

CHAPTER 268

S.B. No. 248

AN ACT

relating to the adoption of a nonsubstantive revision of statutes relating to areas of government that affect or involve both state and local entities, including the operation of government and governmental bodies, public officers and employees, and fiscal affairs and including conforming amendments, repeals, and penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. ADOPTION OF TITLES 5, 6, AND 10, GOVERNMENT CODE. The Government Code is amended by adding Titles 5, 6, and 10 to read as follows:

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

Chapter 551. OPEN MEETINGS

Chapter 552. OPEN RECORDS

Chapter 553. PUBLIC DISCLOSURE

Chapter 554. PROTECTION FOR REPORTING VIOLATIONS OF LAW

Chapter 555. STATE AGENCY RECORDS RELATING TO LICENSE HOLDERS

Chapter 556. POLITICAL ACTIVITIES BY STATE EMPLOYEES

Chapter 557. SEDITION, SABOTAGE, AND COMMUNISM

Chapter 558. INTERPRETERS FOR DEAF OR HEARING IMPAIRED PERSONS

[Chapters 559 to 570 reserved for expansion]

SUBTITLE B. ETHICS

Chapter 571. TEXAS ETHICS COMMISSION

Chapter 572. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

Chapter 573. DEGREES OF RELATIONSHIP; NEPOTISM PROHIBITIONS

Chapter 574. DUAL OFFICE HOLDING

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 551. OPEN MEETINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS

Sec. 551.002. OPEN MEETINGS REQUIREMENT

Sec. 551.003. LEGISLATURE

Sec. 551.004. OPEN MEETINGS REQUIRED BY CHARTER

[Sections 551.005 to 551.020 reserved for expansion]

SUBCHAPTER B. RECORD OF OPEN MEETING

Sec. 551.021. MINUTES OR TAPE RECORDING OF OPEN MEETING REQUIRED

Sec. 551.022. MINUTES AND TAPE RECORDINGS OF OPEN MEETING: PUBLIC RECORD

Sec. 551.023. RECORDING OF MEETING BY PERSON IN ATTENDANCE

[Sections 551.024 to 551.040 reserved for expansion]

SUBCHAPTER C. NOTICE OF MEETINGS

Sec. 551.041. NOTICE OF MEETING REQUIRED

Sec. 551.042. INQUIRY MADE AT MEETING

Sec. 551.043. TIME AND ACCESSIBILITY OF NOTICE; GENERAL RULE

Sec. 551.044. EXCEPTION TO GENERAL RULE: GOVERNMENTAL BODY WITH STATEWIDE JURISDICTION

Sec. 551.045. EXCEPTION TO GENERAL RULE: NOTICE OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA

Sec. 551.046. EXCEPTION TO GENERAL RULE: COMMITTEE OF LEGISLATURE

Sec. 551.047. SPECIAL NOTICE TO NEWS MEDIA OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA

Sec. 551.048. STATE GOVERNMENTAL BODY: NOTICE TO SECRETARY OF STATE; PLACE OF POSTING NOTICE

Sec. 551.049. COUNTY GOVERNMENTAL BODY: PLACE OF POSTING NOTICE

- Sec. 551.050. MUNICIPAL GOVERNMENTAL BODY: PLACE OF POSTING NOTICE
- Sec. 551.051. SCHOOL DISTRICT: PLACE OF POSTING NOTICE
- Sec. 551.052. SCHOOL DISTRICT: SPECIAL NOTICE TO NEWS MEDIA
- Sec. 551.053. DISTRICT OR POLITICAL SUBDIVISION EXTENDING INTO FOUR OR MORE COUNTIES; NOTICE TO PUBLIC, SECRETARY OF STATE, AND COUNTY CLERK; PLACE OF POSTING NOTICE
- Sec. 551.054. DISTRICT OR POLITICAL SUBDIVISION EXTENDING INTO FEWER THAN FOUR COUNTIES; NOTICE TO PUBLIC AND COUNTY CLERKS; PLACE OF POSTING NOTICE

[Sections 551.055 to 551.070 reserved for expansion]

SUBCHAPTER D. EXCEPTIONS TO REQUIREMENT THAT MEETINGS BE OPEN

- Sec. 551.071. CONSULTATION WITH ATTORNEY; CLOSED MEETING
- Sec. 551.072. DELIBERATION REGARDING REAL PROPERTY; CLOSED MEETING
- Sec. 551.073. DELIBERATION REGARDING PROSPECTIVE GIFT; CLOSED MEETING
- Sec. 551.074. PERSONNEL MATTERS; CLOSED MEETING
- Sec. 551.075. CONFERENCE WITH EMPLOYEES; CLOSED MEETING
- Sec. 551.076. DELIBERATION REGARDING SECURITY DEVICES; CLOSED MEETING
- Sec. 551.077. AGENCY FINANCED BY FEDERAL GOVERNMENT
- Sec. 551.078. MEDICAL BOARD OR MEDICAL COMMITTEE
- Sec. 551.079. STATE BOARD OF INSURANCE
- Sec. 551.080. BOARD OF PARDONS AND PAROLES
- Sec. 551.081. CREDIT UNION COMMISSION
- Sec. 551.082. SCHOOL CHILDREN; SCHOOL DISTRICT EMPLOYEES; DISCIPLINARY MATTER OR COMPLAINT
- Sec. 551.083. CERTAIN SCHOOL BOARDS; CLOSED MEETING REGARDING CONSULTATION WITH REPRESENTATIVE OF EMPLOYEE GROUP
- Sec. 551.084. INVESTIGATION; EXCLUSION OF WITNESS FROM HEARING

[Sections 551.085 to 551.100 reserved for expansion]

SUBCHAPTER E. PROCEDURES RELATING TO CLOSED MEETING

- Sec. 551.101. REQUIREMENT TO FIRST CONVENE IN OPEN MEETING
- Sec. 551.102. REQUIREMENT TO VOTE OR TAKE FINAL ACTION IN OPEN MEETING
- Sec. 551.103. CERTIFIED AGENDA OR TAPE RECORDING REQUIRED
- Sec. 551.104. CERTIFIED AGENDA OR TAPE; PRESERVATION; DISCLOSURE

[Sections 551.105 to 551.120 reserved for expansion]

SUBCHAPTER F. MEETINGS BY TELEPHONE CONFERENCE CALL

- Sec. 551.121. GOVERNING BOARD OF INSTITUTION OF HIGHER EDUCATION
- Sec. 551.122. TEXAS HIGH-SPEED RAIL AUTHORITY
- Sec. 551.123. TEXAS BOARD OF CRIMINAL JUSTICE
- Sec. 551.124. BOARD OF PARDONS AND PAROLES

[Sections 551.125 to 551.140 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT AND REMEDIES; CRIMINAL VIOLATIONS

- Sec. 551.141. ACTION VOIDABLE
- Sec. 551.142. MANDAMUS; INJUNCTION

- Sec. 551.143. CONSPIRACY TO CIRCUMVENT CHAPTER; OFFENSE; PENALTY
- Sec. 551.144. CLOSED MEETING; OFFENSE; PENALTY
- Sec. 551.145. CLOSED MEETING WITHOUT CERTIFIED AGENDA OR TAPE RECORDING; OFFENSE; PENALTY
- Sec. 551.146. DISCLOSURE OF CERTIFIED AGENDA OR TAPE RECORDING OF CLOSED MEETING; OFFENSE; PENALTY; CIVIL LIABILITY

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 551. OPEN MEETINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. In this chapter:

- (1) "Closed meeting" means a meeting to which the public does not have access.
- (2) "Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.
- (3) "Governmental body" means:
  - (A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;
  - (B) a county commissioners court in the state;
  - (C) a municipal governing body in the state;
  - (D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
  - (E) a school district board of trustees;
  - (F) a county board of school trustees;
  - (G) a county board of education;
  - (H) the governing board of a special district created by law; and
  - (I) a nonprofit corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.

(4) "Meeting" means a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action. The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, if formal action is not taken and any discussion of public business is incidental to the social function, convention, or workshop. The term includes a session of a governmental body.

(5) "Open" means open to the public.

(6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body. (V.A.C.S. Art. 6252-17, Sec. 1; New.)

Sec. 551.002. OPEN MEETINGS REQUIREMENT. Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter. (V.A.C.S. Art. 6252-17, Sec. 2(a) (part).)

Sec. 551.003. **LEGISLATURE.** In this chapter, the legislature is exercising its powers to adopt rules to prohibit secret meetings of the legislature, committees of the legislature, and other bodies associated with the legislature, except as specifically permitted in the constitution. (V.A.C.S. Art. 6252-17, Sec. 2(b).)

Sec. 551.004. **OPEN MEETINGS REQUIRED BY CHARTER.** This chapter does not authorize a governmental body to close a meeting that a charter of the governmental body:

- (1) prohibits from being closed; or
- (2) requires to be open. (V.A.C.S. Art. 6252-17, Sec. 2(k).)

[Sections 551.005 to 551.020 reserved for expansion]

## SUBCHAPTER B. RECORD OF OPEN MEETING

Sec. 551.021. **MINUTES OR TAPE RECORDING OF OPEN MEETING REQUIRED.**

(a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.

(b) The minutes must:

- (1) state the subject of each deliberation; and
- (2) indicate each vote, order, decision, or other action taken. (V.A.C.S. Art. 6252-17, Sec. 3B (part).)

Sec. 551.022. **MINUTES AND TAPE RECORDINGS OF OPEN MEETING: PUBLIC RECORD.** The minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee. (V.A.C.S. Art. 6252-17, Sec. 3B (part).)

Sec. 551.023. **RECORDING OF MEETING BY PERSON IN ATTENDANCE.** (a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a tape recorder, video camera, or other means of aural or visual reproduction.

(b) A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:

- (1) the location of recording equipment; and
- (2) the manner in which the recording is conducted.

(c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a). (V.A.C.S. Art. 6252-17, Sec. 2(i).)

[Sections 551.024 to 551.040 reserved for expansion]

## SUBCHAPTER C. NOTICE OF MEETINGS

Sec. 551.041. **NOTICE OF MEETING REQUIRED.** A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body. (V.A.C.S. Art. 6252-17, Sec. 3A(a) (part).)

Sec. 551.042. **INQUIRY MADE AT MEETING.** (a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

- (1) a statement of specific factual information given in response to the inquiry; or
- (2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting. (V.A.C.S. Art. 6252-17, Sec. 3A(a) (part).)

Sec. 551.043. **TIME AND ACCESSIBILITY OF NOTICE; GENERAL RULE.** The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting,

except as provided by Sections 551.044–551.046. (V.A.C.S. Art. 6252–17, Secs. 3A(a) (part) and (h) (part).)

**Sec. 551.044. EXCEPTION TO GENERAL RULE: GOVERNMENTAL BODY WITH STATEWIDE JURISDICTION.** (a) The secretary of state must post notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction for at least seven days before the day of the meeting.

(b) Subsection (a) does not apply to:

(1) the Texas Workers' Compensation Commission; or

(2) the governing board of an institution of higher education. (V.A.C.S. Art. 6252–17, Sec. 3A(h) (part).)

**Sec. 551.045. EXCEPTION TO GENERAL RULE: NOTICE OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA.** (a) In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety; or

(2) a reasonably unforeseeable situation.

(c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.

(d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body's stated reason for the emergency or urgent public necessity. (V.A.C.S. Art. 6252–17, Sec. 3A(h) (part).)

**Sec. 551.046. EXCEPTION TO GENERAL RULE: COMMITTEE OF LEGISLATURE.** The notice of a legislative committee meeting shall be as provided by the rules of the house of representatives or of the senate. (V.A.C.S. Art. 6252–17, Sec. 3A(h) (part).)

**Sec. 551.047. SPECIAL NOTICE TO NEWS MEDIA OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA.** (a) The presiding officer of a governmental body, or the member of a governmental body who calls an emergency meeting of the governmental body or adds an emergency item to the agenda of a meeting of the governmental body, shall notify the news media of the emergency meeting or emergency item as required by this section.

(b) The presiding officer or member is required to notify only those members of the news media that have previously:

(1) filed at the headquarters of the governmental body a request containing all pertinent information for the special notice; and

(2) agreed to reimburse the governmental body for the cost of providing the special notice.

(c) The presiding officer or member shall give the notice by telephone or telegraph. (V.A.C.S. Art. 6252–17, Sec. 3A(h) (part).)

**Sec. 551.048. STATE GOVERNMENTAL BODY: NOTICE TO SECRETARY OF STATE; PLACE OF POSTING NOTICE.** (a) A state governmental body shall provide notice of each meeting to the secretary of state.

(b) The secretary of state shall post the notice on a bulletin board at a place convenient to the public in the main office of the secretary of state. (V.A.C.S. Art. 6252–17, Sec. 3A(b).)

**Sec. 551.049. COUNTY GOVERNMENTAL BODY: PLACE OF POSTING NOTICE.** A county governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the county courthouse. (V.A.C.S. Art. 6252–17, Sec. 3A(d).)

Sec. 551.050. MUNICIPAL GOVERNMENTAL BODY: PLACE OF POSTING NOTICE. A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall. (V.A.C.S. Art. 6252-17, Sec. 3A(c).)

Sec. 551.051. SCHOOL DISTRICT: PLACE OF POSTING NOTICE. A school district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district. (V.A.C.S. Art. 6252-17, Sec. 3A(e) (part).)

Sec. 551.052. SCHOOL DISTRICT: SPECIAL NOTICE TO NEWS MEDIA. (a) A school district shall provide special notice of each meeting to any news media that has:

- (1) requested special notice; and
- (2) agreed to reimburse the district for the cost of providing the special notice.

(b) The notice shall be by telephone or telegraph. (V.A.C.S. Art. 6252-17, Sec. 3A(e) (part).)

Sec. 551.053. DISTRICT OR POLITICAL SUBDIVISION EXTENDING INTO FOUR OR MORE COUNTIES: NOTICE TO PUBLIC, SECRETARY OF STATE, AND COUNTY CLERK; PLACE OF POSTING NOTICE. (a) The governing body of a water district or other district or political subdivision that extends into four or more counties shall:

- (1) post notice of each meeting at a place convenient to the public in the administrative office of the district or political subdivision;
- (2) provide notice of each meeting to the secretary of state; and
- (3) provide notice of each meeting to the county clerk of the county in which the administrative office of the district or political subdivision is located.

(b) The secretary of state shall post the notice provided under Subsection (a)(2) on a bulletin board at a place convenient to the public in the main office of the secretary of state.

(c) A county clerk shall post the notice provided under Subsection (a)(3) on a bulletin board at a place convenient to the public in the county courthouse. (V.A.C.S. Art. 6252-17, Sec. 3A(f).)

Sec. 551.054. DISTRICT OR POLITICAL SUBDIVISION EXTENDING INTO FEWER THAN FOUR COUNTIES: NOTICE TO PUBLIC AND COUNTY CLERKS; PLACE OF POSTING NOTICE. (a) The governing body of a water district or other district or political subdivision that extends into fewer than four counties shall:

- (1) post notice of each meeting at a place convenient to the public in the administrative office of the district or political subdivision; and
- (2) provide notice of each meeting to the county clerk of each county in which the district or political subdivision is located.

(b) A county clerk shall post the notice provided under Subsection (a)(2) on a bulletin board at a place convenient to the public in the county courthouse. (V.A.C.S. Art. 6252-17, Sec. 3A(g).)

[Sections 551.055 to 551.070 reserved for expansion]

#### SUBCHAPTER D. EXCEPTIONS TO REQUIREMENT THAT MEETINGS BE OPEN

Sec. 551.071. CONSULTATION WITH ATTORNEY; CLOSED MEETING. A governmental body may not conduct a private consultation with its attorney except:

- (1) when the governmental body seeks the advice of its attorney about:
  - (A) pending or contemplated litigation; or
  - (B) a settlement offer; or

(2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. (V.A.C.S. Art. 6252-17, Sec. 2(e).)

Sec. 551.072. DELIBERATION REGARDING REAL PROPERTY; CLOSED MEETING. A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a

detrimental effect on the position of the governmental body in negotiations with a third person. (V.A.C.S. Art. 6252-17, Sec. 2(f) (part).)

Sec. 551.073. DELIBERATION REGARDING PROSPECTIVE GIFT; CLOSED MEETING. A governmental body may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person. (V.A.C.S. Art. 6252-17, Sec. 2(f) (part).)

Sec. 551.074. PERSONNEL MATTERS; CLOSED MEETING. (a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. (V.A.C.S. Art. 6252-17, Sec. 2(g).)

Sec. 551.075. CONFERENCE WITH EMPLOYEES; CLOSED MEETING. (a) This chapter does not require a governmental body to confer with one or more employees of the governmental body in an open meeting if the only purpose of the conference is to:

(1) receive information from the employees; or

(2) question the employees.

(b) During a conference under Subsection (a), members of the governmental body may not deliberate public business or agency policy that affects public business. (V.A.C.S. Art. 6252-17, Sec. 2(r), as added by Sec. 2, Ch. 549, Acts of the 70th Leg., R.S., 1987.)

Sec. 551.076. DELIBERATION REGARDING SECURITY DEVICES; CLOSED MEETING. This chapter does not require a governmental body to conduct an open meeting to deliberate the deployment, or specific occasions for implementation, of security personnel or devices. (V.A.C.S. Art. 6252-17, Sec. 2(j).)

Sec. 551.077. AGENCY FINANCED BY FEDERAL GOVERNMENT. This chapter does not require an agency financed entirely by federal money to conduct an open meeting. (V.A.C.S. Art. 6252-17, Sec. 2(n).)

Sec. 551.078. MEDICAL BOARD OR MEDICAL COMMITTEE. This chapter does not require a medical board or medical committee to conduct an open meeting to deliberate the medical or psychiatric records of an individual applicant for a disability benefit from a public retirement system. (V.A.C.S. Art. 6252-17, Sec. 2(o).)

Sec. 551.079. STATE BOARD OF INSURANCE. (a) The requirements of this chapter do not apply to a meeting of the State Board of Insurance in the discharge of responsibilities to regulate and maintain the solvency of a person regulated by the board.

(b) The board may deliberate and determine the appropriate action to be taken concerning the solvency of a person regulated by the board in a closed meeting with persons in one or more of the following categories:

(1) staff of the board;

(2) a regulated person; or

(3) representatives of a regulated person. (V.A.C.S. Art. 6252-17, Sec. 2(q).)

Sec. 551.080. BOARD OF PARDONS AND PAROLES. This chapter does not require the Board of Pardons and Paroles to conduct an open meeting to interview or counsel an inmate of a facility of the institutional division of the Texas Department of Criminal Justice. (V.A.C.S. Art. 6252-17, Sec. 2(p).)

Sec. 551.081. CREDIT UNION COMMISSION. This chapter does not require the Credit Union Commission to conduct an open meeting to deliberate a matter made confidential by law. (V.A.C.S. Art. 6252-17, Sec. 2(t).)

Sec. 551.082. SCHOOL CHILDREN; SCHOOL DISTRICT EMPLOYEES; DISCIPLINARY MATTER OR COMPLAINT. (a) This chapter does not require a school board to conduct an open meeting to deliberate in a case:



(1) involving discipline of a public school child; or

(2) in which a complaint or charge is brought against an employee of the school district by another employee and the complaint or charge directly results in a need for a hearing.

(b) Subsection (a) does not apply if an open hearing is requested in writing by a parent or guardian of the child or by the employee against whom the complaint or charge is brought. (V.A.C.S. Art. 6252-17, Sec. 2(h).)

Sec. 551.083. CERTAIN SCHOOL BOARDS; CLOSED MEETING REGARDING CONSULTATION WITH REPRESENTATIVE OF EMPLOYEE GROUP. This chapter does not require a school board operating under a consultation agreement authorized by Section 13.901, Education Code, to conduct an open meeting to deliberate the standards, guidelines, terms, or conditions the board will follow, or instruct its representatives to follow, in a consultation with a representative of an employee group. (V.A.C.S. Art. 6252-17, Sec. 2(m).)

Sec. 551.084. INVESTIGATION; EXCLUSION OF WITNESS FROM HEARING. A governmental body that is investigating a matter may exclude a witness from a hearing during the examination of another witness in the investigation. (V.A.C.S. Art. 6252-17, Sec. 2(c).)

[Sections 551.085 to 551.100 reserved for expansion]

SUBCHAPTER E. PROCEDURES RELATING TO CLOSED MEETING

Sec. 551.101. REQUIREMENT TO FIRST CONVENE IN OPEN MEETING. If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:

(1) announces that a closed meeting will be held; and

(2) identifies the section or sections of this chapter under which the closed meeting is held. (V.A.C.S. Art. 6252-17, Sec. 2(a) (part).)

Sec. 551.102. REQUIREMENT TO VOTE OR TAKE FINAL ACTION IN OPEN MEETING. A final action, decision, or vote on a matter deliberated in a closed meeting under this chapter may only be made in an open meeting that is held in compliance with the notice provisions of this chapter. (V.A.C.S. Art. 6252-17, Sec. 2(l).)

Sec. 551.103. CERTIFIED AGENDA OR TAPE RECORDING REQUIRED. (a) A governmental body shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

(b) The presiding officer shall certify that an agenda kept under Subsection (a) is a true and correct record of the proceedings.

(c) The certified agenda must include:

(1) a statement of the subject matter of each deliberation;

(2) a record of any further action taken; and

(3) an announcement by the presiding officer at the beginning and the end of the meeting indicating the date and time.

(d) A tape recording made under Subsection (a) must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time. (V.A.C.S. Art. 6252-17, Secs. 2A(a), (b), (c) (part), (d).)

Sec. 551.104. CERTIFIED AGENDA OR TAPE; PRESERVATION; DISCLOSURE. (a) A governmental body shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. If an action involving the meeting is brought within that period, the governmental body shall preserve the certified agenda or tape while the action is pending.

(b) In litigation in a district court involving an alleged violation of this chapter, the court:

- (1) is entitled to make an in camera inspection of the certified agenda or tape;
  - (2) may admit all or part of the certified agenda or tape as evidence, on entry of a final judgment; and
  - (3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.
- (c) The certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3). (V.A.C.S. Art. 6252-17, Secs. 2A(c) (part), (e), (f).)

[Sections 551.105 to 551.120 reserved for expansion]

#### SUBCHAPTER F. MEETINGS BY TELEPHONE CONFERENCE CALL

Sec. 551.121. GOVERNING BOARD OF INSTITUTION OF HIGHER EDUCATION. (a) In this section, "governing board," "institution of higher education," and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) This chapter does not prohibit the governing board of an institution of higher education from holding an open or closed meeting by telephone conference call.

(c) A meeting held by telephone conference call may be held only if:

- (1) the meeting is a special called meeting and immediate action is required; and
- (2) the convening at one location of a quorum of the governing board is difficult or impossible.

(d) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(e) The notice of the telephone conference call meeting must specify as the location of the meeting the location where meetings of the governing board are usually held. For a meeting of the governing board of a university system, the notice must specify as the location of the meeting the board's conference room at the university system office.

(f) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape recorded. The tape recording shall be made available to the public. (V.A.C.S. Art. 6252-17, Sec. 2(r), as added by Sec. 4, Ch. 964, Acts of the 70th Leg., R.S., 1987; New.)

Sec. 551.122. TEXAS HIGH-SPEED RAIL AUTHORITY. The Texas High-Speed Rail Authority may conduct an open or closed meeting by telephone conference call using the procedures described in Section 551.121. (V.A.C.S. Art. 6674v.2, Sec. 5(c).)

Sec. 551.123. TEXAS BOARD OF CRIMINAL JUSTICE. (a) The Texas Board of Criminal Justice may hold an open or closed emergency meeting by telephone conference call.

(b) The portion of the telephone conference call meeting that is open shall be recorded. The recording shall be made available to be heard by the public at one or more places designated by the board. (Government Code, Sec. 492.006(c).)

Sec. 551.124. BOARD OF PARDONS AND PAROLES. At the call of the presiding officer of the Board of Pardons and Paroles, the board may hold a hearing on clemency matters by telephone conference call. The portion of a meeting that is public is subject to the provisions of Section 7(f), Article 42.18, Code of Criminal Procedure. (Code of Criminal Procedure, Art. 42.18, Sec. 7(f) (part); New.)

[Sections 551.125 to 551.140 reserved for expansion]

#### SUBCHAPTER G. ENFORCEMENT AND REMEDIES; CRIMINAL VIOLATIONS

Sec. 551.141. ACTION VOIDABLE. An action taken by a governmental body in violation of this chapter is voidable. (V.A.C.S. Art. 6252-17, Sec. 3(a) (part).)

Sec. 551.142. **MANDAMUS; INJUNCTION.** (a) An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.

(b) The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action under Subsection (a). In exercising its discretion, the court shall consider whether the action was brought in good faith and whether the conduct of the governmental body had a reasonable basis in law. (V.A.C.S. Art. 6252-17, Sec. 3(a) (part), (b).)

Sec. 551.143. **CONSPIRACY TO CIRCUMVENT CHAPTER; OFFENSE; PENALTY.** (a) A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in the county jail for not less than one month or more than six months;  
or

(3) both the fine and confinement. (V.A.C.S. Art. 6252-17, Sec. 4(b).)

Sec. 551.144. **CLOSED MEETING; OFFENSE; PENALTY.** (a) A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:

(1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;

(2) closes or aids in closing the meeting to the public, if it is a regular meeting; or

(3) participates in the closed meeting, whether it is a regular, special, or called meeting.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in the county jail for not less than one month or more than six months;  
or

(3) both the fine and confinement. (V.A.C.S. Art. 6252-17, Sec. 4(a).)

Sec. 551.145. **CLOSED MEETING WITHOUT CERTIFIED AGENDA OR TAPE RECORDING; OFFENSE; PENALTY.** (a) A member of a governmental body commits an offense if the member participates in a closed meeting of the governmental body knowing that a certified agenda of the closed meeting is not being kept or that a tape recording of the closed meeting is not being made.

(b) An offense under Subsection (a) is a Class C misdemeanor. (V.A.C.S. Art. 6252-17, Sec. 2A(g).)

Sec. 551.146. **DISCLOSURE OF CERTIFIED AGENDA OR TAPE RECORDING OF CLOSED MEETING; OFFENSE; PENALTY; CIVIL LIABILITY.** (a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public under this chapter:

(1) commits an offense; and

(2) is liable to a person injured or damaged by the disclosure for:

(A) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(B) reasonable attorney fees and court costs; and

(C) at the discretion of the trier of fact, exemplary damages.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) and an affirmative defense to a civil action under Subsection (a)(2) that:

- (1) the defendant had good reason to believe the disclosure was lawful; or
- (2) the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or tape recording. (V.A.C.S. Art. 6252-17, Secs. 2A(h), (i), (j).)

**CHAPTER 552. OPEN RECORDS**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 552.001. POLICY; CONSTRUCTION
- Sec. 552.002. DEFINITION OF PUBLIC RECORD
- Sec. 552.003. DEFINITION OF GOVERNMENTAL BODY
- Sec. 552.004. PRESERVATION OF RECORDS
- Sec. 552.005. EFFECT OF CHAPTER ON SCOPE OF CIVIL DISCOVERY
- Sec. 552.006. EFFECT OF CHAPTER ON WITHHOLDING INFORMATION
- Sec. 552.007. VOLUNTARY DISCLOSURE OF CERTAIN RECORDS WHEN DISCLOSURE NOT REQUIRED
- Sec. 552.008. INFORMATION FOR LEGISLATIVE PURPOSES

[Sections 552.009 to 552.020 reserved for expansion]

**SUBCHAPTER B. RIGHT OF ACCESS TO PUBLIC INFORMATION**

- Sec. 552.021. PUBLIC INFORMATION
- Sec. 552.022. CATEGORIES OF PUBLIC INFORMATION; EXAMPLES
- Sec. 552.023. SPECIAL RIGHT OF ACCESS TO CONFIDENTIAL INFORMATION
- Sec. 552.024. ELECTING TO DISCLOSE ADDRESS AND TELEPHONE NUMBER
- Sec. 552.025. TAX RULINGS AND OPINIONS
- Sec. 552.026. EDUCATION RECORDS

[Sections 552.027 to 552.100 reserved for expansion]

**SUBCHAPTER C. INFORMATION EXCEPTED FROM REQUIRED DISCLOSURE**

- Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION
- Sec. 552.102. EXCEPTION: PERSONNEL INFORMATION
- Sec. 552.103. EXCEPTION: LITIGATION OR SETTLEMENT NEGOTIATIONS INVOLVING THE STATE OR A POLITICAL SUBDIVISION
- Sec. 552.104. EXCEPTION: INFORMATION RELATED TO COMPETITION OR BIDDING
- Sec. 552.105. EXCEPTION: INFORMATION RELATED TO LOCATION OR PRICE OF PROPERTY
- Sec. 552.106. EXCEPTION: CERTAIN LEGISLATIVE DOCUMENTS
- Sec. 552.107. EXCEPTION: CERTAIN LEGAL MATTERS
- Sec. 552.108. EXCEPTION: CERTAIN LAW ENFORCEMENT AND PROSECUTORIAL RECORDS
- Sec. 552.109. EXCEPTION: CERTAIN PRIVATE COMMUNICATIONS OF AN ELECTED OFFICE HOLDER
- Sec. 552.110. EXCEPTION: TRADE SECRETS, COMMERCIAL INFORMATION, OR FINANCIAL INFORMATION
- Sec. 552.111. EXCEPTION: AGENCY MEMORANDA
- Sec. 552.112. EXCEPTION: CERTAIN INFORMATION RELATING TO REGULATION OF FINANCIAL INSTITUTIONS OR SECURITIES
- Sec. 552.113. EXCEPTION: GEOLOGICAL OR GEOPHYSICAL INFORMATION
- Sec. 552.114. EXCEPTION: STUDENT RECORDS
- Sec. 552.115. EXCEPTION: BIRTH AND DEATH RECORDS
- Sec. 552.116. EXCEPTION: STATE AUDITOR WORKING PAPERS
- Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, AND SOCIAL SECURITY NUMBERS

- Sec. 552.118. EXCEPTION: TRIPPLICATE PRESCRIPTION FORM
- Sec. 552.119. EXCEPTION: PHOTOGRAPH OF PEACE OFFICER OR CERTAIN SECURITY GUARDS
- Sec. 552.120. EXCEPTION: CERTAIN RARE BOOKS AND ORIGINAL MANUSCRIPTS
- Sec. 552.121. EXCEPTION: CERTAIN DOCUMENTS HELD FOR HISTORICAL RESEARCH
- Sec. 552.122. EXCEPTION: CURRICULUM OBJECTIVES AND TEST ITEMS
- Sec. 552.123. EXCEPTION: NAME OF APPLICANT FOR CHIEF EXECUTIVE OFFICER OF INSTITUTION OF HIGHER EDUCATION

[Sections 552.124 to 552.200 reserved for expansion]

#### SUBCHAPTER D. OFFICER FOR PUBLIC RECORDS

- Sec. 552.201. IDENTITY OF OFFICER FOR PUBLIC RECORDS
- Sec. 552.202. DEPARTMENT HEADS
- Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC RECORDS

[Sections 552.204 to 552.220 reserved for expansion]

#### SUBCHAPTER E. PROCEDURES RELATED TO ACCESS

- Sec. 552.221. APPLICATION FOR PUBLIC INFORMATION
- Sec. 552.222. PERMISSIBLE INQUIRY OF PERSON APPLYING FOR INSPECTION OF RECORDS
- Sec. 552.223. UNIFORM TREATMENT OF REQUESTS FOR INFORMATION
- Sec. 552.224. COMFORT AND FACILITY
- Sec. 552.225. TIME FOR EXAMINATION
- Sec. 552.226. REMOVAL OF ORIGINAL RECORD
- Sec. 552.227. RESEARCH OF STATE LIBRARY HOLDINGS NOT REQUIRED
- Sec. 552.228. PROVIDING SUITABLE COPY OF RECORD WITHIN REASONABLE TIME
- Sec. 552.229. CONSENT TO RELEASE INFORMATION UNDER SPECIAL RIGHT OF ACCESS
- Sec. 552.230. RULES OF PROCEDURE FOR INSPECTION OF PUBLIC RECORDS

[Sections 552.231 to 552.260 reserved for expansion]

#### SUBCHAPTER F. COST OF COPIES

- Sec. 552.261. DETERMINING COST OF COPIES
- Sec. 552.262. COST FOR NONSTANDARD RECORDS
- Sec. 552.263. BOND FOR PAYMENT OF COSTS OR CASH PREPAYMENT FOR PREPARATION OF PUBLIC RECORDS
- Sec. 552.264. COPY OF PUBLIC RECORD REQUESTED BY MEMBER OF LEGISLATURE
- Sec. 552.265. CERTIFIED RECORD PROVIDED BY DISTRICT OR COUNTY CLERK
- Sec. 552.266. COPY OF PUBLIC RECORD PROVIDED BY MUNICIPAL COURT CLERK
- Sec. 552.267. WAIVER OR REDUCTION OF FEE FOR COPY OF PUBLIC RECORD
- Sec. 552.268. EFFICIENT USE OF PUBLIC RECORDS
- Sec. 552.269. RECOVERY OF OVERPAYMENT FOR PUBLIC RECORD

[Sections 552.270 to 552.300 reserved for expansion]

SUBCHAPTER G. ATTORNEY GENERAL DECISIONS

- Sec. 552.301. REQUEST FOR ATTORNEY GENERAL DECISION
- Sec. 552.302. FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC
- Sec. 552.303. DELIVERY OF REQUESTED INFORMATION TO ATTORNEY GENERAL; DISCLOSURE OF REQUESTED INFORMATION
- Sec. 552.304. SUBMISSION OF PUBLIC COMMENTS
- Sec. 552.305. INFORMATION INVOLVING PRIVACY OR PROPERTY INTERESTS OF THIRD PARTY
- Sec. 552.306. RENDITION OF ATTORNEY GENERAL DECISION; ISSUANCE OF WRITTEN OPINION
- Sec. 552.307. SPECIAL RIGHT OF ACCESS; ATTORNEY GENERAL DECISIONS

[Sections 552.308 to 552.320 reserved for expansion]

SUBCHAPTER H. CIVIL ENFORCEMENT

- Sec. 552.321. SUIT FOR WRIT OF MANDAMUS
- Sec. 552.322. DISCOVERY OF INFORMATION UNDER PROTECTIVE ORDER PENDING FINAL DETERMINATION
- Sec. 552.323. ASSESSMENT OF COSTS OF LITIGATION AND REASONABLE ATTORNEY FEES

[Sections 552.324 to 552.350 reserved for expansion]

SUBCHAPTER I. CRIMINAL VIOLATIONS

- Sec. 552.351. DESTRUCTION, REMOVAL, OR ALTERATION OF PUBLIC RECORD
- Sec. 552.352. DISTRIBUTION OF CONFIDENTIAL INFORMATION
- Sec. 552.353. FAILURE OR REFUSAL OF OFFICER FOR PUBLIC RECORDS TO PROVIDE ACCESS TO OR COPYING OF PUBLIC RECORD

CHAPTER 552. OPEN RECORDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 552.001. POLICY; CONSTRUCTION. (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information. (V.A.C.S. Art. 6252-17a, Secs. 1, 14(d).)

Sec. 552.002. DEFINITION OF PUBLIC RECORD. "Public record" means the portion of a document, writing, letter, memorandum or other written, printed, typed, copied, or developed material that contains public information. (V.A.C.S. Art. 6252-17a, Sec. 2 (part).)

Sec. 552.003. DEFINITION OF GOVERNMENTAL BODY. (a) In this chapter, "governmental body" means:

(1) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

- (2) a county commissioners court in the state;
- (3) a municipal governing body in the state;
- (4) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- (5) a school district board of trustees;
- (6) a county board of school trustees;
- (7) a county board of education;
- (8) the governing board of a special district;
- (9) the governing body of a nonprofit corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code; and

(10) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

(b) In this chapter, "governmental body" does not include the judiciary.

(c) In this section, "public funds" means funds of the state or of a governmental subdivision of the state. (V.A.C.S. Art. 6252-17a, Sec. 2 (part).)

Sec. 552.004. **PRESERVATION OF RECORDS.** A governmental body or, for records of an elective county office, the elected county officer, may determine a time for which records that are not currently in use will be preserved, subject to state laws governing the destruction and other disposition of state and local government records. (V.A.C.S. Art. 6252-17a, Sec. 5(a) (part).)

Sec. 552.005. **EFFECT OF CHAPTER ON SCOPE OF CIVIL DISCOVERY.** (a) This chapter does not affect the scope of civil discovery under the Texas Rules of Civil Procedure.

(b) Exceptions from disclosure under this chapter do not create new privileges from discovery. (V.A.C.S. Art. 6252-17a, Sec. 14(f).)

Sec. 552.006. **EFFECT OF CHAPTER ON WITHHOLDING INFORMATION.** This chapter does not authorize withholding of information or limit the availability of public records to the public, except as expressly provided by this chapter. (V.A.C.S. Art. 6252-17a, Secs. 3(a) (part); 3(b) (part); 14(b).)

Sec. 552.007. **VOLUNTARY DISCLOSURE OF CERTAIN RECORDS WHEN DISCLOSURE NOT REQUIRED.** (a) This chapter does not prohibit a governmental body or its officer for public records from voluntarily making part or all of its records available to the public, unless the disclosure is expressly prohibited by law or the records are confidential under law.

(b) Records made available under Subsection (a) must be made available to any person. (V.A.C.S. Art. 6252-17a, Secs. 3(c) (part); 14(a).)

Sec. 552.008. **INFORMATION FOR LEGISLATIVE PURPOSES.** This chapter does not grant authority to withhold information from individual members or committees of the legislature to use for legislative purposes. (V.A.C.S. Art. 6252-17a, Secs. 3(b) (part); 14(c).)

[Sections 552.009 to 552.020 reserved for expansion]

## SUBCHAPTER B. RIGHT OF ACCESS TO PUBLIC INFORMATION

Sec. 552.021. **PUBLIC INFORMATION.** (a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

(b) Public information is available to the public during normal business hours of the governmental body. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.022. CATEGORIES OF PUBLIC INFORMATION; EXAMPLES. Without limiting the meaning of other sections of this chapter, the following categories of information are public information:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law;

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;

(7) a description of an agency's central and field organization, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)–(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public; and

(15) information regarded as open to the public under an agency's policies. (V.A.C.S. Art. 6252–17a, Sec. 6.)

Sec. 552.023. SPECIAL RIGHT OF ACCESS TO CONFIDENTIAL INFORMATION.

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to records and copies of records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for



denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

(c) A release of information under Subsections (a) and (b) is not an offense under Section 552.352.

(d) A person who receives information under this section may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(e) Access to information under this section shall be provided in the manner prescribed by Sections 552.229 and 552.307. (V.A.C.S. Art. 6252-17a, Secs. 3B(a), (c), (d); New.)

Sec. 552.024. ELECTING TO DISCLOSE ADDRESS AND TELEPHONE NUMBER. (a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body relating to the person's home address and home telephone number.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing not later than the 14th day after the date on which:

- (1) the employee begins employment with the governmental body;
- (2) the official is elected or appointed; or
- (3) the former employee or official ends service with the governmental body.

(c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.

(d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.

(e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may request in writing that the main personnel officer of the governmental body close or open access. (V.A.C.S. Art. 6252-17a, Sec. 3A.)

Sec. 552.025. TAX RULINGS AND OPINIONS. (a) A governmental body with taxing authority that issues a written determination letter, technical advice memorandum, or ruling that concerns a tax matter shall index the letter, memorandum, or ruling by subject matter.

(b) On request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, subject to the provisions of this chapter.

(c) Subchapter C does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority. (V.A.C.S. Art. 6252-17a, Secs. 3(f); 6A.)

Sec. 552.026. EDUCATION RECORDS. This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g. (V.A.C.S. Art. 6252-17a, Sec. 14(e).)

[Sections 552.027 to 552.100 reserved for expansion]

## SUBCHAPTER C. INFORMATION EXCEPTED FROM REQUIRED DISCLOSURE

Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION. Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.102. EXCEPTION: PERSONNEL INFORMATION. (a) Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

(b) Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.103. EXCEPTION: LITIGATION OR SETTLEMENT NEGOTIATIONS INVOLVING THE STATE OR A POLITICAL SUBDIVISION. (a) Information is excepted from the requirements of Section 552.021 if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

(b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court. (V.A.C.S. Art. 6252-17a, Secs. 3(a) (part); 3(e).)

Sec. 552.104. EXCEPTION: INFORMATION RELATED TO COMPETITION OR BIDDING. Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.105. EXCEPTION: INFORMATION RELATED TO LOCATION OR PRICE OF PROPERTY. Information is excepted from the requirements of Section 552.021 if it is information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.106. EXCEPTION: CERTAIN LEGISLATIVE DOCUMENTS. A draft or working paper involved in the preparation of proposed legislation is excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.107. EXCEPTION: CERTAIN LEGAL MATTERS. Information is excepted from the requirements of Section 552.021 if:

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or

(2) a court by order has prohibited disclosure of the information. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.108. EXCEPTION: CERTAIN LAW ENFORCEMENT AND PROSECUTORIAL RECORDS. (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.109. EXCEPTION: CERTAIN PRIVATE COMMUNICATIONS OF AN ELECTED OFFICE HOLDER. Private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.110. EXCEPTION: TRADE SECRETS, COMMERCIAL INFORMATION, OR FINANCIAL INFORMATION. A trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.111. EXCEPTION: AGENCY MEMORANDA. An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.112. EXCEPTION: CERTAIN INFORMATION RELATING TO REGULATION OF FINANCIAL INSTITUTIONS OR SECURITIES. (a) Information is excepted from the requirements of Section 552.021 if it is information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

(b) In this section, "securities" has the meaning assigned by The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.113. EXCEPTION: GEOLOGICAL OR GEOPHYSICAL INFORMATION. Information is excepted from the requirements of Section 552.021 if it is:

(1) an electric log confidential under Subchapter M, Chapter 91, Natural Resources Code; or

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.114. EXCEPTION: STUDENT RECORDS. (a) Information is excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or partly by state revenue.

(b) A record under Subsection (a) shall be made available on the request of:

(1) educational institution personnel;

(2) the student involved or the student's parent, legal guardian, or spouse; or

(3) a person conducting a child abuse investigation required by Section 34.05, Family Code. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.115. EXCEPTION: BIRTH AND DEATH RECORDS. A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health is excepted from the requirements of Section 552.021, except that:

(1) a birth record is public information and available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official; and

(2) a death record is public information and available to the public on and after the 25th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.116. EXCEPTION: STATE AUDITOR WORKING PAPERS. An audit working paper of the state auditor is excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, AND SOCIAL SECURITY NUMBERS. Information is excepted from the requirements of Section 552.021 if it is information relating to:

(1) the home address or home telephone number of:

(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code; or

(2) the home address, home telephone number, or social security number of an employee of the Texas Department of Criminal Justice, or the home or employment address or

telephone number, name, or social security number of a family member of the employee. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.118. EXCEPTION: TRIPPLICATE PRESCRIPTION FORM. Information is excepted from the requirements of Section 552.021 if it is information on or derived from a triplicate prescription form filed with the Department of Public Safety under Section 481.075, Health and Safety Code. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.119. EXCEPTION: PHOTOGRAPH OF PEACE OFFICER OR CERTAIN SECURITY GUARDS. (a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from the requirements of Section 552.021 unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration;

or

- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure. (V.A.C.S. Art. 6252-17a, Secs. 3(a) (part); 3(c) (part).)

Sec. 552.120. EXCEPTION: CERTAIN RARE BOOKS AND ORIGINAL MANUSCRIPTS. A rare book or original manuscript that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.121. EXCEPTION: CERTAIN DOCUMENTS HELD FOR HISTORICAL RESEARCH. An oral history interview, personal paper, unpublished letter, or organizational record of a nongovernmental entity that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021 to the extent that the archival and manuscript repository and the donor of the interview, paper, letter, or record agree to limit disclosure of the item. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.122. EXCEPTION: CURRICULUM OBJECTIVES AND TEST ITEMS. (a) A curriculum objective or test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from the requirements of Section 552.021.

(b) A test item developed by a licensing agency or governmental body is excepted from the requirements of Section 552.021. (V.A.C.S. Art. 6252-17a, Sec. 3(a) (part).)

Sec. 552.123. EXCEPTION: NAME OF APPLICANT FOR CHIEF EXECUTIVE OFFICER OF INSTITUTION OF HIGHER EDUCATION. The name of an applicant for the position of chief executive officer of an institution of higher education is excepted from the requirements of Section 552.021, except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person. (V.A.C.S. Art. 6252-17a, Sec. 3(a)(23).)

[Sections 552.124 to 552.200 reserved for expansion]

#### SUBCHAPTER D. OFFICER FOR PUBLIC RECORDS

Sec. 552.201. IDENTITY OF OFFICER FOR PUBLIC RECORDS. (a) The chief administrative officer of a governmental body is the officer for public records, except as provided by Subsection (b).

(b) Each elected county officer is the officer for public records and the custodian, as defined by Section 201.003, Local Government Code, of the records created or received by that county officer's office. (V.A.C.S. Art. 6252-17a, Sec. 5(a) (part).)

Sec. 552.202. DEPARTMENT HEADS. Each department head is an agent of the officer for public records for the purposes of complying with this chapter. (V.A.C.S. Art. 6252-17a, Sec. 5(a) (part).)

Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC RECORDS. Each officer for public records, subject to penalties provided in this chapter, shall:

- (1) make public records available for public inspection and copying;
- (2) carefully protect public records from deterioration, alteration, mutilation, loss, or unlawful removal; and
- (3) repair, renovate, or rebind public records as necessary to maintain them properly. (V.A.C.S. Art. 6252-17a, Sec. 5(a) (part).)

[Sections 552.204 to 552.220 reserved for expansion]

#### SUBCHAPTER E. PROCEDURES RELATED TO ACCESS

Sec. 552.221. APPLICATION FOR PUBLIC INFORMATION. (a) An officer for public records of a governmental body shall promptly produce public information for inspection, duplication, or both, in the offices of the governmental body on application by any person to the officer.

(b) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public records shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for inspection or duplication. (V.A.C.S. Art. 6252-17a, Sec. 4 (part).)

Sec. 552.222. PERMISSIBLE INQUIRY OF PERSON APPLYING FOR INSPECTION OF RECORDS. The officer for public records and the officer's agent may not make an inquiry of a person who applies for inspection or copying of a public record except to establish proper identification and the public records requested. (V.A.C.S. Art. 6252-17a, Sec. 5(b) (part).)

Sec. 552.223. UNIFORM TREATMENT OF REQUESTS FOR INFORMATION. The officer for public records or the officer's agent shall treat all requests for information uniformly without regard to the position or occupation of the person making the request, the person on whose behalf the request is made, or the status of the individual as a member of the media. (V.A.C.S. Art. 6252-17a, Sec. 5(c).)

Sec. 552.224. COMFORT AND FACILITY. The officer for public records or the officer's agent shall give to a person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this chapter. (V.A.C.S. Art. 6252-17a, Sec. 5(b) (part).)

Sec. 552.225. TIME FOR EXAMINATION. (a) A person requesting public information must complete the examination of the information not later than the 10th day after the date the custodian of the information makes it available to the person.

(b) The officer for public records shall extend the initial examination period by an additional 10 days if, within the initial period, the person requesting the information files with the officer for public records a written request for additional time. The officer for public records shall extend an additional examination period by another 10 days if, within the additional period, the person requesting the information files with the officer for public records a written request for more additional time.

(c) The time during which a person may examine information may be interrupted by the officer for public records if the information is needed for use by the governmental body. The period of interruption is not considered to be a part of the time during which the person may examine the information. (V.A.C.S. Art. 6252-17a, Sec. 4A.)

Sec. 552.226. REMOVAL OF ORIGINAL RECORD. This chapter does not authorize a person to remove an original copy of a public record from the office of a governmental body. (V.A.C.S. Art. 6252-17a, Sec. 4 (part).)

Sec. 552.227. RESEARCH OF STATE LIBRARY HOLDINGS NOT REQUIRED. An officer for public records or the officer's agent is not required to perform general research within the reference and research archives and holdings of state libraries. (V.A.C.S. Art. 6252-17a, Sec. 3(d).)

Sec. 552.228. PROVIDING SUITABLE COPY OF RECORD WITHIN REASONABLE TIME. It shall be a policy of a governmental body to provide a suitable copy of a public record within a reasonable time after the date on which the copy is requested. (V.A.C.S. Art. 6252-17a, Sec. 9(c) (part).)

Sec. 552.229. CONSENT TO RELEASE INFORMATION UNDER SPECIAL RIGHT OF ACCESS. (a) Consent for the release of information excepted from disclosure to the general public but available to a specific person under Sections 552.023 and 552.307 must be in writing and signed by the specific person or the person's authorized representative.

(b) An individual under 18 years of age may consent to the release of information under this section only with the additional written authorization of the individual's parent or guardian.

(c) An individual who has been adjudicated incompetent to manage the individual's personal affairs or for whom an attorney ad litem has been appointed may consent to the release of information under this section only by the written authorization of the designated legal guardian or attorney ad litem. (V.A.C.S. Art. 6252-17a, Sec. 3B(b).)

Sec. 552.230. RULES OF PROCEDURE FOR INSPECTION OF PUBLIC RECORDS. A governmental body may promulgate reasonable rules of procedure under which public records may be inspected efficiently, safely, and without delay. (V.A.C.S. Art. 6252-17a, Sec. 13.)

[Sections 552.231 to 552.260 reserved for expansion]

#### SUBCHAPTER F. COST OF COPIES

Sec. 552.261. DETERMINING COST OF COPIES. (a) A governmental body may not charge an excessive amount for noncertified, photographic reproductions of public records comprised of pages that are legal size or smaller.

(b) The cost of obtaining a standard or legal size photographic reproduction shall be an amount that reasonably includes all costs related to reproducing the record, including costs of materials, labor, and overhead, unless the request is for 50 or fewer pages of readily available information.

(c) The General Services Commission shall periodically determine guidelines for the actual cost of standard size reproductions and shall periodically publish these cost figures for use by governmental bodies in determining charges under this subchapter. (V.A.C.S. Art. 6252-17a, Sec. 9(a).)

Sec. 552.262. COST FOR NONSTANDARD RECORDS. The charge for access to public records that are comprised in a form other than standard or smaller sized pages or that are in computer record banks, microfilm records, or other similar record keeping systems shall be set:

- (1) making every effort to match the charge with the actual cost of providing the record;
- (2) after consultation between a governmental body's officer for public records and the General Services Commission; and
- (3) in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead. (V.A.C.S. Art. 6252-17a, Sec. 9(b).)

Sec. 552.263. BOND FOR PAYMENT OF COSTS OR CASH PREPAYMENT FOR PREPARATION OF PUBLIC RECORDS. An officer for public records or the officer's agent may require a bond for payment of costs or cash prepayment of anticipated costs for the preparation of a public record if the preparation of the record would be unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid. (V.A.C.S. Art. 6252-17a, Sec. 11.)

Sec. 552.264. COPY OF PUBLIC RECORD REQUESTED BY MEMBER OF LEGISLATURE. One copy of a public record that is requested from a state agency by a member of the legislature in the performance of the member's duties shall be provided without charge. (V.A.C.S. Art. 6252-17a, Sec. 9(e).)

Sec. 552.265. **CERTIFIED RECORD PROVIDED BY DISTRICT OR COUNTY CLERK.** The charge for a copy made in a district or county clerk's office may not be more than the actual cost of copies, as provided by Sections 552.261 and 552.262, unless a certified record, the cost of which is set by law, is requested. (V.A.C.S. Art. 6252-17a, Sec. 9(d).)

Sec. 552.266. **COPY OF PUBLIC RECORD PROVIDED BY MUNICIPAL COURT CLERK.** The charge for a copy made by a municipal court clerk shall be the charge provided by municipal ordinance. (V.A.C.S. Art. 6252-17a, Sec. 9(f).)

Sec. 552.267. **WAIVER OR REDUCTION OF FEE FOR COPY OF PUBLIC RECORD.** A governmental body shall furnish public records without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public. (V.A.C.S. Art. 6252-17a, Sec. 9(g).)

Sec. 552.268. **EFFICIENT USE OF PUBLIC RECORDS.** A governmental body shall make reasonably efficient use of each page of a public record to avoid excessive reproduction costs. (V.A.C.S. Art. 6252-17a, Sec. 9(c) (part).)

Sec. 552.269. **RECOVERY OF OVERPAYMENT FOR PUBLIC RECORD.** A person who overpays for a copy of a public record because a governmental body refuses or fails to provide the copy at the actual cost of reproducing the record as provided by Sections 552.261 and 552.262 is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the costs. (V.A.C.S. Art. 6252-17a, Sec. 9(h).)

[Sections 552.270 to 552.300 reserved for expansion]

#### SUBCHAPTER G. ATTORNEY GENERAL DECISIONS

Sec. 552.301. **REQUEST FOR ATTORNEY GENERAL DECISION.** (a) A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

(b) A governmental body that wishes to withhold information must submit written comments stating the reasons why the information should be withheld. (V.A.C.S. Art. 6252-17a, Secs. 7(a) (part), (b) (part).)

Sec. 552.302. **FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC.** If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information. (V.A.C.S. Art. 6252-17a, Sec. 7(a) (part).)

Sec. 552.303. **DELIVERY OF REQUESTED INFORMATION TO ATTORNEY GENERAL; DISCLOSURE OF REQUESTED INFORMATION.** A governmental body that requests an attorney general decision under this subchapter shall supply to the attorney general the specific information requested and shall not disclose the information to the public or to the party requesting the information until the attorney general makes a final determination or, if suit is filed under this chapter, until a final decision has been made by the court with jurisdiction over the suit, except as otherwise provided by Section 552.322. (V.A.C.S. Art. 6252-17a, Sec. 7(b) (part).)

Sec. 552.304. **SUBMISSION OF PUBLIC COMMENTS.** A member of the public may submit written comments stating reasons why the information at issue in a request for an attorney general decision should or should not be released. (V.A.C.S. Art. 6252-17a, Sec. 7(b) (part).)

Sec. 552.305. **INFORMATION INVOLVING PRIVACY OR PROPERTY INTERESTS OF THIRD PARTY.** (a) In a case in which information is requested under this chapter and a third party's privacy or property interests may be involved, including a case under Section

552.101, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

(b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

(c) The governmental body may, but is not required to, submit its reasons why the information should be withheld or released. (V.A.C.S. Art. 6252-17a, Sec. 7(c).)

Sec. 552.306. RENDITION OF ATTORNEY GENERAL DECISION; ISSUANCE OF WRITTEN OPINION. (a) The attorney general shall promptly render a decision requested under this subchapter, consistent with the standards of due process, determining whether the requested information is a public record or is within one of the exceptions of Subchapter C.

(b) The attorney general shall issue a written opinion of the determination. (V.A.C.S. Art. 6252-17a, Sec. 7(b) (part).)

Sec. 552.307. SPECIAL RIGHT OF ACCESS; ATTORNEY GENERAL DECISIONS.

(a) If a governmental body determines that information subject to a special right of access under Section 552.023 is exempt from disclosure under an exception of Subchapter C, other than an exception intended to protect the privacy interest of the requestor or the person whom the requestor is authorized to represent, the governmental body shall, before disclosing the information, submit a written request for a decision to the attorney general under the procedures of this subchapter.

(b) If a decision is not requested under Subsection (a), the governmental body shall release the information to the person with a special right of access under Section 552.023 not later than the 10th day after the date of receiving the request for information. (V.A.C.S. Art. 6252-17a, Sec. 3B(e).)

[Sections 552.308 to 552.320 reserved for expansion]

#### SUBCHAPTER H. CIVIL ENFORCEMENT

Sec. 552.321. SUIT FOR WRIT OF MANDAMUS. A person requesting information or the attorney general may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is a public record. (V.A.C.S. Art. 6252-17a, Sec. 8(a).)

Sec. 552.322. DISCOVERY OF INFORMATION UNDER PROTECTIVE ORDER PENDING FINAL DETERMINATION. In a suit filed under this chapter, the court may order that the information at issue may be discovered only under a protective order until a final determination is made. (V.A.C.S. Art. 6252-17a, Sec. 7(b) (part).)

Sec. 552.323. ASSESSMENT OF COSTS OF LITIGATION AND REASONABLE ATTORNEY FEES. (a) In an action brought under Section 552.321 or Section 552.353(b)(3), the court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails.

(b) In exercising its discretion under this section, the court shall consider whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith. (V.A.C.S. Art. 6252-17a, Sec. 8(b).)

[Sections 552.324 to 552.350 reserved for expansion]

#### SUBCHAPTER I. CRIMINAL VIOLATIONS

Sec. 552.351. DESTRUCTION, REMOVAL, OR ALTERATION OF PUBLIC RECORD.

(a) A person commits an offense if the person wilfully destroys, mutilates, removes without permission as provided by this chapter, or alters a public record.

(b) An offense under this section is a misdemeanor punishable by:



- (1) a fine of not less than \$25 or more than \$4,000;
- (2) confinement in the county jail for not less than three days or more than three months; or
- (3) both the fine and confinement. (V.A.C.S. Art. 6252-17a, Sec. 12.)

Sec. 552.352. DISTRIBUTION OF CONFIDENTIAL INFORMATION. (a) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

- (b) An offense under this section is a misdemeanor punishable by:
  - (1) a fine of not more than \$1,000;
  - (2) confinement in the county jail for not more than six months; or
  - (3) both the fine and confinement.

(c) A violation under this section constitutes official misconduct. (V.A.C.S. Art. 6252-17a, Secs. 10(a), (f) (part).)

Sec. 552.353. FAILURE OR REFUSAL OF OFFICER FOR PUBLIC RECORDS TO PROVIDE ACCESS TO OR COPYING OF PUBLIC RECORD. (a) An officer for public records, or the officer's agent, commits an offense if, with criminal negligence, the officer or the officer's agent fails or refuses to give access to, or to permit or provide copying of, public records to a person on request as provided by this chapter.

(b) It is an affirmative defense to prosecution under Subsection (a) that the officer for public records reasonably believed that public access to the requested records was not required and that the officer:

- (1) acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record or of the attorney general issued under Subchapter G;
- (2) requested a decision from the attorney general in accordance with Subchapter G, and the decision is pending; or

(3) not later than the 10th calendar day after the date of receipt of a decision by the attorney general that the information is public, filed a petition for a declaratory judgment, a writ of mandamus, or both, against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, and a petition is pending.

(c) It is an affirmative defense to prosecution under Subsection (a) that a person or entity has, not later than the 10th calendar day after the date of receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, and the cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (a) that the defendant is the agent of an officer for public records and that the agent reasonably relied on the written instruction of the officer for public records not to disclose the public records requested.

- (e) An offense under this section is a misdemeanor punishable by:
  - (1) a fine of not more than \$1,000;
  - (2) confinement in the county jail for not more than six months; or
  - (3) both the fine and confinement.

(f) A violation under this section constitutes official misconduct. (V.A.C.S. Art. 6252-17a, Secs. 10(b), (c), (d), (e), (f) (part).)

CHAPTER 553. PUBLIC DISCLOSURE

SUBCHAPTER A. DISCLOSURE BY PUBLIC SERVANT OF INTEREST  
IN PROPERTY TO BE ACQUIRED WITH PUBLIC FUNDS

- Sec. 553.001. DEFINITIONS
- Sec. 553.002. DISCLOSURE OF INTEREST IN PROPERTY
- Sec. 553.003. CRIMINAL PENALTY; PRESUMPTION

[Sections 553.004 to 553.020 reserved for expansion]

SUBCHAPTER B. FAILURE BY PUBLIC OFFICER TO PUBLISH  
LEGAL NOTICE OR FINANCIAL STATEMENT

Sec. 553.021. DEFINITION

Sec. 553.022. FAILURE TO PUBLISH LEGAL NOTICE OR FINANCIAL STATEMENT; CIVIL PENALTY

Sec. 553.023. ENFORCEMENT

CHAPTER 553. PUBLIC DISCLOSURE

SUBCHAPTER A. DISCLOSURE BY PUBLIC SERVANT OF INTEREST  
IN PROPERTY TO BE ACQUIRED WITH PUBLIC FUNDS

Sec. 553.001. DEFINITIONS. In this subchapter:

(1) "Public funds" includes only funds collected by or through a government.

(2) "Public servant" means a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as:

(A) a candidate for nomination or election to public office; or

(B) an officer of government. (V.A.C.S. Art. 6252-9e, Secs. (a)(1), (5).)

Sec. 553.002. DISCLOSURE OF INTEREST IN PROPERTY. (a) A public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.

(b) The affidavit must:

(1) state the name of the public servant;

(2) state the public servant's office, public title, or job designation;

(3) fully describe the property;

(4) fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest;

(5) state the date when the person acquired an interest in the property;

(6) include a verification as follows: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code"; and

(7) contain an acknowledgement of the same type required for recording a deed in the deed records of the county.

(c) The affidavit must be filed with:

(1) the county clerk of the county in which the public servant resides; and

(2) the county clerk of each county in which the property is located. (V.A.C.S. Art. 6252-9e, Secs. (a)(2), (4); (b) (part); (c) (part).)

Sec. 553.003. CRIMINAL PENALTY; PRESUMPTION. (a) A person commits an offense if the person violates Section 553.002 and the person has actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property.

(b) A person who violates Section 553.002 by not filing the affidavit required by that section is presumed to have the intent to commit an offense under this section.

(c) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 6252-9e, Secs. (b) (part), (c) (part), (d).)

[Sections 553.004 to 553.020 reserved for expansion]

SUBCHAPTER B. FAILURE BY PUBLIC OFFICER TO PUBLISH  
LEGAL NOTICE OR FINANCIAL STATEMENT

Sec. 553.021. DEFINITION. In this subchapter, "public officer" means an officer of the state or of a county, municipality, or school district of the state. (New.)

Sec. 553.022. FAILURE TO PUBLISH LEGAL NOTICE OR FINANCIAL STATEMENT; CIVIL PENALTY. (a) A public officer who is required by law to publish a legal notice or financial statement commits nonfeasance of office if the officer fails to make the publication.

(b) A public officer who commits nonfeasance of office:

(1) is subject to forfeiture of salary for the month in which the notice or statement is not published; and

(2) may be removed from office if the officer wilfully continues to commit nonfeasance of office under Subsection (a). (V.A.C.S. Art. 6252-2, Sec. 1.)

Sec. 553.023. ENFORCEMENT. (a) The county or district attorney of the county in which a public officer who commits nonfeasance of office under Section 553.022 resides may file an action to enjoin or recover payment of salary or to remove the person from office.

(b) An action under this section must be filed in the appropriate district court. (V.A.C.S. Art. 6252-2, Sec. 2.)

CHAPTER 554. PROTECTION FOR REPORTING VIOLATIONS OF LAW

- Sec. 554.001. DEFINITIONS
- Sec. 554.002. RETALIATION PROHIBITED FOR REPORTING VIOLATION OF LAW
- Sec. 554.003. RELIEF AVAILABLE TO PUBLIC EMPLOYEE
- Sec. 554.004. BURDEN OF PROOF; PRESUMPTION
- Sec. 554.005. LIMITATION PERIOD
- Sec. 554.006. EXHAUSTION OF GRIEVANCE OR APPEAL PROCEDURES
- Sec. 554.007. WHERE SUIT BROUGHT
- Sec. 554.008. CIVIL PENALTY
- Sec. 554.009. NOTICE TO EMPLOYEES

CHAPTER 554. PROTECTION FOR REPORTING VIOLATIONS OF LAW

Sec. 554.001. DEFINITIONS. In this chapter:

(1) "Law" means:

- (A) a state or federal statute;
- (B) an ordinance of a local governmental body; or
- (C) a rule adopted under a statute or ordinance.

(2) "Local government" means:

- (A) a county;
- (B) a municipality;
- (C) a public school district; or
- (D) a special-purpose district or authority.

(3) "Public employee" means a person other than an independent contractor who, for compensation, performs services for a state or local governmental body under a written or oral contract.

(4) "State agency" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government, created under the constitution or a statute of the state, including an institution of higher education, as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Texas Supreme Court, the Texas Court of Criminal Appeals, a court of appeals, a state judicial agency, or the State Bar of Texas. (V.A.C.S. Art. 6252-16a, Sec. 1.)

Sec. 554.002. **RETALIATION PROHIBITED FOR REPORTING VIOLATION OF LAW.** A state agency or local government may not suspend or terminate the employment of or discriminate against a public employee who in good faith reports a violation of law to an appropriate law enforcement authority. (V.A.C.S. Art. 6252-16a, Sec. 2.)

Sec. 554.003. **RELIEF AVAILABLE TO PUBLIC EMPLOYEE.** (a) A public employee whose employment is suspended or terminated or who is discriminated against in violation of Section 554.002 is entitled to sue for:

- (1) injunctive relief;
- (2) actual damages;
- (3) exemplary damages;
- (4) court costs; and
- (5) reasonable attorney fees.

(b) In addition to relief under Subsection (a), a public employee whose employment is suspended or terminated in violation of this chapter is entitled to:

- (1) reinstatement to the employee's former position;
- (2) compensation for wages lost during the period of suspension or termination; and
- (3) reinstatement of fringe benefits and seniority rights lost because of the suspension or termination. (V.A.C.S. Art. 6252-16a, Secs. 3(a) (part), 4.)

Sec. 554.004. **BURDEN OF PROOF; PRESUMPTION.** A public employee who sues under this chapter has the burden of proof, except that if the suspension or termination of a public employee occurs not later than the 90th day after the date on which the employee reports a violation of law, the suspension or termination is presumed, subject to rebuttal, to be because the employee made the report. (V.A.C.S. Art. 6252-16a, Sec. 3(b).)

Sec. 554.005. **LIMITATION PERIOD.** Except as provided by Section 554.006, a public employee who seeks relief under this chapter must sue not later than the 90th day after the date on which the alleged violation of this chapter:

- (1) occurred; or
- (2) was discovered by the employee through reasonable diligence. (V.A.C.S. Art. 6252-16a, Sec. 3(a) (part).)

Sec. 554.006. **EXHAUSTION OF GRIEVANCE OR APPEAL PROCEDURES.** (a) An employee of a local government must exhaust that government's grievance or appeal procedures relating to suspension or termination of employment or unlawful discrimination before suing under this chapter.

(b) The employee must invoke the grievance or appeal procedures not later than the 90th day after the date on which the alleged violation of this chapter:

- (1) occurred; or
- (2) was discovered by the employee through reasonable diligence.

(c) Time used by the employee in exhausting the grievance or appeal procedures is excluded from the period established by Section 554.005.

(d) This section does not apply if a final decision is not rendered before the 31st day after the date on which the employee initiated the grievance or appeal. (V.A.C.S. Art. 6252-16a, Secs. 3(d), (e).)

Sec. 554.007. **WHERE SUIT BROUGHT.** A public employee may sue under this chapter in a district court of the county in which the employee resides or in a district court of Travis County. (V.A.C.S. Art. 6252-16a, Sec. 3(c).)

Sec. 554.008. **CIVIL PENALTY.** (a) A supervisor who suspends or terminates the employment of a public employee in violation of this chapter is liable for a civil penalty not to exceed \$1,000.

(b) The attorney general or appropriate prosecuting attorney may sue to collect a civil penalty under this section.

(c) A civil penalty collected under this section shall be deposited in the state treasury. (V.A.C.S. Art. 6252-16a, Sec. 5.)

Sec. 554.009. NOTICE TO EMPLOYEES. (a) A state agency or local government shall inform its employees of their rights under this chapter by posting a sign in a prominent location in the workplace.

(b) The attorney general shall prescribe the design and content of the sign required by this section. (V.A.C.S. Art. 6252-16a, Sec. 6.)

CHAPTER 555. STATE AGENCY RECORDS RELATING TO LICENSE HOLDERS

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 555.001. DEFINITIONS
- Sec. 555.002. RULES
- Sec. 555.003. EXCEPTION

[Sections 555.004 to 555.020 reserved for expansion]

SUBCHAPTER B. PROCEDURES RELATING TO LICENSE RECORDS

- Sec. 555.021. MAINTENANCE AND ACCESSIBILITY OF LICENSE RECORDS
- Sec. 555.022. REMOVAL OF RECORDS FROM FILE
- Sec. 555.023. AGENCY FILE DIVERSIFICATION PERMITTED

CHAPTER 555. STATE AGENCY RECORDS RELATING TO LICENSE HOLDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 555.001. DEFINITIONS. In this chapter, "state agency," "license," and "contested case" have the meanings assigned by Section 2001.003. (V.A.C.S. Art. 6252-17b, Sec. 1.)

Sec. 555.002. RULES. A state agency may adopt fair and reasonable rules, minimum standards, and limitations that are appropriate for implementing this chapter. (V.A.C.S. Art. 6252-17b, Sec. 5.)

Sec. 555.003. EXCEPTION. This chapter does not apply to files that relate to drivers of motor vehicles and that are maintained by the Department of Public Safety under Section 21, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes) (V.A.C.S. Art. 6252-17b, Sec. 6.)

[Sections 555.004 to 555.020 reserved for expansion]

SUBCHAPTER B. PROCEDURES RELATING TO LICENSE RECORDS

Sec. 555.021. MAINTENANCE AND ACCESSIBILITY OF LICENSE RECORDS. (a) Each state agency that issues a license shall keep in its files records relating to each license holder regulated by the agency.

(b) The agency shall maintain the files in a manner that permits public access to:

(1) all information in the files relating to a license holder regulated by the agency, including information about a contested case, unless the information is excepted by law from public disclosure; and

(2) notice of information in the file as described by Section 555.022. (V.A.C.S. Art. 6252-17b, Sec. 2.)

Sec. 555.022. REMOVAL OF RECORDS FROM FILE. (a) On removal from a state agency file of information relating to the license status of one or more license holders, the agency shall:

- (1) describe the content of the removed record;
- (2) indicate the reason the particular record is not any longer part of the agency file;  
and
- (3) state the date and time the record was removed.

(b) This section does not apply to a record that is removed for destruction as permitted by law. (V.A.C.S. Art. 6252-17b, Sec. 3.)

Sec. 555.023. **AGENCY FILE DIVERSIFICATION PERMITTED.** (a) A state agency is not required to discontinue or convert its records management procedures or systems in existence before June 14, 1989, to comply with this chapter. An agency may continue to use those procedures and systems in conjunction with any changes made to comply with this chapter.

(b) A state agency may not impede public access to records through use of a records management procedure or system that existed before June 14, 1989, if the public is entitled by law to access. (V.A.C.S. Art. 6252-17b, Sec. 4.)

#### CHAPTER 556. POLITICAL ACTIVITIES BY STATE EMPLOYEES

Sec. 556.001. **DEFINITIONS**

Sec. 556.002. **EXCEPTION**

Sec. 556.003. **STATE EMPLOYEES' RIGHTS**

Sec. 556.004. **PROHIBITED ACTS OF STATE EMPLOYEES**

Sec. 556.005. **VIOLATION**

#### CHAPTER 556. POLITICAL ACTIVITIES BY STATE EMPLOYEES

Sec. 556.001. **DEFINITIONS.** In this chapter:

(1) "State agency" means:

(A) a department, commission, board, office, or other agency in the executive branch of state government, created under the constitution or a statute, with statewide authority;

(B) a university system or an institution of higher education as defined by Section 61.003, Education Code; or

(C) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council.

(2) "State employee" means an individual who is employed by a state agency. The term does not include an elected official or an individual appointed to office by the governor subject to approval by the senate. (V.A.C.S. Art. 6252-9f, Sec. 1.)

Sec. 556.002. **EXCEPTION.** This chapter does not apply to an individual employed by the Department of Public Safety. (V.A.C.S. Art. 6252-9f, Sec. 5.)

Sec. 556.003. **STATE EMPLOYEES' RIGHTS.** A state employee has the rights of freedom of association and political participation guaranteed by the state and federal constitutions except as provided by Section 556.004. (V.A.C.S. Art. 6252-9f, Sec. 2.)

Sec. 556.004. **PROHIBITED ACTS OF STATE EMPLOYEES.** (a) A state employee may not:

(1) use official authority or influence or permit the use of a program administered by the state to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose; or

(2) coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of any thing of value to a person or political organization for a political purpose.

(b) For purposes of this section, a state employee does not interfere with or affect the results of an election or nomination if the employee's conduct is permitted by a law relating to the individual's office or employment and is not otherwise unlawful. (V.A.C.S. Art. 6252-9f, Sec. 3.)

Sec. 556.005. VIOLATION. A state employee who violates Section 556.004 is subject to immediate termination of employment. (V.A.C.S. Art. 6252-9f, Sec. 4.)

CHAPTER 557. SEDITION, SABOTAGE, AND COMMUNISM

SUBCHAPTER A. SEDITION

- Sec. 557.001. SEDITION
- Sec. 557.002. DISQUALIFICATION
- Sec. 557.003. SEDITIOUS ORGANIZATIONS
- Sec. 557.004. ENFORCEMENT
- Sec. 557.005. JUDICIAL POWERS IN LABOR DISPUTES

[Sections 557.006 to 557.010 reserved for expansion]

SUBCHAPTER B. SABOTAGE

- Sec. 557.011. SABOTAGE
- Sec. 557.012. CAPITAL SABOTAGE
- Sec. 557.013. ENFORCEMENT

[Sections 557.014 to 557.020 reserved for expansion]

SUBCHAPTER C. COMMUNISM

- Sec. 557.021. DEFINITIONS
- Sec. 557.022. RESTRICTIONS
- Sec. 557.023. ENFORCEMENT

CHAPTER 557. SEDITION, SABOTAGE, AND COMMUNISM

SUBCHAPTER A. SEDITION

Sec. 557.001. SEDITION. (a) A person commits an offense if the person knowingly:

(1) commits, attempts to commit, or conspires with one or more persons to commit an act intended to overthrow, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force or violence;

(2) under circumstances that constitute a clear and present danger to the security of this state or a political subdivision of this state, advocates, advises, or teaches or conspires with one or more persons to advocate, advise, or teach a person to commit or attempt to commit an act described in Subdivision (1); or

(3) participates, with knowledge of the nature of the organization, in the management of an organization that engages in or attempts to engage in an act intended to overthrow, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force or violence.

(b) An offense under this section is a felony punishable by:

(1) a fine not to exceed \$20,000;

(2) confinement in the institutional division of the Texas Department of Criminal Justice for a term of not less than one year or more than 20 years; or

(3) both fine and imprisonment.

(c) A person convicted of an offense under this section may not receive probation under Article 42.12, Code of Criminal Procedure. (V.A.C.S. Art. 6889-3A, Secs. 5 (part), 6 (part).)

Sec. 557.002. DISQUALIFICATION. A person who is finally convicted of an offense under Section 557.001 may not hold office or a position of profit, trust, or employment with the state or any political subdivision of the state. (V.A.C.S. Art. 6889-3A, Sec. 7.)

Sec. 557.003. **SEDITIONOUS ORGANIZATIONS.** (a) An organization, either incorporated or unincorporated, may not engage in or have as a purpose activities intended to overthrow, destroy, or alter the constitutional form of government of this state or a political subdivision of this state by force or violence.

(b) An organization that violates Subsection (a):

(1) may not lawfully exist, function, or operate in this state; and

(2) is not entitled to the rights, privileges, and immunities granted to organizations under the law of this state.

(c) A district attorney, criminal district attorney, or county attorney may bring an action against an organization in a court of competent jurisdiction. If the court finds that the organization has violated Subsection (a), the court shall order:

(1) the organization dissolved;

(2) if the organization is incorporated in the state or has a permit to do business in the state, the organization's charter or permit revoked;

(3) all funds, records, and property of the organization forfeited to the state; and

(4) all books, records, and files of the organization turned over to the attorney general.

(d) It is prima facie evidence that an organization engages in or has as a purpose engaging in activities intended to overthrow, destroy, or alter the constitutional form of the government of this state or a political subdivision of this state by force or violence if it is shown that the organization has a parent or superior organization that engages in or has as a purpose engaging in activities intended to overthrow, destroy, or alter the constitutional form of the government of this state or a political subdivision of this state by force or violence. (V.A.C.S. Art. 6889-3A, Secs. 2, 4.)

Sec. 557.004. **ENFORCEMENT.** (a) A district court may, on application by a district attorney, criminal district attorney, or county attorney, order injunctive or other equitable relief appropriate to enforce this subchapter.

(b) The procedure for relief sought under Subsection (a) of this section is the same as that for other similar relief in the district court except that the proceeding may not be instituted unless the director of the Department of Public Safety of the State of Texas or the director's assistant in charge is notified by telephone, telegraph, or in person that injunctive or other equitable relief will be sought.

(c) An affidavit that states that the notice described in Subsection (b) was given and that accompanies the application for relief is sufficient to permit filing of the application.

(d) Injunctive or other equitable relief sought to enforce this subchapter may not be granted in a labor dispute.

(e) The internal security section of the Department of Public Safety of the State of Texas shall assist in the enforcement of this subchapter. (V.A.C.S. Art. 6889-3A, Secs. 8 (part), 9a (part).)

Sec. 557.005. **JUDICIAL POWERS IN LABOR DISPUTES.** This subchapter does not affect the powers of the courts of this state or of the United States under the law of this state in a labor dispute. (V.A.C.S. Art. 6889-3A, Sec. 8 (part).)

[Sections 557.006 to 557.010 reserved for expansion]

## SUBCHAPTER B. SABOTAGE

Sec. 557.011. **SABOTAGE.** (a) A person commits an offense if the person, with the intent to injure the United States, this state, or any facility or property used for national defense sabotages or attempts to sabotage any property or facility used or to be used for national defense.

(b) An offense under this section is a felony punishable by confinement in the institutional division of the Texas Department of Criminal Justice for a term of not less than two years or more than 20 years.



(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, the actor may be prosecuted under both sections.

(d) In this section, "sabotage" means to wilfully and maliciously damage or destroy property. (V.A.C.S. Art. 6889-3, Sec. 5 (part).)

Sec. 557.012. CAPITAL SABOTAGE. (a) A person commits an offense if the person commits an offense under Section 557.011(a) and the sabotage or attempted sabotage causes the death of an individual.

(b) An offense under this section is punishable by:

(1) death; or

(2) confinement in the institutional division of the Texas Department of Criminal Justice for:

(A) life; or

(B) a term of not less than two years.

(c) If conduct constituting an offense under this section also constitutes an offense under other law, the actor may be prosecuted under both sections. (V.A.C.S. Art. 6889-3, Sec. 5 (part).)

Sec. 557.013. ENFORCEMENT. The attorney general, a district or county attorney, the department, and any law enforcement officer of this state shall enforce this subchapter. (V.A.C.S. Art. 6889-3, Sec. 8.)

[Sections 557.014 to 557.020 reserved for expansion]

### SUBCHAPTER C. COMMUNISM

Sec. 557.021. DEFINITIONS. In this subchapter:

(1) "Communist" means a person who commits an act reasonably calculated to further the overthrow of the government:

(A) by force or violence; or

(B) by unlawful or unconstitutional means and replace it with a communist government.

(2) "Department" means the Department of Public Safety of the State of Texas.

(3) "Government" means the government of this state or any of its political subdivisions. (V.A.C.S. Art. 6889-3, Sec. 1 (part).)

Sec. 557.022. RESTRICTIONS. (a) The name of a communist may not be printed on the ballot for any primary or general election in this state or a political subdivision of this state.

(b) A person may not hold a nonelected office or position with the state or any political subdivision of the state if:

(1) any of the compensation for the office or position comes from public funds of this state or a political subdivision of this state; and

(2) the employer or superior of the person has reasonable grounds to believe that the person is a communist. (V.A.C.S. Art. 6889-3, Secs. 6, 7.)

Sec. 557.023. ENFORCEMENT. The attorney general, a district or county attorney, the department, and any law enforcement officer of this state shall enforce this subchapter. (V.A.C.S. Art. 6889-3, Sec. 8.)

### CHAPTER 558. INTERPRETERS FOR DEAF OR HEARING IMPAIRED PERSONS

Sec. 558.001. DEFINITION

Sec. 558.002. STATE EXAMINATIONS

Sec. 558.003. PROCEEDINGS BEFORE POLITICAL SUBDIVISIONS

CHAPTER 558. INTERPRETERS FOR DEAF OR HEARING IMPAIRED PERSONS

Sec. 558.001. DEFINITION. In this chapter, "deaf or hearing impaired" means having a hearing impairment, regardless of the existence of a speech impairment, that inhibits:

- (1) comprehension of an examination or proceeding; or
- (2) communication with others. (V.A.C.S. Art. 6252-18a(b)(1).)

Sec. 558.002. STATE EXAMINATIONS. (a) A deaf or hearing impaired person taking a state examination required for state employment or issuance of a state license is entitled, on request, to an interpreter.

(b) The interpreter may be paid for not more than eight hours for interpreting in a calendar day and is entitled to \$5 for each hour of interpreting in a calendar day, except that the interpreter is entitled to \$15 for the first hour. (V.A.C.S. Art. 6252-18.)

Sec. 558.003. PROCEEDINGS BEFORE POLITICAL SUBDIVISIONS. (a) In a proceeding before the governing body of a political subdivision in which the legal rights, duties, or privileges of a party are to be determined by the governing body after an adjudicative hearing, the governing body shall supply for a party who is deaf or hearing impaired an interpreter who has qualifications approved by the Texas Commission for the Deaf and Hearing Impaired.

(b) In this section, "political subdivision" means a county, municipality, school district, special purpose district, or other subdivision of state government that has jurisdiction limited to a geographic portion of the state. (V.A.C.S. Art. 6252-18a(a), (b)(2).)

[Chapters 559 to 570 reserved for expansion]

SUBTITLE B. ETHICS

CHAPTER 571. TEXAS ETHICS COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 571.001. PURPOSE
- Sec. 571.002. DEFINITIONS

[Sections 571.003 to 571.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- Sec. 571.021. TEXAS ETHICS COMMISSION
- Sec. 571.022. SUNSET PROVISION
- Sec. 571.023. PRESIDING OFFICER
- Sec. 571.024. EXPENSES
- Sec. 571.025. MEETINGS
- Sec. 571.026. QUORUM; VOTE REQUIRED
- Sec. 571.027. PROHIBITED PARTICIPATION
- Sec. 571.028. PROHIBITED CANDIDACY
- Sec. 571.029. STAFF
- Sec. 571.030. STATE ETHICS FUND
- Sec. 571.031. RECORDS
- Sec. 571.032. MAILING OF NOTICES, DECISIONS, AND REPORTS
- Sec. 571.033. DISCRIMINATION PROHIBITED

[Sections 571.034 to 571.060 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES

- Sec. 571.061. LAWS ADMINISTERED AND ENFORCED BY COMMISSION
- Sec. 571.062. RULES
- Sec. 571.063. RULES CONCERNING GIFTS TO REGULATORY AGENCY OFFICERS AND EMPLOYEES
- Sec. 571.064. REPORTING AND REGISTRATION THRESHOLDS
- Sec. 571.065. FORMS
- Sec. 571.066. ELECTRONIC DATA BASE
- Sec. 571.067. COMPUTER SOFTWARE
- Sec. 571.068. ACCOUNT NUMBERS
- Sec. 571.069. REVIEW OF STATEMENTS AND REPORTS; AUDITS
- Sec. 571.070. MANUAL
- Sec. 571.071. TRAINING; GUIDELINES
- Sec. 571.072. PUBLIC ACCESS
- Sec. 571.073. REPORT
- Sec. 571.074. GIFTS AND GRANTS
- Sec. 571.075. DELEGATION OF AUTHORITY
- Sec. 571.076. CONTRACT FOR ADMINISTRATION

[Sections 571.077 to 571.090 reserved for expansion]

SUBCHAPTER D. ADVISORY OPINIONS

- Sec. 571.091. OPINION TO BE GIVEN ON REQUEST
- Sec. 571.092. DEADLINE FOR OPINION; EXTENSION
- Sec. 571.093. PROTECTION OF IDENTITY OF REQUESTOR OR AFFECTED PERSON
- Sec. 571.094. OPINION ISSUED ON INITIATIVE OF COMMISSION
- Sec. 571.095. MAINTENANCE OF OPINIONS; SUMMARY
- Sec. 571.096. OPINION BY OTHER GOVERNMENTAL ENTITY
- Sec. 571.097. DEFENSE FOR RELIANCE ON ADVISORY OPINION
- Sec. 571.098. CONVERSION OF CONTRIBUTION TO PERSONAL USE

[Sections 571.099 to 571.120 reserved for expansion]

SUBCHAPTER E. COMPLAINT PROCEDURES AND HEARINGS

- Sec. 571.121. GENERAL POWERS
- Sec. 571.122. FILING OF COMPLAINT; CONTENTS
- Sec. 571.123. PROCESSING OF COMPLAINT
- Sec. 571.124. PRELIMINARY REVIEW: INITIATION
- Sec. 571.125. PRELIMINARY REVIEW: PROCEDURE
- Sec. 571.126. PRELIMINARY REVIEW: RESOLUTION
- Sec. 571.127. INFORMAL HEARING: PROCEDURE
- Sec. 571.128. INFORMAL HEARING: RESOLUTION
- Sec. 571.129. FORMAL HEARING: STANDARD OF EVIDENCE
- Sec. 571.130. FORMAL HEARING: SUBPOENAS AND WITNESSES
- Sec. 571.131. FORMAL HEARING: PROCEDURE
- Sec. 571.132. FORMAL HEARING: RESOLUTION
- Sec. 571.133. APPEAL OF FINAL DECISION
- Sec. 571.134. DELAY OF REFERRAL
- Sec. 571.135. PUBLIC INTEREST INFORMATION; STATUS OF COMPLAINT
- Sec. 571.136. EXTENSION OF DEADLINE
- Sec. 571.137. SUBPOENA
- Sec. 571.138. STATUS OF COMPLAINANT
- Sec. 571.139. APPLICABILITY OF OTHER ACTS
- Sec. 571.140. CONFIDENTIALITY; OFFENSE

[Sections 571.141 to 571.170 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

- Sec. 571.171. INITIATION AND REFERRAL
- Sec. 571.172. ORDER
- Sec. 571.173. CIVIL PENALTY FOR DELAY OR VIOLATION
- Sec. 571.174. DENIAL, SUSPENSION, OR REVOCATION OF LOBBYIST REGISTRATION
- Sec. 571.175. NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY
- Sec. 571.176. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT
- Sec. 571.177. FACTORS CONSIDERED FOR ASSESSMENT OF SANCTION

SUBTITLE B. ETHICS

CHAPTER 571. TEXAS ETHICS COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 571.001. PURPOSE. It is the policy of the legislature to protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence while also protecting the constitutional right of the governed to apply to their government for the redress of grievances. This chapter is intended to achieve those purposes and shall be construed to achieve the following objectives:

- (1) to control and reduce the cost of elections;
- (2) to eliminate opportunities for undue influence over elections and governmental actions;
- (3) to disclose fully information related to expenditures and contributions for elections and for petitioning the government;
- (4) to enhance the potential for individual participation in electoral and governmental processes; and
- (5) to ensure the public's confidence and trust in its government. (V.A.C.S. Art. 6252-9d.1, Sec. 1.01.)

Sec. 571.002. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Ethics Commission.
- (2) "Complainant" means an individual who files a sworn complaint with the commission.
- (3) "Political party" includes only a political party required to hold a primary election under Section 172.001, Election Code.
- (4) "Respondent" means a person who is alleged to have committed a violation of a rule adopted by or a law administered and enforced by the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.02.)

[Sections 571.003 to 571.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 571.021. TEXAS ETHICS COMMISSION. This chapter applies to the Texas Ethics Commission created under Article III, Section 24a, of the Texas Constitution. (New.)

Sec. 571.022. SUNSET PROVISION. The commission is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed during the periods in which state agencies abolished in 2001 and every 12th year after 2001 are reviewed. (V.A.C.S. Art. 6252-9d.1, Sec. 1.36(d).)

Sec. 571.023. PRESIDING OFFICER. The members of the commission shall elect annually the presiding officer of the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.07(a).)

Sec. 571.024. **EXPENSES.** A member of the commission is entitled to travel expenses incurred in performing official duties and to a per diem equal to the maximum amount allowed on January 1 of that year for federal employees per diem for federal income tax purposes, subject to the same limitations for members of state boards and commissions in the General Appropriations Act. (V.A.C.S. Art. 6252-9d.1, Sec. 1.08.)

Sec. 571.025. **MEETINGS.** The commission shall meet at least once each calendar quarter and at other times at the call of the presiding officer. (V.A.C.S. Art. 6252-9d.1, Sec. 1.07(b).)

Sec. 571.026. **QUORUM; VOTE REQUIRED.** (a) A majority of the membership of the commission constitutes a quorum.

(b) A vacancy on the commission may not be considered in determining the membership of the commission for the purpose of a quorum.

(c) Except as otherwise provided by this chapter, an action or recommendation of the commission requiring a vote of the commission is not valid unless:

- (1) the vote is taken at a meeting of the commission with a quorum present; and
- (2) the action or recommendation receives an affirmative vote of a majority of the membership of the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.06.)

Sec. 571.027. **PROHIBITED PARTICIPATION.** (a) A member of the commission may not participate in a commission proceeding relating to any of the following actions if the member is the subject of the action:

- (1) a formal investigation by the commission;
- (2) a sworn complaint filed with the commission; or
- (3) a motion by an affirmative record vote of at least six members of the commission.

(b) A member of the commission may not participate in or vote on any matter before the commission if the matter concerns the member directly or an individual related to the member within the second degree by affinity or consanguinity. (V.A.C.S. Art. 6252-9d.1, Sec. 1.31.)

Sec. 571.028. **PROHIBITED CANDIDACY.** A member of the commission may not be a candidate for an elective public office for 12 months after the date on which the member ends service on the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.32.)

Sec. 571.029. **STAFF.** (a) The commission may employ staff, including an executive director and a general counsel, necessary to administer the commission's functions.

(b) The commission may not employ a person and an employee of the commission may not continue in employment with the commission if the person at the time of employment or while employed by the commission is:

- (1) an officer of a political party, a political subdivision, or a political committee;
- (2) a person required to be registered under Chapter 305;
- (3) a candidate or campaign treasurer subject to Title 15, Election Code; or
- (4) a member of the legislature. (V.A.C.S. Art. 6252-9d.1, Sec. 1.10.)

Sec. 571.030. **STATE ETHICS FUND.** (a) The state ethics fund in the state treasury consists of that part of the unclaimed money fund as provided by Section 74.602, Property Code, and fees collected under Section 305.005.

(b) Money in the fund may be appropriated only to the commission to administer and enforce:

- (1) this chapter;
- (2) Chapters 302, 305, and 572; and
- (3) Title 15, Election Code.

(c) At the request of the commission, the state treasurer shall transfer funds to the commission under Section 74.602(b)(2), Property Code. (V.A.C.S. Art. 6252-9d.1, Sec. 1.35.)

Sec. 571.031. **RECORDS.** Except as provided by Sections 571.139(a) and 571.140, Chapter 552 applies to all records of the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.36(c).)

Sec. 571.032. MAILING OF NOTICES, DECISIONS, AND REPORTS. Each written notice, decision, and report required to be sent under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt requested. (V.A.C.S. Art. 6252-9d.1, Sec. 1.25(a).)

Sec. 571.033. DISCRIMINATION PROHIBITED. This chapter may not be applied to discriminate on the basis of race, sex, national origin, or religion. (V.A.C.S. Art. 6252-9d.1, Sec. 1.33.)

[Sections 571.034 to 571.060 reserved for expansion]

### SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 571.061. LAWS ADMINISTERED AND ENFORCED BY COMMISSION. (a) The commission shall administer and enforce:

- (1) Chapters 302, 305, and 572; and
- (2) Title 15, Election Code.

(b) The commission shall perform any other powers or duties given to the commission under a law listed in Subsection (a). (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(a)(1).)

Sec. 571.062. RULES. (a) The commission, on the affirmative vote of at least six members of the commission, may adopt rules to administer this chapter or any other law administered and enforced by the commission.

(b) Chapter 2001, relating to rules and rulemaking, applies to the commission to the extent consistent with this chapter. (V.A.C.S. Art. 6252-9d.1, Secs. 1.11(b)(9), 1.36(a) (part).)

Sec. 571.063. RULES CONCERNING GIFTS TO REGULATORY AGENCY OFFICERS AND EMPLOYEES. (a) The commission shall require each regulatory agency in the executive branch to develop rules limiting the acceptance of gifts or other benefits from persons appearing before or regulated by the agency. The rules must be at least as restrictive as the rules of the commission.

(b) The commission shall provide for the submission of those rules to the commission for approval. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(a)(7).)

Sec. 571.064. REPORTING AND REGISTRATION THRESHOLDS. (a) If a law administered and enforced by the commission authorizes the commission to determine dollar amounts as reporting or registration thresholds, the commission shall set those thresholds in amounts that are reasonable, are in the public interest, and further the purposes of the reporting or registration law involved.

(b) If a law administered and enforced by the commission sets dollar amounts or categories of amounts as reporting thresholds or if the commission sets those amounts, the commission annually shall adjust those 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. (V.A.C.S. Art. 6252-9d.1, Secs. 1.11(c), (d).)

Sec. 571.065. FORMS. (a) The commission shall prescribe forms for statements and reports required to be filed with the commission.

(b) The commission shall provide for the distribution of the forms. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(a)(2).)

Sec. 571.066. ELECTRONIC DATA BASE. (a) The Department of Information Resources shall study the implementation of the most appropriate electronic data base to enhance the commission's abilities to administer this chapter.

(b) The commission shall:

- (1) establish an electronic data base composed of statements and reports filed with the commission;
- (2) provide the public with access to that data;
- (3) establish a system to provide access by electronic data transmittal processes to that data;

(4) set and charge a fee for electronic access to the data base in an amount reasonable and necessary to cover the costs of access; and

(5) ensure that entries entered on multiple reports may be electronically cross-referenced in the data base. (V.A.C.S. Art. 6252-9d.1, Sec. 1.12.)

Sec. 571.067. **COMPUTER SOFTWARE.** The commission may develop computer software to facilitate the discharge of its statutory duties. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(b)(6).)

Sec. 571.068. **ACCOUNT NUMBERS.** The commission shall assign an account number to each person required to file a statement or report with the commission under a law administered and enforced by the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(a)(8).)

Sec. 571.069. **REVIEW OF STATEMENTS AND REPORTS; AUDITS.** (a) The commission may review for facial compliance a statement or report filed with the commission and may review any available documents. The commission may return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report.

(b) The commission may by an affirmative record vote of at least six commission members perform a complete audit only at an informal or formal hearing.

(c) Any audited statement, report, document, or other material is confidential and may not be disclosed unless the statement, report, document, or other material:

(1) was previously public information; or

(2) is entered into the record of a formal hearing or a judicial proceeding.

(d) The party who is the subject of the audit may waive confidentiality by sending written notice to the commission.

(e) The commission may not audit a statement or report filed before January 1, 1992, under a law administered and enforced before that date by the secretary of state. (V.A.C.S. Art. 6252-9d.1, Sec. 1.13.)

Sec. 571.070. **MANUAL.** The commission shall adopt by rule and publish a manual that establishes uniform methods of accounting and reporting for use by persons required to file statements and reports with the commission and that includes a digest of each advisory opinion issued by the commission under Subchapter D. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(a) 3.)

Sec. 571.071. **TRAINING; GUIDELINES.** (a) The commission shall:

(1) provide training by January of each odd-numbered year for members and members-elect of the legislature concerning compliance with the laws administered and enforced by the commission; and

(2) provide, in cooperation with state agencies, a program of ethics training for state employees.

(b) The commission may disseminate, through pamphlets and seminars, explanations and compliance guidelines concerning any law administered and enforced by the commission. (V.A.C.S. Art. 6252-9d.1, Secs. 1.11(a)(5), (6); (b)(5).)

Sec. 571.072. **PUBLIC ACCESS.** (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on issues under the general jurisdiction of the commission.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to commission proceedings. (V.A.C.S. Art. 6252-9d.1, Sec. 1.34.)

Sec. 571.073. **REPORT.** On or before December 31 of each even-numbered year, the commission shall report to the governor and legislature. The report must include each advisory opinion issued by the commission under Subchapter D in the preceding two years and recommendations for any necessary statutory changes. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(a)(4).)

Sec. 571.074. **GIFTS AND GRANTS.** The commission may accept gifts and grants for the administration of its duties. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(b)(8).)

Sec. 571.075. DELEGATION OF AUTHORITY. The commission by rule may delegate a power conferred on it by this chapter or another law administered by the commission, except:

- (1) any power requiring a vote of the commission;
- (2) rulemaking authority; or
- (3) authority to issue an advisory opinion under Subchapter D. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(e).)

Sec. 571.076. CONTRACT FOR ADMINISTRATION. The commission may contract with persons to administer and carry out this chapter and rules, standards, and orders adopted under this chapter, excluding any enforcement authority. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(b)(7).)

[Sections 571.077 to 571.090 reserved for expansion]

#### SUBCHAPTER D. ADVISORY OPINIONS

Sec. 571.091. OPINION TO BE GIVEN ON REQUEST. (a) The commission shall prepare a written opinion answering the request of a person subject to any of the following laws for an opinion about the application of any of these laws to the person in regard to a specified existing or hypothetical, factual situation:

- (1) Chapter 302;
- (2) Chapter 305;
- (3) Chapter 572;
- (4) Title 15, Election Code;
- (5) Chapter 36, Penal Code; or
- (6) Chapter 39, Penal Code.

(b) An opinion request under Subsection (a) must be in writing to the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.29(a).)

Sec. 571.092. DEADLINE FOR OPINION; EXTENSION. (a) The commission shall issue an advisory opinion not later than the 60th day after the date the commission receives the request.

(b) The commission by vote may extend the time available to issue an opinion by 30 days. The commission may not grant more than two extensions. (V.A.C.S. Art. 6252-9d.1, Sec. 1.29(b).)

Sec. 571.093. PROTECTION OF IDENTITY OF REQUESTOR OR AFFECTED PERSON. (a) The commission shall maintain the confidentiality of the name of the person requesting an advisory opinion and shall issue opinions in a form necessary to maintain that confidentiality.

(b) The commission may not issue an opinion that includes the name of any person who may be affected by the opinion.

(c) Subsections (a) and (b) do not apply to a person who requests an opinion and files written notice with the commission waiving the confidentiality of the person's identity. (V.A.C.S. Art. 6252-9d.1, Secs. 1.29(c), (d) (part).)

Sec. 571.094. OPINION ISSUED ON INITIATIVE OF COMMISSION. On its own initiative, the commission may issue a written advisory opinion about the application of a law listed in Section 571.091 if a majority of the commission determines that an opinion would be in the public interest or in the interest of any person under the jurisdiction of the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.29(d) (part).)

Sec. 571.095. MAINTENANCE OF OPINIONS; SUMMARY. The commission shall number and categorize each advisory opinion issued and annually shall compile a summary of its opinions in a single reference document. (V.A.C.S. Art. 6252-9d.1, Sec. 1.29(e).)

Sec. 571.096. OPINION BY OTHER GOVERNMENTAL ENTITY. (a) The authority of the commission to issue an advisory opinion does not affect the authority of the attorney general to issue an opinion as authorized by law.



(b) In issuing an opinion under this subchapter, the commission shall consider the opinions issued by the State Ethics Advisory Commission and the secretary of state that are not overruled by statute or rule of the commission.

(c) The commission shall rely on opinions issued by the attorney general and the courts of this state. (V.A.C.S. Art. 6252-9d.1, Secs. 1.29(f), (g).)

Sec. 571.097. **DEFENSE FOR RELIANCE ON ADVISORY OPINION.** It is a defense to prosecution or to imposition of a civil penalty that the person reasonably relied on a written advisory opinion of the commission relating to the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved. (V.A.C.S. Art. 6252-9d.1, Sec. 1.30(a).)

Sec. 571.098. **CONVERSION OF CONTRIBUTION TO PERSONAL USE.** A person involved in a transaction or activity that the commission concludes in an advisory opinion to be a conversion of a contribution to personal use in violation of Section 253.035, Election Code, is not civilly liable to the state if:

(1) before receiving the opinion, the person reasonably believed the transaction or activity did not constitute a conversion, taking into account prior opinions and rules of the commission; and

(2) on or before the 30th day after the date the opinion is published, the person:

(A) returns to the political fund from which it was removed an amount equal to the amount converted; and

(B) notifies the commission by certified mail that the person has returned the converted contribution as required by this section. (V.A.C.S. Art. 6252-9d.1, Sec. 1.30(b).)

[Sections 571.099 to 571.120 reserved for expansion]

## SUBCHAPTER E. COMPLAINT PROCEDURES AND HEARINGS

Sec. 571.121. **GENERAL POWERS.** (a) The commission may:

(1) hold hearings, on its own motion adopted by an affirmative record vote of at least six commission members or on a sworn complaint, and render decisions on complaints or reports of violations as provided by this chapter; and

(2) agree to the settlement of issues.

(b) The commission may not consider a complaint or vote to investigate a matter outside the commission's jurisdiction. (V.A.C.S. Art. 6252-9d.1, Secs. 1.11(b)(2), (3); (f).)

Sec. 571.122. **FILING OF COMPLAINT; CONTENTS.** (a) An individual may file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to a law administered and enforced by the commission has violated a rule adopted by or a law administered and enforced by the commission.

(b) A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

(1) the name of the complainant;

(2) the street or mailing address of the complainant;

(3) the name of each respondent;

(4) the position or title of each respondent;

(5) the nature of the alleged violation, including if possible the specific rule or provision of law alleged to have been violated;

(6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

(7) all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known, and a list

of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including the location of the documents, if known.

(c) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant may swear to the facts by oath before a notary public or other authorized official.

(d) The complaint must state on its face an allegation that, if true, constitutes a violation of a rule adopted by or a law administered and enforced by the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.15.)

**Sec. 571.123. PROCESSING OF COMPLAINT.** (a) The commission shall determine whether a sworn complaint filed with the commission complies with the form requirements of Section 571.122.

(b) Not later than the 14th business day after the date a complaint is filed, the commission shall send written notice to the complainant and the respondent. The notice must state whether the complaint complies with the form requirements of Section 571.122.

(c) If the commission determines that the complaint does not comply with the form requirements, the commission shall send the complaint to the complainant with the written notice, a statement explaining how the complaint fails to comply, and a copy of the rules for filing sworn complaints. The complainant may resubmit the complaint not later than the 21st day after the date the notice under Subsection (b) is mailed. If the commission determines that the complaint is not resubmitted within the 21-day period, the commission shall:

(1) dismiss the complaint; and

(2) not later than the fifth business day after the date of the dismissal, send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) If the commission determines that a complaint is resubmitted under Subsection (c) within the 21-day period but is not in proper form, the commission shall send the notice required under Subsection (c), and the complainant may resubmit the complaint under that subsection.

(e) If the commission determines that a complaint returned to the complainant under Subsection (c) or (d) is resubmitted within the 21-day period and that the complaint complies with the form requirements, the commission shall send the written notice under Subsection (b). (V.A.C.S. Art. 6252-9d.1, Secs. 1.16(a)-(d), (e) (part).)

**Sec. 571.124. PRELIMINARY REVIEW: INITIATION.** (a) The commission promptly shall conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 571.122.

(b) On a motion by an affirmative record vote of at least six commission members, the commission, without a sworn complaint, may initiate a preliminary review of the matter that is the subject of the motion.

(c) The commission by record vote shall determine whether the commission has jurisdiction over the violation of law alleged in a sworn complaint processed under Section 571.123.

(d) Not later than the fifth business day after the date of the commission's determination under Subsection (c), the commission shall send written notice to the complainant and the respondent stating whether the commission has jurisdiction over the violation alleged in the complaint.

(e) If the commission determines that the commission has jurisdiction, the notice must include:

(1) a copy of the complaint and the rules of procedure of the commission;

(2) a statement of the rights of the respondent;

(3) a statement inviting the respondent to provide to the commission any information relevant to the complaint; and

(4) the date the commission will begin a preliminary review of the complaint.

(f) If the commission determines that the commission does not have jurisdiction over the violation alleged in the complaint, the commission shall:

(1) dismiss the complaint; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal. (V.A.C.S. Art. 6252-9d.1, Secs. 1.16(e) (part), 1.17(a)-(e).)

Sec. 571.125. PRELIMINARY REVIEW: PROCEDURE. (a) During a preliminary review, the commission:

(1) may consider all submitted evidence related to the complaint or to the subject matter of a motion under Section 571.124(b);

(2) may review any documents or material related to the complaint or to the motion; and

(3) shall determine whether there is credible evidence that provides cause for the commission to conclude that a violation within the jurisdiction of the commission has occurred.

(b) During a preliminary review, the respondent may appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement. (V.A.C.S. Art. 6252-9d.1, Sec. 1.17(f).)

Sec. 571.126. PRELIMINARY REVIEW: RESOLUTION. (a) As soon as practicable after the completion of a preliminary review, the commission by record vote shall issue a decision stating:

(1) whether there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred; or

(2) that there is insufficient evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission shall resolve and settle the complaint or motion to the extent possible. If the commission successfully resolves and settles the complaint or motion, not later than the fifth business day after the date of the final resolution of the complaint or motion, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission in its discretion shall:

(1) order an informal hearing to be held in accordance with Section 571.127; and

(2) not later than the fifth business day after the date of the decision, send to the complainant, if any, and the respondent a copy of the decision and written notice of the date, time, and place of the informal hearing.

(c) If the commission determines that there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has not occurred, the commission shall:

(1) dismiss the complaint or motion; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the dismissal and the grounds for dismissal.

(d) If the commission determines that there is insufficient credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred, the commission may dismiss the complaint or motion or promptly conduct an informal hearing under Section 571.127. Not later than the fifth business day after the date of the commission's determination under this subsection, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the grounds for the determination. (V.A.C.S. Art. 6252-9d.1, Sec. 1.18.)

Sec. 571.127. INFORMAL HEARING: PROCEDURE. (a) During an informal hearing, the commission:

(1) may consider all evidence related to a sworn complaint or to a motion under Section 571.124(b);

(2) may review any documents or materials related to the sworn complaint or motion;

(3) may submit written questions and require those questions to be answered under oath;

(4) may subpoena documents or materials related to the sworn complaint or motion; and

(5) shall determine by credible evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) During an informal hearing, the respondent may appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement. (V.A.C.S. Art. 6252-9d.1, Sec. 1.19.)

Sec. 571.128. INFORMAL HEARING: RESOLUTION. (a) As soon as practicable after the completion of an informal hearing, the commission by record vote shall issue a decision stating whether there is credible evidence for the commission to determine that a violation has occurred and whether the violation is technical or de minimis.

(b) If the commission determines that there is credible evidence for the commission to determine that a violation has not occurred, the commission shall:

(1) dismiss the complaint or motion; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the dismissal and the grounds for dismissal.

(c) If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission shall resolve and settle the complaint or motion to the extent possible. If the commission successfully resolves and settles the complaint or motion, not later than the fifth business day after the date of the final resolution of the complaint or motion, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission shall:

(1) order a formal hearing to be held in accordance with Sections 571.129 through 571.131; and

(2) not later than the fifth business day after the date of the decision, send to the complainant, if any, and the respondent a copy of the decision and written notice of the date, time, and place of the formal hearing, a statement of the nature of the alleged violation, and a description of the evidence of the alleged violation.

(d) A copy of the complaint or motion, the rules of procedure of the commission, and a statement of the rights of the respondent shall be sent with the notice required under Subsection (c)(2). (V.A.C.S. Art. 6252-9d.1, Sec. 1.20.)

Sec. 571.129. FORMAL HEARING: STANDARD OF EVIDENCE. During a formal hearing, the commission shall determine by clear and convincing evidence whether a violation within the jurisdiction of the commission has occurred. (V.A.C.S. Art. 6252-9d.1, Sec. 1.22(a).)

Sec. 571.130. FORMAL HEARING: SUBPOENAS AND WITNESSES. (a) A subpoena or other request to testify shall be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.

(b) Except as provided by Section 571.131(a)(1), the commission may order that a person may not, except as specifically authorized by the presiding officer, make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(c) A witness may read a written statement or present a brief oral opening statement at a formal hearing.

(d) A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:

- (1) request to appear personally before the commission to testify in the person's own behalf; or
- (2) file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) A witness who testifies at a formal hearing must be sworn. (V.A.C.S. Art. 6252-9d.1, Secs. 1.22(b)-(e), (h).)

Sec. 571.131. FORMAL HEARING: PROCEDURE. (a) Not later than the fifth business day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, the commission shall provide to the complainant, if any, and to the respondent:

- (1) a list of proposed witnesses to be called at the hearing;
- (2) copies of all documents expected to be introduced as exhibits at the hearing; and
- (3) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(b) The respondent may not be compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) The commission shall adopt rules governing discovery, hearings, and related procedures consistent with this chapter and Chapter 2001. (V.A.C.S. Art. 6252-9d.1, Secs. 1.22(f), (g), (i).)

Sec. 571.132. FORMAL HEARING: RESOLUTION. (a) Not later than the 30th business day after the date the formal hearing is completed, the commission by motion shall issue:

- (1) a final decision stating the resolution of the formal hearing; and
- (2) a written report stating in detail the commission's findings of fact, conclusions of law, and recommendation of criminal referral or imposition of a civil penalty, if any.

(b) The motion must be adopted by record vote of at least six members if the final decision is that a violation has occurred or by five members if the final decision is that a violation has not occurred.

(c) Not later than the fifth business day after the date the commission issues the final decision and written report, the commission shall:

- (1) send a copy of the decision and report to the complainant, if any, and to the respondent; and
- (2) make a copy of the decision and report available to the public during reasonable business hours. (V.A.C.S. Art. 6252-9d.1, Sec. 1.23.)

Sec. 571.133. APPEAL OF FINAL DECISION. (a) To appeal a final decision of the commission, a person may file a petition in a district court in Travis County or in the county in which the respondent resides.

(b) The petition must be filed not later than the 30th business day after the date the person received the decision.

(c) Not later than the 30th day after the date on which the petition is filed, the respondent may request that the appeal be transferred to a district court in Travis County or in the county in which the respondent resides, as appropriate. The court in which the appeal is originally filed shall transfer the appeal to a district court in the other county on receipt of the request.

(d) An appeal brought under this section is not limited to questions of law, and the substantial evidence rule does not apply. The action shall be determined by trial de novo. The reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior action by the commission or the nature of that action, except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court. A party is entitled, on demand, to a

jury determination of any issue of fact on which a jury determination is available in other civil suits in this state. (V.A.C.S. Art. 6252-9d.1, Sec. 1.24.)

Sec. 571.134. **DELAY OF REFERRAL.** If an alleged violation involves an election in which the alleged violator is a candidate, a candidate's campaign treasurer, or the campaign treasurer of a political committee supporting or opposing a candidate and the complaint is filed within 60 days before the date of the election, the commission shall delay referral until:

- (1) the day after election day;
- (2) the day after runoff election day if an ensuing runoff involving the alleged violator is held; or
- (3) the day after general election day if the election involved in the violation is a primary election and the alleged violator is involved in the succeeding general election. (V.A.C.S. Art. 6252-9d.1, Sec. 1.26.)

Sec. 571.135. **PUBLIC INTEREST INFORMATION; STATUS OF COMPLAINT.** (a) The commission shall prepare information of public interest describing the functions of the commission and the procedures by which sworn or other complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep an information file about each sworn or other complaint filed with the commission. In addition to the notice required by Sections 571.124 through 571.132, the commission, at least quarterly and until final disposition of a complaint, shall notify the complainant and the respondent, if any, of the status of the sworn or other complaint. (V.A.C.S. Art. 6252-9d.1, Sec. 1.27.)

Sec. 571.136. **EXTENSION OF DEADLINE.** The commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review, informal hearing, or formal hearing. (V.A.C.S. Art. 6252-9d.1, Sec. 1.25(b).)

Sec. 571.137. **SUBPOENA.** (a) In connection with an informal or a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint. A copy of a subpoena of the commission must be delivered to the respondent.

(b) At the written request of at least six members of the commission, a peace officer shall serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(c) If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, the commission shall report that fact to a district court in Travis County. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(d) A respondent has the right to quash a subpoena as provided by law.

(e) A subpoenaed witness who attends a commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. (V.A.C.S. Art. 6252-9d.1, Secs. 1.11(b)(1), 1.14.)

Sec. 571.138. **STATUS OF COMPLAINANT.** The complainant is not a party to a preliminary review, informal hearing, or formal hearing under this subchapter. (V.A.C.S. Art. 6252-9d.1, Sec. 1.25(c).)

Sec. 571.139. **APPLICABILITY OF OTHER ACTS.** (a) Except as provided by Section 571.140(b), Chapter 552 does not apply to documents or any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion.

(b) Chapter 551 does not apply to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion, but does apply to a formal hearing held under Sections 571.129 through 571.131.

(c) Subchapters C through H, Chapter 2001, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter. (V.A.C.S. Art. 6252-9d.1, Secs. 1.21(b); 1.36(a) (part), (b).)

Sec. 571.140. **CONFIDENTIALITY; OFFENSE.** (a) Except as provided by Subsection (b), proceedings at a preliminary review or informal hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or an informal hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(c) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class A misdemeanor.

(d) In addition to other penalties, a person who discloses information made confidential by this section is civilly liable to the respondent in an amount equal to the greater of \$10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees. (V.A.C.S. Art. 6252-9d.1, Secs. 1.21(a), (c), (d), (e) (part).)

[Sections 571.141 to 571.170 reserved for expansion]

## SUBCHAPTER F. ENFORCEMENT

Sec. 571.171. **INITIATION AND REFERRAL.** On a motion adopted by an affirmative record vote of at least six commission members, the commission may initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution. (V.A.C.S. Art. 6252-9d.1, Sec. 1.11(b)(4).)

Sec. 571.172. **ORDER.** The commission may:

- (1) issue and enforce a cease and desist order to stop a violation; and
- (2) issue an affirmative order to require compliance with the laws administered and enforced by the commission. (V.A.C.S. Art. 6252-9d.1, Secs. 1.28(a)(5), (6).)

Sec. 571.173. **CIVIL PENALTY FOR DELAY OR VIOLATION.** The commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the commission, whichever amount is more, for a delay in complying with a commission order or for a violation of a law administered and enforced by the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.28(a)(1).)

Sec. 571.174. **DENIAL, SUSPENSION, OR REVOCATION OF LOBBYIST REGISTRATION.** After a criminal conviction for an offense under Chapter 36 of the Penal Code or under Chapter 305, the commission may deny, suspend, or revoke the registration of a person required to be registered under Chapter 305. (V.A.C.S. Art. 6252-9d.1, Sec. 1.28(a)(3).)

Sec. 571.175. **NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY.** The commission may notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, the senate, the house of representatives, or the State Bar of Texas, of a violation of a law administered and enforced by the commission. (V.A.C.S. Art. 6252-9d.1, Sec. 1.28(a)(4).)

Sec. 571.176. **CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT.** (a) The commission may impose a civil penalty of not more than \$10,000 for the filing of a frivolous or bad-faith complaint. In this subsection, "frivolous complaint" means a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment.

(b) In addition to other penalties, a person who files a frivolous complaint is civilly liable to the respondent in an amount equal to the greater of \$10,000 or the amount of actual damages

incurred by the respondent, including court costs and attorney fees. (V.A.C.S. Art. 6252-9d.1, Secs. 1.21(e) (part); 1.28(a)(2), (b).)

Sec. 571.177. **FACTORS CONSIDERED FOR ASSESSMENT OF SANCTION.** The commission shall consider the following factors in assessing a sanction:

- (1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;
- (2) the history and extent of previous violations;
- (3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;
- (4) the penalty necessary to deter future violations; and
- (5) any other matters that justice may require. (V.A.C.S. Art. 6252-9d.1, Sec. 1.28(c).)

**CHAPTER 572. PERSONAL FINANCIAL DISCLOSURE, STANDARDS  
OF CONDUCT, AND CONFLICT OF INTEREST**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 572.001. **POLICY; LEGISLATIVE INTENT**
- Sec. 572.002. **GENERAL DEFINITIONS**
- Sec. 572.003. **DEFINITION: APPOINTED OFFICER OF MAJOR STATE AGENCY**
- Sec. 572.004. **DEFINITION: REGULATION**
- Sec. 572.005. **DETERMINATION OF SUBSTANTIAL INTEREST**
- Sec. 572.006. **DETERMINATION OF DEPENDENT CHILD**
- Sec. 572.007. **PENALTIES IMPOSED BY COMMISSION**
- Sec. 572.008. **VENUE**

[Sections 572.009 to 572.020 reserved for expansion]

**SUBCHAPTER B. PERSONAL FINANCIAL STATEMENT**

- Sec. 572.021. **FINANCIAL STATEMENT REQUIRED**
- Sec. 572.022. **REPORTING CATEGORIES**
- Sec. 572.023. **CONTENTS OF FINANCIAL STATEMENT IN GENERAL**
- Sec. 572.024. **INFORMATION ABOUT SERVICES FOR LOBBYISTS OR LOBBYIST EMPLOYERS**
- Sec. 572.025. **INFORMATION ABOUT LEGISLATORS' REPRESENTATION BEFORE EXECUTIVE STATE AGENCIES**
- Sec. 572.026. **FILING DATES FOR STATE OFFICERS AND PARTY CHAIRMEN**
- Sec. 572.027. **FILING DATES FOR CANDIDATES**
- Sec. 572.028. **DUPLICATE STATEMENTS**
- Sec. 572.029. **TIMELINESS OF FILING**
- Sec. 572.030. **PREPARATION AND MAILING OF FORMS**
- Sec. 572.031. **DETERMINATION OF COMPLIANCE WITH SUBCHAPTER**
- Sec. 572.032. **PUBLIC ACCESS TO STATEMENTS**
- Sec. 572.033. **CIVIL PENALTY**
- Sec. 572.034. **CRIMINAL PENALTY**

[Sections 572.035 to 572.050 reserved for expansion]

**SUBCHAPTER C. STANDARDS OF CONDUCT AND  
CONFLICT OF INTEREST PROVISIONS.**

- Sec. 572.051. **STANDARDS OF CONDUCT**
- Sec. 572.052. **REPRESENTATION BY LEGISLATORS BEFORE STATE AGENCIES;  
CRIMINAL OFFENSE**
- Sec. 572.053. **VOTING BY LEGISLATORS ON CERTAIN MEASURES OR BILLS;  
CRIMINAL OFFENSE**



- Sec. 572.054. REPRESENTATION BY FORMER OFFICER OR EMPLOYEE OF REGULATORY AGENCY RESTRICTED; CRIMINAL OFFENSE
- Sec. 572.055. CERTAIN SOLICITATIONS OF REGULATED BUSINESS ENTITIES PROHIBITED; CRIMINAL OFFENSE
- Sec. 572.056. CONTRACTS BY STATE OFFICERS WITH GOVERNMENTAL ENTITIES; CRIMINAL OFFENSE
- Sec. 572.057. CERTAIN LEASES PROHIBITED
- Sec. 572.058. PRIVATE INTEREST IN MEASURE OR DECISION; DISCLOSURE; REMOVAL FROM OFFICE FOR VIOLATION

CHAPTER 572. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 572.001. POLICY; LEGISLATIVE INTENT. (a) It is the policy of this state that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

(b) To implement this policy and to strengthen the faith and confidence of the people of this state in state government, this chapter provides standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people and government of this state in the performance of their official duties.

(c) It is the intent of the legislature that this chapter serve not only as a guide for official conduct of those persons but also as a basis for discipline of those who refuse to abide by its terms. (V.A.C.S. Art. 6252-9b, Sec. 1.)

Sec. 572.002. GENERAL DEFINITIONS. In this chapter:

(1) "Appointed officer" means:

(A) the secretary of state;

(B) an individual appointed with the advice and consent of the senate to the governing board of a state-supported institution of higher education;

(C) an officer of a state agency who is appointed for a term of office specified by the Texas Constitution or a statute of this state, excluding an appointee to a vacated elective office; or

(D) an individual who is a member of the governing board or commission of a state agency, who is not appointed, and who is not otherwise:

(i) an elected officer;

(ii) an officer described by Paragraphs (A) through (C); or

(iii) an executive head of a state agency.

(2) "Business entity" means any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust.

(3) "Commission" means the Texas Ethics Commission.

(4) "Elected officer" means:

(A) a member of the legislature;

(B) an executive or judicial officer elected in a statewide election;

(C) a judge of a court of appeals or of a district court;

(D) a member of the State Board of Education; or

(E) an individual appointed to fill a vacancy in an office or appointed to a newly created office who, if elected to the office instead of appointed, would be an elected officer under this subdivision.

(5) "Executive head of a state agency" means the director, executive director, commissioner, administrator, chief clerk, or other individual who is appointed by the governing body or highest officer of the state agency to act as the chief executive or administrative officer of the agency and who is not an appointed officer. The term includes the chancellor or highest executive officer of a university system and the president of a public senior college or university as defined by Section 61.003, Education Code.

(6) "Party chairman" means the state chairman of any political party receiving more than two percent of the vote for governor in the most recent general election.

(7) "Person" means an individual or a business entity.

(8) "Regulatory agency" means any department, commission, board, or other agency, except the secretary of state and the comptroller, that:

- (A) is in the executive branch of state government;
- (B) has authority that is not limited to a geographical portion of the state;
- (C) was created by the Texas Constitution or a statute of this state; and
- (D) has constitutional or statutory authority to engage in regulation.

(9) "Salaried appointed officer" means an appointed officer who receives or is authorized to receive a salary for state service but not a per diem or other form of compensation.

(10) "State agency" means:

(A) a department, commission, board, office, or other agency that:

- (i) is in the executive branch of state government;
- (ii) has authority that is not limited to a geographical portion of the state; and
- (iii) was created by the Texas Constitution or a statute of this state;

(B) a university system or an institution of higher education as defined by Section 61.003, Education Code, other than a public junior college; or

(C) a river authority created under the Texas Constitution or a statute of this state.

(11) "State employee" means an individual, other than a state officer, who is employed by:

(A) a state agency;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, or the Texas Judicial Council; or

(C) either house of the legislature or a legislative agency, council, or committee, including the Legislative Budget Board, the Texas Legislative Council, the State Auditor's Office, and the Legislative Reference Library.

(12) "State officer" means an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency. (V.A.C.S. Art. 6252-9b, Secs. 2(1), (2), (3), (4), (6), (7), (8), (9), (11), (13), (15), (16).)

Sec. 572.003. DEFINITION: APPOINTED OFFICER OF MAJOR STATE AGENCY.

(a) In this chapter, "appointed officer of a major state agency" means an individual listed in Subsection (b) or (c).

(b) The term means:

(1) the Banking Commissioner of The Banking Department of Texas;

(2) the fire fighters' pension commissioner;

(3) the administrative director of the Office of Court Administration of the Texas Judicial System;

(4) the chief executive of the Office of Public Utility Counsel;

(5) the executive director of the State Bar of Texas;

(6) the director of the lottery division in the office of the comptroller;

(7) the deputy in charge of the department of security in the lottery division in the office of the comptroller; or

(8) the secretary of state.

(c) The term means a member of:

- (1) the Public Utility Commission of Texas;
- (2) the Texas Department of Commerce;
- (3) the Texas Natural Resource Conservation Commission
- (4) the Texas Alcoholic Beverage Commission;
- (5) The Finance Commission of Texas;
- (6) the General Services Commission;
- (7) the Texas Board of Criminal Justice;
- (8) the board of trustees of the Employees Retirement System of Texas;
- (9) the Texas Transportation Commission;
- (10) the Texas Workers' Compensation Commission;
- (11) the State Board of Insurance;
- (12) the Parks and Wildlife Commission;
- (13) the Public Safety Commission;
- (14) the Texas Ethics Commission;
- (15) the State Securities Board;
- (16) the Texas Water Development Board;
- (17) the governing board of a public senior college or university as defined by Section 61.003, Education Code, or of The University of Texas Southwestern Medical Center at Dallas, The University of Texas Medical Branch at Galveston, The University of Texas Health Science Center at Houston, The University of Texas Health Science Center at San Antonio, The University of Texas System Cancer Center, The University of Texas Health Science Center at Tyler, Texas College of Osteopathic Medicine, Texas Tech University Health Sciences Center, Texas State Technical Institute—Amarillo, Texas State Technical Institute—Harlingen, Texas State Technical Institute—Sweetwater, or Texas State Technical Institute—Waco;
- (18) the Texas Higher Education Coordinating Board;
- (19) the Texas Employment Commission;
- (20) the State Banking Board;
- (21) the board of trustees of the Teachers Retirement System of Texas;
- (22) the Credit Union Commission;
- (23) the School Land Board;
- (24) the board of the Texas Department of Housing and Community Affairs;
- (25) the Texas Racing Commission;
- (26) the State Board of Dental Examiners;
- (27) the Texas Board of Licensure for Nursing Home Administrators;
- (28) the Texas State Board of Medical Examiners;
- (29) the Board of Pardons and Paroles;
- (30) the State Board of Pharmacy;
- (31) the Department of Information Resources governing board;
- (32) the Motor Vehicle Board;
- (33) the Texas Real Estate Commission;
- (34) the board of directors of the State Bar of Texas;
- (35) the bond review board;
- (36) the Texas Board of Health;
- (37) the Texas Board of Mental Health and Mental Retardation;
- (38) the Texas Board on Aging;

(39) the Texas Board of Human Services;

(40) the Texas Funeral Service Commission; or

(41) the board of directors of a river authority created under the Texas Constitution or a statute of this state.

(d) The term includes the successor in function as provided by law to an office listed in Subsection (b) or (c) if that office is abolished. (V.A.C.S. Art. 6252-9b, Secs. 2(5)(A), (B).)

Sec. 572.004. DEFINITION: REGULATION. In this chapter, "regulation" means rule-making, adjudication, or licensing. In this definition:

(1) "Adjudication" means the process of an agency for formulating an order.

(2) "License" includes all or part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission.

(3) "Licensing" includes the process of an agency concerning the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(4) "Order" means all or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing.

(5) "Rule" means all or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of an agency. (V.A.C.S. Art. 6252-9b, Sec. 2(10).)

Sec. 572.005. DETERMINATION OF SUBSTANTIAL INTEREST. An individual has a substantial interest in a business entity if the individual:

(1) has a controlling interest in the business entity;

(2) owns more than 10 percent of the voting interest in the business entity;

(3) owns more than \$25,000 of the fair market value of the business entity;

(4) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains of the business entity;

(5) is a member of the board of directors or other governing board of the business entity;

(6) serves as an elected officer of the business entity; or

(7) is an employee of the business entity. (V.A.C.S. Art. 6252-9b, Sec. 2(12).)

Sec. 572.006. DETERMINATION OF DEPENDENT CHILD. An individual's child, including an adopted child or stepchild, is the individual's dependent during a calendar year in which the individual provides more than 50 percent of the child's support. (V.A.C.S. Art. 6252-9b, Sec. 2(14).)

Sec. 572.007. PENALTIES IMPOSED BY COMMISSION. This chapter does not prohibit the imposition of civil penalties by the commission in addition to criminal penalties or other sanctions imposed by law. (V.A.C.S. Art. 6252-9b, Sec. 12B.)

Sec. 572.008. VENUE. An offense under this chapter, including perjury, may be prosecuted in Travis County or in any other county in which it may be prosecuted under the Code of Criminal Procedure. (V.A.C.S. Art. 6252-9b, Sec. 11.)

[Sections 572.009 to 572.020 reserved for expansion]

## SUBCHAPTER B. PERSONAL FINANCIAL STATEMENT

Sec. 572.021. FINANCIAL STATEMENT REQUIRED. A state officer, a partisan or independent candidate for an office as an elected officer, and a party chairman shall file with the commission a verified financial statement complying with Sections 572.022 through 572.025. (V.A.C.S. Art. 6252-9b, Secs. 3(a) (part), (d) (part); 4(d).)

Sec. 572.022. REPORTING CATEGORIES. (a) If an amount in a financial statement is required to be reported by category, the individual filing the statement shall report whether the amount is:

- (1) less than \$5,000;
- (2) at least \$5,000 but less than \$10,000;
- (3) at least \$10,000 but less than \$25,000; or
- (4) \$25,000 or more.

(b) The individual filing the statement shall report an amount of stock by category of number of shares instead of by category of dollar value and shall report whether the amount is:

- (1) less than 100 shares;
- (2) at least 100 but less than 500 shares;
- (3) at least 500 but less than 1,000 shares;
- (4) at least 1,000 but less than 5,000 shares;
- (5) at least 5,000 but less than 10,000 shares; or
- (6) 10,000 shares or more.

(c) The individual filing the statement shall report a description of real property by the number of lots or number of acres, as applicable, in each county, the name of the county, and the names of all persons retaining an interest in the property, excluding an interest that is a severed mineral interest. (V.A.C.S. Art. 6252-9b, Sec. 4(b).)

Sec. 572.023. CONTENTS OF FINANCIAL STATEMENT IN GENERAL. (a) A financial statement must include an account of the financial activity of the individual required by this subchapter to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year.

(b) The account of financial activity consists of:

(1) a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of a person or other organization from which the individual or a business in which the individual has a substantial interest received a fee as a retainer for a claim on future services in case of need, as distinguished from a fee for services on a matter specified at the time of contracting for or receiving the fee, if professional or occupational services are not actually performed during the reporting period equal to or in excess of the amount of the retainer, and the category of the amount of the fee;

(2) identification by name and the category of the number of shares of stock of any business entity held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;

(3) a list of all bonds, notes, and other commercial paper held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;

(4) identification of each source and the category of the amount of income in excess of \$500 derived from each source from interest, dividends, royalties, and rents;

(5) identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year and the category of the amount of the liability;

(6) identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale;

(7) identification of a person or other organization from which the individual or the individual's spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift, except:

(A) a gift received from an individual related to the individual at any time within the second degree by consanguinity or affinity, as determined under Subchapter A, Chapter 573;

(B) a political contribution that was reported as required by law; and

(C) an expenditure required to be reported by a person required to be registered under Chapter 305;

(8) identification of the source and the category of the amount of all income received as beneficiary of a trust and identification of each asset, if known to the beneficiary, from which income was received by the beneficiary in excess of \$500;

(9) identification by description and the category of the amount of all assets and liabilities of a corporation or partnership in which 50 percent or more of the outstanding ownership was held, acquired, or sold;

(10) a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations, firms, partnerships, or proprietorships, stating the name of each corporation, firm, partnership, or proprietorship and the position held;

(11) identification of any person providing transportation, meals, or lodging expenses permitted under Section 36.07(b), Penal Code, and the amount of those expenses, other than expenditures required to be reported under Chapter 305; and

(12) any partnership, joint venture, or other business association, excluding a publicly held corporation, in which both the state officer and a person registered under Chapter 305 have an interest. (V.A.C.S. Art. 6252-9b, Secs. 4(a), (c).)

**Sec. 572.024. INFORMATION ABOUT SERVICES FOR LOBBYISTS OR LOBBYIST EMPLOYERS.** A state officer who receives a fee for services rendered by the officer to or on behalf of a person required to be registered under Chapter 305, or to or on behalf of a person or entity that the officer actually knows directly compensates or reimburses a person required to be registered under Chapter 305, shall report on the financial statement the name of each person or entity for which the services were rendered and the category of the amount of each fee. (V.A.C.S. Art. 6252-9b, Sec. 4(f).)

**Sec. 572.025. INFORMATION ABOUT LEGISLATORS' REPRESENTATION BEFORE EXECUTIVE STATE AGENCIES.** A member of the legislature who represents another person for compensation before an executive state agency shall report on the financial statement:

(1) the name of the agency;

(2) the person represented by the member; and

(3) the category of the amount of compensation received by the member for that representation. (V.A.C.S. Art. 6252-9b, Sec. 4(g).)

**Sec. 572.026. FILING DATES FOR STATE OFFICERS AND PARTY CHAIRMEN.** (a) Not later than April 30 each year, a state officer or a party chairman shall file the financial statement as required by this subchapter.

(b) An individual who is appointed to serve as a salaried appointed officer or an appointed officer of a major state agency or who is appointed to fill a vacancy in an elective office shall file a financial statement not later than the 30th day after the date of appointment or the date of qualification for the office, or if confirmation by the senate is required, before the confirmation, whichever date is earlier.

(c) An individual who is appointed or employed as the executive head of a state agency shall file a financial statement not later than the 45th day after the date on which the individual assumes the duties of the position. A state agency shall immediately notify the commission of the appointment or employment of an executive head of the agency.

(d) An individual required to file a financial statement under Subsection (a) may request the commission to grant an extension of not more than 60 days for filing the statement. The commission shall grant the request if it is received before the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. The commission may not grant more than one extension to an individual in one year except for good cause shown. (V.A.C.S. Art. 6252-9b, Secs. 3(a), (b), (c), (h).)

**Sec. 572.027. FILING DATES FOR CANDIDATES.** (a) Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the

general primary election, an individual who is a partisan or independent candidate for an office as an elected officer shall file the financial statement required by this subchapter.

(b) If the deadline under which a candidate files an application for a place on the ballot, other than the regular filing deadline for an independent candidate, or files a declaration of write-in candidacy falls after the date of the regular filing deadline for candidates in the general primary election, the candidate shall file the financial statement not later than the 30th day after that later deadline. However, if that deadline falls not later than the 35th day after the date on which the election in which the candidate is running, the candidate shall file the statement not later than the fifth day before the date of that election.

(c) An individual who is a candidate in a special election for an office as an elected officer shall file the financial statement not later than the fifth day before the date of that election.

(d) An individual nominated to fill a vacancy in a nomination as a candidate for a position as an elected officer under Chapter 145, Election Code, shall file the financial statement not later than the 15th day after the date the certificate of nomination required by Section 145.037 or 145.038, Election Code, is filed. (V.A.C.S. Art. 6252-9b, Secs. 3(d) (part), (f) (part).)

Sec. 572.028. **DUPLICATE STATEMENTS.** If an individual has filed a financial statement under one provision of this subchapter covering the preceding calendar year, the individual is not required to file a financial statement required under another provision of this subchapter to cover that same year if, before the deadline for filing the statement under the other provision, the individual notifies the commission in writing that the individual has already filed a financial statement under the provision specified. (V.A.C.S. Art. 6252-9b, Sec. 3(g).)

Sec. 572.029. **TIMELINESS OF FILING.** (a) The deadline for filing a financial statement required by this subchapter is 5 p.m. of the last day designated in the applicable provision for filing the statement.

(b) If the last day for filing the financial statement is a Saturday, Sunday, or holiday included under Subchapter B, Chapter 662, the statement is timely if filed on the next day that is not a Saturday, Sunday, or listed holiday.

(c) A financial statement is timely filed if it is properly addressed and placed in the United States Post Office or in the hands of a common or contract carrier not later than the last day for filing the financial statement. The post office cancellation mark or the receipt mark of a common or contract carrier is prima facie evidence of the date the statement was deposited with the post office or carrier. The individual filing the statement may show by competent evidence that the actual date of posting was different from that shown by the marks. (V.A.C.S. Art. 6252-9b, Sec. 3(i).)

Sec. 572.030. **PREPARATION AND MAILING OF FORMS.** (a) The commission shall design forms that may be used for filing the financial statement under this subchapter.

(b) The commission shall mail two copies of the financial statement form to each individual required to file under this subchapter.

(c) The copies must be mailed:

(1) before the 30th day before the deadline for filing the financial statement under Section 572.026(a) or (c), except as otherwise provided by this subsection;

(2) not later than the 15th day after the applicable filing deadline for candidates required to file under Section 572.027(a), (b), or (c);

(3) not later than the seventh day after the date of appointment for individuals required to file under Section 572.026(b), or if the legislature is in session, sooner if possible; and

(4) not later than the fifth day after the date the certificate of nomination is filed for candidates required to file under Section 574.027(d). (V.A.C.S. Art. 6252-9b, Secs. 3(e), (f) (part); 4(e).)

Sec. 572.031. **DETERMINATION OF COMPLIANCE WITH SUBCHAPTER.** (a) The commission shall conduct a continuing survey to determine whether all individuals required to file financial statements under this subchapter have filed statements in compliance with this subchapter.

(b) If the commission determines that an individual has failed to file the statement in compliance with this subchapter, the commission shall send a written statement of the determination to the appropriate prosecuting attorneys of the state. (V.A.C.S. Art. 6252-9b, Sec. 12.)

Sec. 572.032. PUBLIC ACCESS TO STATEMENTS. (a) Financial statements filed under this subchapter are public records. The commission shall maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours.

(b) During the one-year period following the filing of a financial statement, each time a person requests to see the financial statement, excluding the commission or a commission employee acting on official business, the commission shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The commission shall retain that statement in the file for one year after the date the requested financial statement is filed.

(c) After the second anniversary of the date the individual ceases to be a state officer, the commission may and on notification from the former state officer shall destroy each financial statement filed by the state officer. (V.A.C.S. Art. 6252-9b, Sec. 9.)

Sec. 572.033. CIVIL PENALTY. (a) The commission shall determine from any available evidence whether a statement required to be filed under this subchapter is late. On making a determination that the statement is late, the commission shall immediately mail a notice of the determination to the individual responsible for filing the statement and to the appropriate attorney for the state.

(b) If a statement is determined to be late, the individual responsible for filing the statement is civilly liable to the state for an amount determined by commission rule, but not to exceed \$100 for each day that the statement is late. If a statement is more than 30 days late, the commission shall issue a warning of liability by registered mail to the individual responsible for the filing. If the penalty is not paid before the 10th day after the date on which the warning is received, the individual is liable for a civil penalty in an amount determined by commission rule, but not to exceed \$10,000.

(c) This section is cumulative of any other available sanction for a late filing of a sworn statement. (V.A.C.S. Art. 6252-9b, Secs. 12A(a), (b), (d).)

Sec. 572.034. CRIMINAL PENALTY. (a) An individual commits an offense if the individual is a state officer, candidate, or party chairman and knowingly and wilfully fails to file a financial statement as required by this subchapter.

(b) An offense under this section is a Class B misdemeanor.

(c) In a prosecution for failure to file a financial statement under this section, it is a defense that the individual did not receive copies of the financial statement form required by this subchapter to be mailed to the individual. (V.A.C.S. Art. 6252-9b, Sec. 10.)

[Sections 572.035 to 572.050 reserved for expansion]

### SUBCHAPTER C. STANDARDS OF CONDUCT AND CONFLICT OF INTEREST PROVISIONS

Sec. 572.051. STANDARDS OF CONDUCT. A state officer or employee should not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;



(4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another. (V.A.C.S. Art. 6252-9b, Sec. 8.)

**Sec. 572.052. REPRESENTATION BY LEGISLATORS BEFORE STATE AGENCIES; CRIMINAL OFFENSE.** (a) A member of the legislature may not, for compensation, represent another person before a state agency in the executive branch of state government unless:

(1) the representation is made in a proceeding that is adversary in nature or in another public hearing that is a matter of record; or

(2) the representation involves the filing of documents, contacts with the agency, or other relations, that involve only ministerial acts on the part of the commission, agency, board, department, or officer.

(b) A member of the legislature commits an offense if the member violates this section. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 6252-9b, Secs. 7(a), (e).)

**Sec. 572.053. VOTING BY LEGISLATORS ON CERTAIN MEASURES OR BILLS; CRIMINAL OFFENSE.** (a) A member of the legislature may not vote on a measure or a bill, other than a measure that will affect an entire class of business entities, that will directly benefit a specific business transaction of a business entity in which the member has a controlling interest.

(b) In this section, "controlling interest" includes:

(1) an ownership interest or participating interest by virtue of shares, stock, or otherwise that exceeds 10 percent;

(2) membership on the board of directors or other governing body of the business entity; or

(3) service as an officer of the business entity.

(c) A member of the legislature commits an offense if the member violates this section. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 6252-9b, Secs. 7(b), (c), (d), (e).)

**Sec. 572.054. REPRESENTATION BY FORMER OFFICER OR EMPLOYEE OF REGULATORY AGENCY RESTRICTED; CRIMINAL OFFENSE.** (a) A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made:

(1) with the intent to influence; and

(2) on behalf of any person in connection with any matter on which the person seeks official action.

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(d) Subsection (b) does not apply to a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased.

(e) Other law that restricts the representation of a person before a particular state agency by a former state officer or employee of that agency prevails over this section.

(f) An individual commits an offense if the individual violates this section. An offense under this subsection is a Class A misdemeanor.

(g) In this section, the comptroller and the secretary of state are not excluded from the definition of "regulatory agency."

(h) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding. (V.A.C.S. Art. 6252-9b, Sec. 7A.)

Sec. 572.055. CERTAIN SOLICITATIONS OF REGULATED BUSINESS ENTITIES PROHIBITED; CRIMINAL OFFENSE. (a) An association or organization of employees of a regulatory agency may not solicit, accept, or agree to accept anything of value from a business entity regulated by that agency and from which the business entity must obtain a permit to operate that business in this state or from an individual directly or indirectly connected with that business entity.

(b) A business entity regulated by a regulatory agency and from which the business entity must obtain a permit to operate that business in this state or an individual directly or indirectly connected with that business entity may not offer, confer, or agree to confer on an association or organization of employees of that agency anything of value.

(c) This section does not apply to an agency regulating the operation or inspection of motor vehicles or an agency charged with enforcing the parks and wildlife laws of this state.

(d) A person commits an offense if the person intentionally or knowingly violates this section. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 6252-9b, Sec. 7B.)

Sec. 572.056. CONTRACTS BY STATE OFFICERS WITH GOVERNMENTAL ENTITIES; CRIMINAL OFFENSE. (a) A state officer may not solicit or accept from a governmental entity a commission, fee, bonus, retainer, or rebate that is compensation for the officer's personal solicitation for the award of a contract for services or sale of goods to a governmental entity.

(b) This section does not apply to:

(1) a contract that is awarded by competitive bid as provided by law and that is not otherwise prohibited by law; or

(2) a court appointment.

(c) In this section, "governmental entity" means the state, a political subdivision of the state, or a governmental entity created under the Texas Constitution or a statute of this state.

(d) A state officer who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 6252-9b, Secs. 7C(a), (b).)

Sec. 572.057. CERTAIN LEASES PROHIBITED. (a) A member of the legislature, an executive or judicial officer elected in a statewide election, or a business entity in which the legislator or officer has a substantial interest may not lease any office space or other real property to the state, a state agency, the legislature or a legislative agency, the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial agency.

(b) A lease made in violation of Subsection (a) is void.

(c) This section does not apply to an individual who is an elected officer on June 16, 1989, for as long as the officer holds that office. (V.A.C.S. Art. 6252-9b, Sec. 8A.)

Sec. 572.058. PRIVATE INTEREST IN MEASURE OR DECISION; DISCLOSURE; REMOVAL FROM OFFICE FOR VIOLATION. (a) An elected or appointed officer, other than an officer subject to impeachment under Article XV, Section 2, of the Texas Constitution,

who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with Chapter 551. The officer may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

(b) An individual who violates this section is subject to removal from office on the petition of the attorney general on the attorney general's own initiative or on the relation of a resident or of any other member of the board or commission. The suit must be brought in a district court of Travis County or of the county where the violation is alleged to have been committed.

(c) If the court or jury finds from a preponderance of the evidence that the defendant violated this section and that an ordinary prudent person would have known the individual's conduct to be a violation of this section, the court shall enter judgment removing the defendant from office.

(d) A suit under this section must be brought before the second anniversary of the date the violation is alleged to have been committed, or the suit is barred.

(e) The remedy provided by this section is cumulative of other methods of removal from office provided by the Texas Constitution or a statute of this state.

(f) In this section, "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution, governing the conduct of members of the legislature. For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation. (V.A.C.S. Art. 6252-9b, Sec. 6.)

## CHAPTER 573. DEGREES OF RELATIONSHIP; NEPOTISM PROHIBITIONS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 573.001. DEFINITIONS

Sec. 573.002. DEGREES OF RELATIONSHIP

[Sections 573.003 to 573.020 reserved for expansion]

### SUBCHAPTER B. RELATIONSHIPS BY CONSANGUINITY OR BY AFFINITY

Sec. 573.021. METHOD OF COMPUTING DEGREE OF RELATIONSHIP

Sec. 573.022. DETERMINATION OF CONSANGUINITY

Sec. 573.023. COMPUTATION OF DEGREE OF CONSANGUINITY

Sec. 573.024. DETERMINATION OF AFFINITY

Sec. 573.025. COMPUTATION OF DEGREE OF AFFINITY

[Sections 573.026 to 573.040 reserved for expansion]

### SUBCHAPTER C. NEPOTISM PROHIBITIONS

Sec. 573.041. PROHIBITION APPLICABLE TO PUBLIC OFFICIAL

Sec. 573.042. PROHIBITION APPLICABLE TO CANDIDATE

Sec. 573.043. PROHIBITION APPLICABLE TO DISTRICT JUDGE

Sec. 573.044. PROHIBITION APPLICABLE TO TRADING

[Sections 573.045 to 573.060 reserved for expansion]

### SUBCHAPTER D. EXCEPTIONS

Sec. 573.061. GENERAL EXCEPTIONS

Sec. 573.062. CONTINUOUS EMPLOYMENT

[Sections 573.063 to 573.080 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

- Sec. 573.081. REMOVAL IN GENERAL
- Sec. 573.082. REMOVAL BY QUO WARRANTO PROCEEDING
- Sec. 573.083. WITHHOLDING PAYMENT OF COMPENSATION
- Sec. 573.084. CRIMINAL PENALTY

CHAPTER 573. DEGREES OF RELATIONSHIP; NEPOTISM PROHIBITIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 573.001. DEFINITIONS. In this chapter:

- (1) "Candidate" has the meaning assigned by Section 251.001, Election Code.
- (2) "Position" includes an office, clerkship, employment, or duty.
- (3) "Public official" means:
  - (A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state;
  - (B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or
  - (C) a judge of a court created by or under a statute of this state. (V.A.C.S. Art. 5996a, Secs. 1(a) (part), 2(a) (part); New.)

Sec. 573.002. DEGREES OF RELATIONSHIP. Except as provided by Section 573.043, this chapter applies to relationships within the third degree by consanguinity or within the second degree by affinity. (V.A.C.S. Art. 5996a, Sec. 1(a) (part).)

[Sections 573.003 to 573.020 reserved for expansion]

SUBCHAPTER B. RELATIONSHIPS BY CONSANGUINITY OR BY AFFINITY

Sec. 573.021. METHOD OF COMPUTING DEGREE OF RELATIONSHIP. The degree of a relationship is computed by the civil law method. (V.A.C.S. Art. 5996h, Sec. 1.)

Sec. 573.022. DETERMINATION OF CONSANGUINITY. (a) Two individuals are related to each other by consanguinity if:

- (1) one is a descendant of the other; or
  - (2) they share a common ancestor.
- (b) An adopted child is considered to be a child of the adoptive parent for this purpose. (V.A.C.S. Art. 5996h, Sec. 2(a).)

Sec. 573.023. COMPUTATION OF DEGREE OF CONSANGUINITY. (a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

- (1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and
- (2) the number of generations between the relative and the nearest common ancestor.

(c) An individual's relatives within the third degree by consanguinity are the individual's:

- (1) parent or child (relatives in the first degree);
- (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree). (V.A.C.S. Art. 5996h, Secs. 2(b), (c), 4(a).)

Sec. 573.024. DETERMINATION OF AFFINITY. (a) Two individuals are related to each other by affinity if:

(1) they are married to each other; or

(2) the spouse of one of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives. (V.A.C.S. Art. 5996h, Secs. 3(a), (b).)

Sec. 573.025. COMPUTATION OF DEGREE OF AFFINITY. (a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual's relatives within the third degree by affinity are:

(1) anyone related by consanguinity to the individual's spouse in one of the ways named in Section 573.023(c); and

(2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c). (V.A.C.S. Art. 5996h, Secs. 3(c), 4(b).)

[Sections 573.026 to 573.040 reserved for expansion]

### SUBCHAPTER C. NEPOTISM PROHIBITIONS

Sec. 573.041. PROHIBITION APPLICABLE TO PUBLIC OFFICIAL. A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

(1) the individual is related to the public official within a degree described by Section 573.002; or

(2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002. (V.A.C.S. Art. 5996a, Sec. 1(a).)

Sec. 573.042. PROHIBITION APPLICABLE TO CANDIDATE. (a) A candidate may not take an affirmative action to influence the following individuals regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a degree described by Section 573.002:

(1) an employee of the office to which the candidate seeks election; or

(2) an employee or another officer of the governmental body to which the candidate seeks election, if the office the candidate seeks is one office of a multimember governmental body.

(b) The prohibition imposed by this section does not apply to a candidate's actions taken regarding a bona fide class or category of employees or prospective employees. (V.A.C.S. Art. 5996a, Sec. 2.)

Sec. 573.043. PROHIBITION APPLICABLE TO DISTRICT JUDGE. A district judge may not appoint as official stenographer of the judge's district an individual related to the judge or to the district attorney of the district within the third degree. (V.A.C.S. Art. 5996e.)

Sec. 573.044. PROHIBITION APPLICABLE TO TRADING. A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

(1) the individual is related to another public official within a degree described by Section 573.002; and

(2) the appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment or confirmation of the appointment of an individual who is related to the first public official within a degree described by Section 573.002. (V.A.C.S. Art. 5996c.)

[Sections 573.045 to 573.060 reserved for expansion]

#### SUBCHAPTER D. EXCEPTIONS

Sec. 573.061. GENERAL EXCEPTIONS. Section 573.041 does not apply to:

(1) an appointment to the office of a notary public or to the confirmation of that appointment;

(2) an appointment of a page, secretary, attendant, or other employee by the legislature for attendance on any member of the legislature who, because of physical infirmities, is required to have a personal attendant;

(3) a confirmation of the appointment of an appointee appointed to a first term on a date when no individual related to the appointee within a degree described by Section 573.002 was a member of or a candidate for the legislature, or confirmation on reappointment of the appointee to any subsequent consecutive term; or

(4) an appointment or employment of a substitute teacher or bus driver by a school district if:

(A) the district is located wholly in a county with a population of less than 35,000; or

(B) the district is located in more than one county and the county in which the largest part of the district is located has a population of less than 35,000. (V.A.C.S. Art. 5996g, Sec. 1.)

Sec. 573.062. CONTINUOUS EMPLOYMENT. (a) A nepotism prohibition prescribed by Section 573.041 or by a municipal charter or ordinance does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

(1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree; and

(2) that prior employment of the individual is continuous for at least:

(A) 30 days, if the public official is appointed;

(B) six months, if the public official is elected at an election other than the general election for state and county officers; or

(C) one year, if the public official is elected at the general election for state and county officers.

(b) If, under Subsection (a), an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees. (V.A.C.S. Art. 5996a, Secs. 1(b), (c).)

[Sections 573.063 to 573.080 reserved for expansion]

## SUBCHAPTER E. ENFORCEMENT

Sec. 573.081. REMOVAL IN GENERAL. (a) An individual who violates Subchapter C or Section 573.062(b) shall be removed from the individual's position. The removal must be made in accordance with the removal provisions in the constitution of this state, if applicable. If a provision of the constitution does not govern the removal, the removal must be by a quo warranto proceeding.

(b) A removal from a position shall be made immediately and summarily by the original appointing authority if a criminal conviction against the appointee for a violation of Subchapter C or Section 573.062(b) becomes final. If the removal is not made within 30 days after the date the conviction becomes final, the individual holding the position may be removed under Subsection (a). (V.A.C.S. Art. 5996i.)

Sec. 573.082. REMOVAL BY QUO WARRANTO PROCEEDING. (a) A quo warranto proceeding under this chapter must be brought by the attorney general in a district court in Travis County or in a district court of the county in which the defendant resides.

(b) The district or county attorney of the county in which a suit is filed under this section shall assist the attorney general at the attorney general's discretion. (V.A.C.S. Art. 5997.)

Sec. 573.083. WITHHOLDING PAYMENT OF COMPENSATION. A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible. (V.A.C.S. Art. 5996d.)

Sec. 573.084. CRIMINAL PENALTY. (a) An individual commits an offense involving official misconduct if the individual violates Subchapter C or Section 573.062(b) or 573.083.

(b) An offense under this section is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000. (V.A.C.S. Art. 5996f.)

## CHAPTER 574. DUAL OFFICE HOLDING

Sec. 574.001. FINDING OF CONSTITUTIONAL COMPLIANCE

Sec. 574.002. RECORD

Sec. 574.003. RULES

## CHAPTER 574. DUAL OFFICE HOLDING

Sec. 574.001. FINDING OF CONSTITUTIONAL COMPLIANCE. A nonelective state officer may not accept an offer to serve in another nonelective office unless the officer obtains from the governing body or, if there is not a governing body, the executive head of the agency, division, department, or institution with which the officer is associated a finding that the officer has satisfied Article XVI, Section 40, of the Texas Constitution. (V.A.C.S. Art. 6252-9a, Sec. 2 (part).)

Sec. 574.002. RECORD. A governing body or executive head shall make a record of:

(1) a finding under Section 574.001; and

(2) any compensation that the nonelective officer is to receive from holding the additional office, including salary, bonus, or per diem payment. (V.A.C.S. Art. 6252-9a, Sec. 2 (part).)

Sec. 574.003. RULES. A governing body or executive head shall adopt rules to implement this chapter. (V.A.C.S. Art. 6252-9a, Sec. 3.)

TITLE 6. PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE  
TO PUBLIC OFFICERS AND EMPLOYEES

Chapter 601. ELECTION AND OFFICE HOLDING

Chapter 602. ADMINISTRATION OF OATHS

Chapter 603. PROVISION OF DOCUMENTS AND FEES OF OFFICE

Chapter 604. OFFICIAL BONDS

Chapter 605. EIGHT-HOUR WORKDAY

Chapter 606. SOCIAL SECURITY

Chapter 607. BENEFITS RELATING TO CERTAIN CONTAGIOUS DISEASES

Chapter 608. PAYROLL DEDUCTION FOR SAVINGS BONDS

Chapter 609. DEFERRED COMPENSATION PLANS

Chapter 610. CHILD CARE EXPENSE SALARY REDUCTIONS

Chapter 611. LODGING, MEAL, AND TRAVEL REIMBURSEMENT

Chapter 612. LIABILITY INSURANCE

Chapter 613. REEMPLOYMENT FOLLOWING MILITARY SERVICE

Chapter 614. PEACE OFFICERS AND FIRE FIGHTERS

Chapter 615. FINANCIAL ASSISTANCE TO SURVIVORS OF CERTAIN LAW  
ENFORCEMENT OFFICERS, FIRE FIGHTERS, AND OTHERS

Chapter 616. EMERGENCY INTERIM PUBLIC OFFICE SUCCESSION

Chapter 617. COLLECTIVE BARGAINING AND STRIKES

[Chapters 618 to 650 reserved for expansion]

SUBTITLE B. STATE OFFICERS AND EMPLOYEES

Chapter 651. GENERAL PROVISIONS

Chapter 652. VACANCIES

Chapter 653. BONDS COVERING CERTAIN STATE OFFICERS AND EMPLOYEES

Chapter 654. POSITION CLASSIFICATION

Chapter 655. MERIT SELECTION

Chapter 656. JOB NOTICES AND TRAINING

Chapter 657. VETERAN'S EMPLOYMENT PREFERENCES

Chapter 658. HOURS OF LABOR

Chapter 659. COMPENSATION

Chapter 660. TRAVEL EXPENSES

Chapter 661. LEAVE

Chapter 662. HOLIDAYS AND RECOGNITION DAYS

Chapter 663. CHILD CARE SERVICES FOR STATE EMPLOYEES



## Chapter 664. STATE EMPLOYEES HEALTH FITNESS AND EDUCATION

## Chapter 665. IMPEACHMENT AND REMOVAL

## TITLE 6. PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE  
TO PUBLIC OFFICERS AND EMPLOYEES

## CHAPTER 601. ELECTION AND OFFICE HOLDING

- Sec. 601.001. DELIVERY OF CERTAIN BOOKS, PAPERS, AND DOCUMENTS TO SUCCESSOR
- Sec. 601.002. PERFORMANCE OF DUTIES BY FIRST ASSISTANT OR CHIEF DEPUTY
- Sec. 601.003. REGULAR TERM OF STATE, DISTRICT, COUNTY, OR PRECINCT OFFICE
- Sec. 601.004. PERSON ELECTED TO UNEXPIRED TERM OF STATE, DISTRICT, COUNTY, OR PRECINCT OFFICE
- Sec. 601.005. GOVERNOR TO COMMISSION STATE OR COUNTY OFFICERS
- Sec. 601.006. CERTIFIED STATEMENT OF PERSONS ELECTED TO COUNTY OR PRECINCT OFFICES
- Sec. 601.007. EVIDENCE OF QUALIFICATION FOR OFFICE
- Sec. 601.008. UNAUTHORIZED OFFICERS

## TITLE 6. PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE  
TO PUBLIC OFFICERS AND EMPLOYEES

## CHAPTER 601. ELECTION AND OFFICE HOLDING

Sec. 601.001. DELIVERY OF CERTAIN BOOKS, PAPERS, AND DOCUMENTS TO SUCCESSOR. (a) On leaving office, an officer shall deliver all books, papers, and documents relating to the office to the officer's successor.

(b) In this section, "officer" includes:

- (1) each officer selected under the laws of this state; and
- (2) a member of a board or commission created by state law. (V.A.C.S. Art. 18 (part).)

Sec. 601.002. PERFORMANCE OF DUTIES BY FIRST ASSISTANT OR CHIEF DEPUTY. (a) The first assistant or chief deputy of a public office in which a physical vacancy occurs shall conduct the affairs of the office until a successor qualifies for the office.

(b) The authority of a first assistant or chief deputy to discharge the duties of an office under Subsection (a) ceases on the earliest of:

- (1) the time the successor to the office qualifies for the office;
- (2) the end of the last day of any session of the legislature occurring during the vacancy if the successor to the office is subject to senate confirmation; or
- (3) the end of the 21st day after the day the person began discharging the duties of the office if the legislature is in session on that day and the successor to the office is subject to senate confirmation.

(c) This section does not apply to a vacancy on a board or commission. (V.A.C.S. Art. 6252-1.)

Sec. 601.003. REGULAR TERM OF STATE, DISTRICT, COUNTY, OR PRECINCT OFFICE. (a) The regular term of an elective state, district, county, or precinct office begins on January 1 of the year following the general election for state and county officers.

(b) A person elected to a regular term of office shall qualify and assume the duties of the office on, or as soon as possible after, January 1 of the year following the person's election.

(c) This section does not apply to the office of governor, lieutenant governor, state senator, or state representative. (V.A.C.S. Art. 17 (part).)

Sec. 601.004. PERSON ELECTED TO UNEXPIRED TERM OF STATE, DISTRICT, COUNTY, OR PRECINCT OFFICE. A person who receives a certificate of election to an unexpired term of an office is entitled to qualify for and assume the duties of the office immediately and shall take office as soon as possible after the receipt of the certificate of election. (V.A.C.S. Art. 17 (part).)

Sec. 601.005. GOVERNOR TO COMMISSION STATE OR COUNTY OFFICERS. (a) The governor shall issue a commission to each state or county officer, other than the governor, the lieutenant governor, a state senator, or a state representative, who qualifies for office.

(b) The secretary of state shall perform ministerial duties incidental to administer this section. (V.A.C.S. Art. 16b.)

Sec. 601.006. CERTIFIED STATEMENT OF PERSONS ELECTED TO COUNTY OR PRECINCT OFFICES. (a) On or immediately after January 1 after a general election for state and county officers, each county clerk shall deliver to the secretary of state a certified statement that contains for each person elected to a county or precinct office in the election:

- (1) the name of the person;
- (2) the office to which the person was elected; and
- (3) the date the person qualified for the office.

(b) The secretary of state shall prescribe necessary forms for the statement and instructions for delivery of the statement. (V.A.C.S. Art. 16a.)

Sec. 601.007. EVIDENCE OF QUALIFICATION FOR OFFICE. On demand of a citizen of this state, the comptroller, the treasurer, a commissioners court, a county treasurer, or any other officer of the state or of a municipality who is authorized by law to make, order, or audit payment to an officer of the state, of a county, or of a municipality of compensation, fees, or perquisites for official services shall, before making, ordering, or auditing the payment, require the officer to produce:

- (1) the certificate of election or of appointment to the office that is required by law to be issued to the officer; or
- (2) a certified copy of the judgment or decree that:
  - (A) was issued by a court of competent jurisdiction; and
  - (B) determined the officer's claim to the office. (V.A.C.S. Art. 6827.)

Sec. 601.008. UNAUTHORIZED OFFICERS. (a) An officer or court of this state or of a municipality may not make, order, allow, or audit payment of a person's claim for compensation, fees, perquisites, or services as an officer of the state or of the municipality unless the person:

- (1) has been:
  - (A) lawfully elected as the officer and determined to be elected to the office by the canvass conducted of the election for the office;
  - (B) appointed as the officer by the lawful appointing authority; or
  - (C) adjudged to be the officer by a state court of competent jurisdiction; and
- (2) has qualified as the officer under law.

(b) A person who has not been elected or appointed to an office or has not qualified for office, as prescribed by Subsection (a), is not entitled to:

- (1) receive payment for services as the officer; or
- (2) exercise the powers or jurisdiction of the office.

(c) The official acts of a person who claims a right to exercise the power or jurisdiction of an office contrary to this section are void. (V.A.C.S. Art. 6828.)

## CHAPTER 602. ADMINISTRATION OF OATHS

- Sec. 602.001. DEFINITION  
 Sec. 602.002. OATH MADE IN TEXAS  
 Sec. 602.003. OATH MADE OUTSIDE TEXAS BUT INSIDE UNITED STATES  
 Sec. 602.004. OATH MADE OUTSIDE UNITED STATES  
 Sec. 602.005. OATH MADE BY MEMBER OF ARMED FORCES OR BY MEMBER'S SPOUSE  
 Sec. 602.006. OATH OF OFFICE

## CHAPTER 602. ADMINISTRATION OF OATHS

Sec. 602.001. DEFINITION. In this chapter, "oath" includes the oath in an affidavit. (New.)

Sec. 602.002. OATH MADE IN TEXAS. An oath made in this state may be administered and a certificate of the fact given by:

- (1) a judge, clerk, or commissioner of a court of record;
- (2) a justice of the peace or a clerk of a justice court;
- (3) a notary public;
- (4) a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;
- (5) a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;
- (6) the secretary of state;
- (7) the lieutenant governor;
- (8) the speaker of the house of representatives; or
- (9) the governor. (V.A.C.S. Art. 26, Sec. 1.)

Sec. 602.003. OATH MADE OUTSIDE TEXAS BUT INSIDE UNITED STATES. An oath made outside this state but inside the United States or its territories may be administered and a certificate of the fact given by:

- (1) a clerk of a court of record having a seal;
- (2) a commissioner of deeds appointed under a law of this state; or
- (3) a notary public. (V.A.C.S. Art. 26, Sec. 2.)

Sec. 602.004. OATH MADE OUTSIDE UNITED STATES. An oath made outside the United States and its territories may be administered and a certificate of the fact given by:

- (1) a minister, commissioner, or charge d'affaires of the United States who resides in and is accredited to the country where the oath or affidavit is made;
- (2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who resides in the country where the oath or affidavit is made; or
- (3) a notary public. (V.A.C.S. Art. 26, Sec. 3.)

Sec. 602.005. OATH MADE BY MEMBER OF ARMED FORCES OR BY MEMBER'S SPOUSE. (a) A commissioned officer of the United States armed forces or of a United States armed forces auxiliary may administer an oath made by a member of the armed forces, a member of an armed forces auxiliary, or a member's spouse and may give a certificate of the fact.

(b) Unless there is pleading or evidence to the contrary, a certificate signed under this section that is offered in evidence establishes that:

- (1) the commissioned officer who signed was a commissioned officer on the date the officer signed; and

(2) the person who made the oath or affidavit was a member of the armed forces or an armed forces auxiliary or was a member's spouse when the oath was made.

(c) An oath is not invalid because the commissioned officer who certified the oath did not attach an official seal to the certificate. (V.A.C.S. Art. 26, Sec. 4.)

Sec. 602.006. OATH OF OFFICE. An oath of office may be administered and a certificate of the fact given by a member of the legislature. (V.A.C.S. Art. 26, Sec. 5.)

#### CHAPTER 603. PROVISION OF DOCUMENTS AND FEES OF OFFICE

- Sec. 603.001. DEFINITION
- Sec. 603.002. COPIES OF DOCUMENTS AVAILABLE TO PUBLIC
- Sec. 603.003. COPIES FOR CLAIMS RELATING TO MILITARY SERVICE
- Sec. 603.004. FEES FOR CERTIFICATES OR COPIES OF DOCUMENTS
- Sec. 603.005. FEE FOR ACKNOWLEDGMENT
- Sec. 603.006. FEE BOOK
- Sec. 603.007. BILL FOR FEES
- Sec. 603.008. POSTING OF FEES REQUIRED
- Sec. 603.009. DISPOSITION OF FEES
- Sec. 603.010. OVERCHARGING OF FEES; PENALTY

#### CHAPTER 603. PROVISION OF DOCUMENTS AND FEES OF OFFICE

Sec. 603.001. DEFINITION. In this chapter, "document" includes any instrument, paper, or other record. (New.)

Sec. 603.002. COPIES OF DOCUMENTS AVAILABLE TO PUBLIC. The secretary of state, Commissioner of the General Land Office, comptroller, state treasurer, commissioner of agriculture, Banking Commissioner, state librarian, or attorney general:

(1) shall furnish to a person on request a certified copy, under seal, of any document in the officer's office that is available under law to that person; and

(2) may not demand or collect a fee from an officer of the state for a copy of any document in the respective offices or for a certificate in relation to a matter in the respective offices if the copy is required in the performance of an official duty of the office of the state officer requesting the copy. (V.A.C.S. Art. 3913 (part).)

Sec. 603.003. COPIES FOR CLAIMS RELATING TO MILITARY SERVICE. (a) A county clerk, district clerk, or other public official on request shall furnish without cost to a person or the person's guardian, dependent, or heir one or more certified copies of a document that is in the custody of or on file in the county clerk's, district clerk's, or other public official's office if:

(1) the person or the person's guardian, dependent, or heir is eligible to make a claim against the United States government because of service in the United States armed forces or an auxiliary service, including the maritime service or the merchant marine; and

(2) the document is necessary to prove the claim.

(b) The issuance of a certified copy under this section may not be considered in determining the maximum fee of the office. (V.A.C.S. Art. 1939a, Art. 1.)

Sec. 603.004. FEES FOR CERTIFICATES OR COPIES OF DOCUMENTS. (a) Except as otherwise provided by law, the secretary of state, land commissioner, comptroller, commissioner of agriculture, Banking Commissioner, state librarian, attorney general, or other officer of the state or a head of a state department shall collect the following fees for the following services:

(1) a copy, other than a photographic copy, of a document in an office in English, for each page or fraction of a page, \$1.50;

(2) a copy, other than a photographic copy, of a document in an office in a language other than English, for each page or fraction of a page, \$2;

(3) a translated copy of a document in an office, the greater of \$.03 for each word or \$5;

(4) a copy of a plat or map in an office, a fee the officer of the office in which the copy is made may establish with reference to the amount of labor, supplies, and materials required; or

(5) a sealed certificate affixed to a copy, including a certificate affixed to a photographic copy, \$1.

(b) The state librarian may charge for a photographic copy a fee determined by the Texas State Library and Archives Commission with reference to the amount of labor, supplies, and materials required. (V.A.C.S. Art. 3913 (part).)

Sec. 603.005. FEE FOR ACKNOWLEDGMENT. An officer who is authorized by law to take acknowledgment or proof of a deed or other written instrument shall receive the same fee a notary public may receive for the same service. (V.A.C.S. Art. 3905.)

Sec. 603.006. FEE BOOK. An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered. (V.A.C.S. Art. 3907 (part).)

Sec. 603.007. BILL FOR FEES. A fee under this chapter is not payable to a person until a clerk or officer produces, or is ready to produce, a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer. (V.A.C.S. Art. 3908 (part).)

Sec. 603.008. POSTING OF FEES REQUIRED. A county judge, clerk of a district or county court, sheriff, justice of the peace, constable, or notary public shall keep posted at all times in a conspicuous place in the respective offices a complete list of fees the person may charge by law. (V.A.C.S. Art. 3910.)

Sec. 603.009. DISPOSITION OF FEES. (a) Except as provided by this section, an officer required to collect a fee under Section 603.004 shall deposit the fee in the state treasury to the credit of the general revenue fund.

(b) The Banking Commissioner shall deposit fees as provided by Section 8, Chapter 139, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3921a, Vernon's Texas Civil Statutes).

(c) The Texas Employment Commission shall deposit fees in accordance with federal law.

(d) The Texas State Library and Archives Commission shall retain fees collected under this chapter by the state librarian. (V.A.C.S. Art. 3913 (part).)

Sec. 603.010. OVERCHARGING OF FEES; PENALTY. An officer named in this chapter who demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for four times the amount unlawfully demanded and received. (V.A.C.S. Art. 3909 (part).)

#### CHAPTER 604. OFFICIAL BONDS

Sec. 604.001. FILING OF OFFICIAL BOND

Sec. 604.002. SURETIES

Sec. 604.003. DEPOSITORY OF BOND OF CERTAIN OFFICERS

Sec. 604.004. COPY OF CERTAIN BONDS TO BE FILED WITH SECRETARY OF STATE

Sec. 604.005. BOND NOT VOID ON FIRST RECOVERY

Sec. 604.006. BOND INURES TO PERSONS AGGRIEVED

Sec. 604.007. LIMITATION

#### CHAPTER 604. OFFICIAL BONDS

Sec. 604.001. FILING OF OFFICIAL BOND. An officer required by law to give an official bond shall file the bond with the officer's oath of office. (V.A.C.S. Art. 16 (part).)

Sec. 604.002. SURETIES. An officer shall execute the officer's official bond with:

(1) two or more good and sufficient sureties; or

(2) a solvent surety company authorized to do business in this state. (V.A.C.S. Art. 5998.)

Sec. 604.003. DEPOSITORY OF BOND OF CERTAIN OFFICERS. (a) Except as provided by Subsection (b), the officer approving the bond of an officer required by law to give an official bond payable to the governor or the state shall deposit the bond with the comptroller.

(b) The governor shall deposit the official bond of the comptroller with the secretary of state. (V.A.C.S. Art. 5999.)

Sec. 604.004. COPY OF CERTAIN BONDS TO BE FILED WITH SECRETARY OF STATE. A member of the governing body of a political subdivision created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution who is required by law to file an official bond shall file a copy of the individual's bond with the secretary of state not later than the 10th day after the date the bond is required by law to be filed. (V.A.C.S. Art. 6003c, Sec. 1.)

Sec. 604.005. BOND NOT VOID ON FIRST RECOVERY. (a) The official bond of a state, county, or precinct officer is not void on first recovery.

(b) An injured party may sue separately on a bond until the bond is exhausted. (V.A.C.S. Art. 6003.)

Sec. 604.006. BOND INURES TO PERSONS AGGRIEVED. In a suit arising from the defalcation of a public officer or the misapplication or misappropriation of money by a public officer, the official bond of the officer inures to the benefit of a person aggrieved by the defalcation or misapplication or misappropriation occurring in the period covered by the bond. (V.A.C.S. Art. 6003a (part).)

Sec. 604.007. LIMITATION. For purposes of limitation, a suit on an official bond of a public officer arising from the defalcation of the officer or the misapplication or misappropriation of money by the officer is an action for debt founded on a contract in writing governed by Section 16.004, Civil Practice and Remedies Code. (V.A.C.S. Art. 6003a (part).)

#### CHAPTER 605. EIGHT-HOUR WORKDAY

Sec. 605.001. EIGHT-HOUR WORKDAY FOR CERTAIN PUBLIC WORKS

Sec. 605.002. LENGTH OF WORKDAY; EMERGENCY WORK

Sec. 605.003. CRIMINAL OFFENSE

Sec. 605.004. FEDERAL LABOR STANDARDS ACT EXEMPTION

#### CHAPTER 605. EIGHT-HOUR WORKDAY

Sec. 605.001. EIGHT-HOUR WORKDAY FOR CERTAIN PUBLIC WORKS. Eight hours of work in a calendar day constitute a day's work for a laborer, worker, or mechanic employed by or on behalf of the state or a political subdivision of the state for the construction, repair, or improvement of a building, bridge, road, highway, stream, or levee or for other similar work. (V.A.C.S. Arts. 5165, 5165.1.)

Sec. 605.002. LENGTH OF WORKDAY; EMERGENCY WORK. (a) In a contract for any work made by or on behalf of the state or a legal or political subdivision of the state eight hours constitutes a day's work.

(b) The time spent by a worker in going to and from the workplace is not a part of the hours of work.

(c) A person having a contract with the state or a legal or political subdivision of the state may not require or permit a laborer, worker, or mechanic to work more than eight hours in a calendar day, except:

(1) in employment to which the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) applies;

(2) in an emergency that may arise in a time of war;

(3) to protect property or human life;

(4) for the housing of inmates of a public institution in case of fire or destruction by the elements; or

(5) for work financed in whole or part by the federal government or any of its agencies in which the total number of hours a week required or permitted of a worker does not exceed the number of hours a week allowed by federal regulation.

(d) A laborer, worker, or mechanic who works in an emergency described by Subsection (c) more than eight hours in a calendar day is entitled to be paid according to the workday provided by Subsection (a). (V.A.C.S. Art. 5165.2 (part).)

Sec. 605.003. CRIMINAL OFFENSE. (a) A person or officer, agent, or employee of the person commits an offense if the person or officer, agent, or employee of the person violates any provision of this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$1,000 and confinement in jail for not more than six months or both a fine and confinement.

(c) Each day a person violates a provision of this chapter is a separate offense. (V.A.C.S. Art. 5165.3.)

Sec. 605.004. FEDERAL LABOR STANDARDS ACT EXEMPTION. An employer who complies with the overtime provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) is considered to comply with the eight-hour day requirements of this chapter and is not civilly or criminally liable for a violation of the requirements. (V.A.C.S. Art. 5165.6.)

CHAPTER 606. SOCIAL SECURITY

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 606.001. DEFINITIONS
- Sec. 606.002. ADMINISTRATION OF CHAPTER
- Sec. 606.003. AGREEMENTS WITH SECRETARY

[Sections 606.004 to 606.020 reserved for expansion]

SUBCHAPTER B. COVERAGE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

- Sec. 606.021. DEFINITIONS
- Sec. 606.022. AGREEMENTS WITH POLITICAL SUBDIVISIONS
- Sec. 606.023. RULES
- Sec. 606.024. PLAN FOR COVERAGE
- Sec. 606.025. GUARANTEES FOR PAYMENT
- Sec. 606.026. CONTRIBUTIONS BY POLITICAL SUBDIVISION
- Sec. 606.027. PROCEDURE FOR MAKING CONTRIBUTIONS
- Sec. 606.028. ADMINISTRATIVE EXPENSES
- Sec. 606.029. DELINQUENT PAYMENTS
- Sec. 606.030. SOCIAL SECURITY ADMINISTRATION FUND
- Sec. 606.031. EXPENDITURES

[Sections 606.032 to 606.060 reserved for expansion]

SUBCHAPTER C. COVERAGE FOR STATE EMPLOYEES

- Sec. 606.061. DEFINITIONS
- Sec. 606.062. DUTY OF EXECUTIVE DIRECTOR
- Sec. 606.063. CONTRIBUTIONS BY STATE AGENCY
- Sec. 606.064. EMPLOYEE CONTRIBUTIONS BY STATE AGENCY
- Sec. 606.065. CONTRIBUTIONS FOR JUDGES
- Sec. 606.066. COLLECTION OF EMPLOYEE'S CONTRIBUTION

- Sec. 606.067. COLLECTION OF STATE CONTRIBUTION FOR EMPLOYEES PAID FROM TREASURY
- Sec. 606.068. COLLECTION OF STATE CONTRIBUTION FOR EMPLOYEES NOT PAID FROM TREASURY
- Sec. 606.069. METHOD OF MAKING CONTRIBUTIONS TO FEDERAL GOVERNMENT
- Sec. 606.070. RULES AND REPORTS
- Sec. 606.071. EXPENDITURES
- Sec. 606.072. BENEFITS FOR STATE EMPLOYEES UNDER BOTH STATE AND FEDERAL LAW

[Sections 606.073 to 606.100 reserved for expansion]

SUBCHAPTER D. COVERAGE FOR STATE EMPLOYEES  
PAID FROM FEDERAL FUNDS

Sec. 606.101. COVERAGE

CHAPTER 606. SOCIAL SECURITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 606.001. DEFINITIONS. In this chapter:

(1) "Social security coverage" means federal old-age, survivors, and disability insurance benefits under 42 U.S.C. Chapter 7, Subchapter II.

(2) "Federal Insurance Contributions Act" means 26 U.S.C. Chapter 21.

(3) "Political subdivision" includes:

(A) a county;

(B) a municipality; or

(C) an instrumentality of the state, of another political subdivision, or of the state and another political subdivision:

(i) that is a juristic entity that is legally separate and distinct from the state or political subdivision; and

(ii) whose employees are not employees of the state or political subdivision.

(4) "Retirement system" means the Employees Retirement System of Texas.

(5) "Secretary" means the United States Secretary of Health and Human Services or an individual designated by the secretary to administer coverage of the Social Security Act to employees of a state and its political subdivisions.

(6) "Social Security Act" means Chapter 7, Title 42, United States Code (42 U.S.C. Section 301 et seq.), including regulations and requirements adopted under that chapter. (V.A.C.S. Arts. 695g, Secs. 1(d), (e), (g), (h); 695h, Secs. 1(d), (e), (f), (g) (part); New.)

Sec. 606.002. ADMINISTRATION OF CHAPTER. The executive director of the retirement system shall direct and administer the functions of the retirement system under this chapter. (V.A.C.S. Arts. 695g, Sec. 2; 695h, Sec. 2 (part).)

Sec. 606.003. AGREEMENTS WITH SECRETARY. (a) The retirement system may enter into agreements with the secretary to obtain social security coverage for employees of the state or a political subdivision.

(b) An agreement between the retirement system and the secretary may contain any appropriate provision, including a provision relating to coverage, benefits, contributions, effective date, modification, and administration. (V.A.C.S. Arts. 695g, Sec. 3; 695h, Sec. 3.)



[Sections 606.004 to 606.020 reserved for expansion]

## SUBCHAPTER B. COVERAGE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

Sec. 606.021. DEFINITIONS. In this subchapter:

- (1) "Employee" includes an officer of a political subdivision.
- (2) "Employment" means service performed by an employee of a political subdivision except service:
  - (A) that in the absence of an agreement under this subchapter would constitute employment under the Social Security Act;
  - (B) that under the Social Security Act may not be included in an agreement between the retirement system and the secretary; or
  - (C) as a police officer in a position that, at the time the agreement is made, is subject to another retirement system of a municipality with a population of 250,000 or more, according to the most recent federal census before the date of the agreement.
- (3) "Wages" means all remuneration for employment, including the cash value of all remuneration paid other than by cash. The term does not include remuneration that does not constitute "wages" under the Federal Insurance Contributions Act. (V.A.C.S. Art. 695g, Secs. 1(a), (b), (c) (part).)

Sec. 606.022. AGREEMENTS WITH POLITICAL SUBDIVISIONS. (a) The retirement system and the governing body of a political subdivision that is eligible under the Social Security Act may enter into an agreement to obtain social security coverage for the employees of the political subdivision.

(b) An agreement between the retirement system and the governing body:

- (1) must include a provision that an action of the federal government may not impair or impede a retirement program of this state or a political subdivision; and
- (2) may include any other appropriate provision, including a provision relating to coverage benefits, contributions, effective date, modification of the agreement, and administration.

(c) The retirement system shall prescribe the terms of agreements necessary to:

- (1) carry out this subchapter; and
- (2) insure the financial responsibility of the participating political subdivisions. (V.A.C.S. Art. 695g, Secs. 4 (part), 5 (part), 6 (part).)

Sec. 606.023. RULES. The retirement system shall adopt rules that it finds necessary to govern the application for and the eligibility of employees of a political subdivision to obtain social security coverage. (V.A.C.S. Art. 695g, Sec. 5 (part).)

Sec. 606.024. PLAN FOR COVERAGE. (a) To obtain social security coverage for its employees, a political subdivision must submit a plan for approval by the retirement system.

(b) The retirement system shall approve a plan if the retirement system finds that the plan:

- (1) conforms to the retirement system's rules;
- (2) conforms to federal law and agreements made between the federal government and the states;
- (3) specifies the source of funds from which payments will be made and guarantees that this source will be adequate;
- (4) provides methods for proper and efficient administration by the political subdivision that are found by the retirement system to be necessary;
- (5) provides that the political subdivision will:
  - (A) report information at a time and in a form required by the retirement system; and
  - (B) comply with requirements of the retirement system or federal authorities for the receipt, correctness, and verification of reports; and

(6) specifies the personnel of the political subdivision who are responsible for making assessments, collections, and reports.

(c) The retirement system may not refuse to approve a submitted plan unless the retirement system gives the submitting political subdivision reasonable notice and an opportunity for a hearing. (V.A.C.S. Art. 695g, Secs. 7 (part), 9 (part).)

Sec. 606.025. **GUARANTEES FOR PAYMENT.** The retirement system by rule may require guarantees to create adequate security that a political subdivision will be financially responsible for its payments for at least the minimum period required by federal requirements to precede social security coverage cancellation. The guarantees may be in the form of:

- (1) surety bonds;
- (2) advance payments into an escrow account;
- (3) detailed representations and assurances of priority dedication; or
- (4) another legal undertaking. (V.A.C.S. Art. 695g, Sec. 7 (part).)

Sec. 606.026. **CONTRIBUTIONS BY POLITICAL SUBDIVISION.** (a) The governing body of a political subdivision may make contributions under an agreement to obtain social security coverage.

(b) The maximum compensation provided by statute for a county employee is not exceeded by the payment of a matching contribution by a political subdivision to obtain social security coverage for the employee.

(c) An instrumentality of the state that receives a direct legislative appropriation may contribute, for employees covered under Subtitle C, Title 8, only funds specifically appropriated for social security coverage. (V.A.C.S. Art. 695g, Secs. 4 (part), 6 (part).)

Sec. 606.027. **PROCEDURE FOR MAKING CONTRIBUTIONS.** (a) In accordance with state and federal requirements, a political subdivision that has an approved plan for social security coverage shall:

(1) make deductions from wages of employees whose services are covered by the plan; and

(2) pay matching contributions from the funds from which covered employees receive their compensation.

(b) The employment or continued employment of an employee covered by an approved plan of a political subdivision is consideration for the deductions.

(c) An employee or a political subdivision is not relieved from liability for a contribution if the political subdivision fails to deduct the contribution from the employee's wages.

(d) The county treasurer, or the person who acts as treasurer in a political subdivision other than a county, shall assess and collect the required contributions and transmit the contributions in accordance with federal requirements for the filing of reports and the payment of contributions. (V.A.C.S. Art. 695g, Secs. 6 (part), 8(a), (c), 9 (part).)

Sec. 606.028. **ADMINISTRATIVE EXPENSES.** (a) As agreed by the retirement system and the governing body of a political subdivision that has an approved plan, the retirement system shall require the political subdivision to pay the subdivision's proportionate share of the state administrative expenses for this subchapter by:

- (1) an annual fee for the political subdivision;
- (2) an annual fee for each employee covered;
- (3) an amount equal to a percentage of the contributions made to federal authorities; or
- (4) any other equitable measure.

(b) A political subdivision may make payment for administrative expenses under this section from any available fund not otherwise dedicated. (V.A.C.S. Art. 695g, Sec. 10 (part).)

Sec. 606.029. **DELINQUENT PAYMENTS.** (a) The retirement system may require in an agreement with a political subdivision that interest be paid on delinquent payments.

(b) The retirement system may bring suit to collect a delinquent payment and interest on the payment.

(c) The retirement system may direct the comptroller or the state treasurer to deduct a delinquent payment and interest from funds payable by the state to the delinquent political subdivision that are expressly subject to deduction. The comptroller or the state treasurer shall send to the retirement system in trust the amount deducted for the contribution of the delinquent political subdivision. (V.A.C.S. Art. 695g, Sec. 11.)

Sec. 606.030. SOCIAL SECURITY ADMINISTRATION FUND. (a) The social security administration fund is outside the treasury. The state treasurer is the custodian of the fund and shall administer the fund separately from other funds as directed by the retirement system. Credits of money in the fund are not state funds or subject to legislative appropriation.

(b) The retirement system shall deposit in the fund all money collected for administrative expenses under Section 606.028.

(c) The comptroller shall issue warrants for disbursements from the fund under sworn vouchers executed by the executive director of the retirement system or a person designated by the director.

(d) The fund may be used to pay:

(1) interest assessed as a penalty by the United States secretary of the treasury because of delinquent payment of contributions under this subchapter; or

(2) any expense necessary for the retirement system to administer this subchapter.

(e) A salary or expenditure paid from the fund shall be consistent with a comparable item in and the general provisions of the General Appropriations Act.

(f) The retirement system, at the end of each fiscal year, shall pay from the social security administration fund to the state treasurer for deposit in the general revenue fund at least 10 percent of the contributions collected for administrative expenses in the preceding year. Payment under this subsection may continue only until the amount appropriated to the retirement system from the state for administering this subchapter has been reimbursed in full. (V.A.C.S. Art. 695g, Secs. 10 (part), 12(b), 13 (part).)

Sec. 606.031. EXPENDITURES. The retirement system may employ personnel, purchase equipment, and make other expenditures as necessary to administer this subchapter. (V.A.C.S. Art. 695g, Sec. 13 (part).)

[Sections 606.032 to 606.060 reserved for expansion]

## SUBCHAPTER C. COVERAGE FOR STATE EMPLOYEES

Sec. 606.061. DEFINITIONS. In this subchapter:

(1) "Employee tax" means the tax imposed by Section 3101 of the Internal Revenue Code of 1986 (26 U.S.C. Section 3101).

(2) "Employment" means service performed by a state employee except service:

(A) that in the absence of an agreement under this subchapter would constitute employment under the Social Security Act; or

(B) that under the Social Security Act may not be included in an agreement between the retirement system and the secretary.

(3) "State agency" means:

(A) a department, commission, board, office, or other agency in the executive or legislative branch created by the constitution or a statute of this state;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or

(C) a university system or an institution of higher education as defined by Section 61.003, Education Code.

(4) "State employee" includes an elected or appointed state officer but does not include an individual who:

(A) is compensated by fees; or

(B) is in a position eligible for membership in the Teacher Retirement System of Texas unless the person is employed by a state department, agency, or institution.

(5) "Wages" means all remuneration for employment, including the cash value of all remuneration paid other than by cash, except for remuneration that does not constitute "wages" under the Federal Insurance Contributions Act. (V.A.C.S. Art. 695h, Secs. 1(a), (b), (c), (g) (part), (i).)

Sec. 606.062. DUTY OF EXECUTIVE DIRECTOR. The executive director of the retirement system shall negotiate the best possible contract for social security coverage for state employees. (V.A.C.S. Art. 695h, Sec. 2 (part).)

Sec. 606.063. CONTRIBUTIONS BY STATE AGENCY. A state agency may pay contributions on social security coverage of the agency's state employees who are paid from the state treasury as required by an agreement with the secretary from funds appropriated to the comptroller for that purpose. A contribution made under this section is not considered compensation to the employee under any state law. (V.A.C.S. Art. 695h, Sec. 4 (part).)

Sec. 606.064. EMPLOYEE CONTRIBUTIONS BY STATE AGENCY. (a) The state shall pay all contributions on wages for social security coverage of a state employee except:

(1) as provided by Section 606.065; or

(2) the amount of the employee tax in excess of 5.85 percent of wages computed on a wage base of \$16,500 in a calendar year.

(b) The legislature may provide in the General Appropriations Act for a state contribution in excess of the amount provided in Subsection (a)(2).

(c) A state employee is obligated to pay only the difference between the amount the legislature provides and the amount required by federal law.

(d) The contribution made by the state shall be paid from the same fund from which an employee receives compensation.

(e) The comptroller may prorate the state's expected contribution for an employee's employee tax over the portion of the calendar year that the employee's salary is subject to the Federal Insurance Contributions Act to equalize the employee's monthly contributions during the portion of the year that the employee's salary is subject to Federal Insurance Contributions Act taxes. (V.A.C.S. Art. 695h, Secs. 5(a) (part), (c), (d).)

Sec. 606.065. CONTRIBUTIONS FOR JUDGES. (a) A judge who is paid by the state and for whom the retirement system and the secretary have an agreement for social security coverage shall contribute the entire amount of the employee tax, unless the legislature provides in the General Appropriations Act for payment at any rate and on any amount of the employee tax.

(b) If the state makes a contribution under Subsection (a):

(1) the judge is obligated to pay only the difference between the amount the legislature provides and the amount required by the Federal Insurance Contributions Act;

(2) the contribution shall be paid from the same fund from which the judge receives compensation; and

(3) the comptroller may prorate the state's expected contribution for an employee's tax over the portion of the calendar year that the judge's salary is subject to the Federal Insurance Contributions Act to equalize the judge's monthly contributions during the portion of the year that the judge's salary is subject to Federal Insurance Contributions Act taxes. (V.A.C.S. Art. 695h, Secs. 5(a) (part), (b), (c), (d).)

Sec. 606.066. COLLECTION OF EMPLOYEE'S CONTRIBUTION. (a) On the authorization of the head of a state agency, the disbursing officer of the department shall deduct from each payroll of a state employee with social security coverage the amount of the employee's contribution paid by the employee under this subchapter. The total amount deducted shall be paid in accordance with federal requirements.

(b) The head of a state agency shall, for each payroll:

(1) certify to the comptroller in the manner prescribed by the comptroller:

(A) the amount of a state employee's contribution to be deducted from the employee's salary; and

(B) the total amount to be deducted from all salaries; and

(2) include the total amount in the payroll voucher.

(c) If an amount less than the amount of the employee's contribution under this subchapter is deducted from a state employee's salary for the employee's contribution, the employee is liable for the difference between the amount deducted and the correct amount of the contribution. (V.A.C.S. Art. 695h, Secs. 6(a)(1) (part), (2) (part), (3).)

**Sec. 606.067. COLLECTION OF STATE CONTRIBUTION FOR EMPLOYEES PAID FROM TREASURY.** (a) For a state employee who is paid from the state treasury, the legislature shall appropriate, from the same fund from which the employee is paid, an amount equal to the total of the state's contributions under Section 606.063 and Section 606.064 or 606.065.

(b) The state agency shall certify at the end of each payroll period to the comptroller in a manner prescribed by the comptroller the total amount of the department's state contributions for that period for employees paid from the state treasury.

(c) A state agency having employees paid from the state treasury shall include in the budget information the department submits to the Legislative Budget Board and the budget division of the governor's office a certification of the amount necessary to pay contributions of the state for the following biennium. The governor shall include this amount in the budget that the governor submits to the legislature.

(d) All money appropriated to the comptroller for the contributions of the state shall be allocated to the state agency according to rules adopted by the comptroller. (V.A.C.S. Art. 695h, Secs. 6(b)(1) (part), (2), (3) (part).)

**Sec. 606.068. COLLECTION OF STATE CONTRIBUTION FOR EMPLOYEES NOT PAID FROM TREASURY.** (a) For state employees who are paid from funds not in the state treasury, the head of a state agency shall certify to the department's disbursing officer the total amount of the state's contributions based on compensation paid the employees.

(b) The disbursing officer of a state agency that has state employees who are paid from funds not in the state treasury shall pay the total amount of contributions of the state for employees in accordance with federal requirements. (V.A.C.S. Art. 695h, Sec. 6(b)(4) (part).)

**Sec. 606.069. METHOD OF MAKING CONTRIBUTIONS TO FEDERAL GOVERNMENT.** A state agency shall comply with federal requirements for filing reports and paying contributions. (V.A.C.S. Art. 695h, Sec. 6(c) (part).)

**Sec. 606.070. RULES AND REPORTS.** (a) The retirement system may, as it finds necessary to the efficient administration of this subchapter, adopt rules and require state agencies to file reports.

(b) The retirement system shall certify to the comptroller any state agency that has not filed a required report within the specified time.

(c) The comptroller shall withhold salary or expense reimbursement warrants to the head or an employee of a state agency that the retirement system certifies under Subsection (b). On notification from the retirement system that the report has been filed, the comptroller shall release the warrants.

(d) If a state agency whose employees are not paid from funds in the state treasury is notified that a required report is delinquent, the disbursing officer may not pay a salary or an expense reimbursement. A disbursing officer is liable both personally and on the officer's official bond if the officer pays a salary or an expense reimbursement after notification of a delinquent report by the retirement system. (V.A.C.S. Art. 695h, Sec. 7.)

**Sec. 606.071. EXPENDITURES.** The retirement system may employ personnel, including accountants and attorneys, purchase equipment, and make other expenditures as necessary to administer this subchapter. (V.A.C.S. Art. 695h, Sec. 9 (part).)

**Sec. 606.072. BENEFITS FOR STATE EMPLOYEES UNDER BOTH STATE AND FEDERAL LAW.** A state employee may receive benefits under both Chapters 811 through 815 and the Social Security Act. (V.A.C.S. Art. 695h, Sec. 11.)

[Sections 606.073 to 606.100 reserved for expansion]

SUBCHAPTER D. COVERAGE FOR STATE EMPLOYEES  
PAID FROM FEDERAL FUNDS

Sec. 606.101. COVERAGE. Subchapter B applies to a state employee or officer who is paid entirely from federal funds but is classified as a state employee by the federal government. (V.A.C.S. Art. 695g, Sec. 1(c) (part).)

CHAPTER 607. BENEFITS RELATING TO CERTAIN CONTAGIOUS DISEASES

- Sec. 607.001. DEFINITION
- Sec. 607.002. REIMBURSEMENT
- Sec. 607.003. PHYSICIAN OF CHOICE
- Sec. 607.004. PREVENTATIVE IMMUNIZATIONS AND VACCINATIONS

CHAPTER 607. BENEFITS RELATING TO CERTAIN CONTAGIOUS DISEASES

Sec. 607.001. DEFINITION. In this chapter, "public safety employee" means a peace officer, fire fighter, or emergency medical services employee of the state or a political subdivision of the state. (V.A.C.S. Art. 1269t, Subsec. (a).)

Sec. 607.002. REIMBURSEMENT. A public safety employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

- (1) the disease is not an "ordinary disease of life" as that term is used in the context of a workers' compensation claim;
- (2) the exposure to the disease occurs during the course of the employment; and
- (3) the employee requires preventative medical treatment because of exposure to the disease. (V.A.C.S. Art. 1269t, Subsec. (b).)

Sec. 607.003. PHYSICIAN OF CHOICE. A public safety employee who is exposed to a disease described by Section 607.002 is entitled to be treated for the prevention of that disease by the physician of the employee's choice. (V.A.C.S. Art. 1269t, Subsec. (c).)

Sec. 607.004. PREVENTATIVE IMMUNIZATIONS AND VACCINATIONS. (a) A certified fire fighter or other governmental employee who operates an ambulance or who responds to emergency medical calls is entitled to preventative immunization for any disease to which the fire fighter or other governmental employee may be exposed in performing official duties and for which immunization is possible.

(b) The employee and any member of the employee's immediate family are entitled to vaccination for a contagious disease to which the employee is exposed during the course of employment.

(c) The employing governmental entity may satisfy the requirements of this section by:

- (1) providing the immunization or vaccination without charge; or
- (2) reimbursing the employee for any necessary and reasonable expenses incurred by the employee for the immunization or vaccination. (V.A.C.S. Art. 1269t, Subsec. (d).)

CHAPTER 608. PAYROLL DEDUCTION FOR SAVINGS BONDS

- Sec. 608.001. DEFINITIONS
- Sec. 608.002. AUTHORIZATION FOR PAYROLL DEDUCTION
- Sec. 608.003. WITHHOLDING; DEDUCTION FROM PAYROLL
- Sec. 608.004. ISSUANCE OF WARRANT TO OFFICER OR EMPLOYEE
- Sec. 608.005. ISSUANCE OF WARRANT TO DEPARTMENT ADMINISTRATOR OR DISBURSING OFFICER
- Sec. 608.006. FORM OF PAYROLL

- Sec. 608.007. TRUST ACCOUNT
- Sec. 608.008. PURCHASE OF SAVINGS BONDS
- Sec. 608.009. RECORDS
- Sec. 608.010. TERMINATION OF DEDUCTION
- Sec. 608.011. NO LIABILITY ON OFFICIAL BOND

CHAPTER 608. PAYROLL DEDUCTION FOR SAVINGS BONDS

Sec. 608.001. DEFINITIONS. In this chapter:

(1) "Department administrator" means the chief administrator of a department of state government of which an individual executing an authorization is an officer or employee.

(2) "Disbursing officer" means the disbursing officer of a political subdivision of which an individual executing an authorization is an officer or employee.

(3) "Political subdivision" means a county, municipality, or other political subdivision of this state.

(4) "Savings bonds" means United States savings bonds. (New.)

Sec. 608.002. AUTHORIZATION FOR PAYROLL DEDUCTION. (a) An officer or employee of this state or of a political subdivision may voluntarily authorize the individual's department administrator or disbursing officer, as appropriate, to deduct from the individual's compensation an amount to be used to purchase savings bonds.

(b) An authorization must be in writing and must state:

- (1) the period for which the authorization is to be in effect; and
- (2) the amount to be deducted. (V.A.C.S. Art. 6252-3, Sec. 1 (part).)

Sec. 608.003. WITHHOLDING; DEDUCTION FROM PAYROLL. (a) A department administrator or disbursing agent, as appropriate, may withhold the amount authorized under Section 608.002 from an individual's compensation each payday.

(b) If a withholding is made, the department administrator or disbursing officer shall make a deduction when the payroll of a state department or a political subdivision is presented to the comptroller or disbursing officer, as appropriate, for the issuance of warrants for payment. (V.A.C.S. Art. 6252-3, Sec. 1 (part).)

Sec. 608.004. ISSUANCE OF WARRANT TO OFFICER OR EMPLOYEE. (a) When the payroll of a state department is presented to the comptroller for payment, the comptroller shall issue to each officer or employee named in the payroll a warrant for the full amount of the officer's or employee's compensation, less:

- (1) the amount deducted to purchase savings bonds; and
- (2) the amount of other authorized deductions.

(b) When the payroll of a political subdivision is presented to the disbursing officer for payment, the disbursing officer shall issue to each officer or employee named in the payroll a warrant for the full amount of the officer's or employee's compensation, less:

- (1) the amount deducted to purchase savings bonds; and
- (2) the amount of other authorized deductions. (V.A.C.S. Art. 6252-3, Sec. 2 (part).)

Sec. 608.005. ISSUANCE OF WARRANT TO DEPARTMENT ADMINISTRATOR OR DISBURSING OFFICER. (a) When the payroll of a state department is presented to the comptroller for payment, the comptroller shall issue to the department administrator a warrant for the full amount deducted from the department's payroll for the payroll period to purchase savings bonds on behalf of department officers and employees.

(b) When the payroll of a political subdivision is presented to the disbursing officer for payment, the disbursing officer shall issue to the disbursing officer a warrant for the full amount deducted from the political subdivision's payroll for the payroll period to purchase savings bonds on behalf of officers and employees of the political subdivision. (V.A.C.S. Art. 6252-3, Sec. 2 (part).)

Sec. 608.006. FORM OF PAYROLL. (a) The comptroller shall prescribe the proper form of payroll for state officers and employees to comply with this chapter.

(b) A disbursing officer shall prescribe the proper form of payroll for officers and employees of the disbursing officer's political subdivision to comply with this chapter. (V.A.C.S. Art. 6252-3, Sec. 2 (part).)

Sec. 608.007. TRUST ACCOUNT. (a) A department administrator shall deposit a warrant issued under Section 608.005(a) with the state treasurer to be held in trust by the treasurer until disbursed by the department administrator to purchase savings bonds for an individual designated in an authorization under Section 608.002 filed with the department administrator.

(b) A disbursing officer shall deposit a warrant issued under Section 608.005(b) with the treasurer of the political subdivision to be held in trust by the treasurer until disbursed by the disbursing officer to purchase savings bonds for an individual designated in an authorization under Section 608.002 filed with the disbursing officer.

(c) A warrant held in trust under this section shall be deposited in an account designated as the savings bond payroll savings account. The treasurer shall pay out money deposited in the account on proper warrants drawn by the department administrator or disbursing officer, as appropriate. (V.A.C.S. Art. 6252-3, Sec. 2 (part).)

Sec. 608.008. PURCHASE OF SAVINGS BONDS. (a) A department administrator and a disbursing officer shall use money deducted and held in trust under this chapter to purchase savings bonds on behalf of an individual who has executed an authorization under Section 608.002, in the denomination designated and authorized in the individual's authorization, when an amount sufficient to make a purchase has been withheld.

(b) A department administrator or disbursing officer, on receipt of a savings bond purchased under Subsection (a), shall immediately deliver the bond to the individual entitled to it or shall mail the bond to the address designated by the individual in the authorization. (V.A.C.S. Art. 6252-3, Sec. 3 (part).)

Sec. 608.009. RECORDS. A department administrator and disbursing officer shall keep records at all times, itemizing money deducted and disbursed by the department administrator or disbursing officer under this chapter. (V.A.C.S. Art. 6252-3, Sec. 3 (part).)

Sec. 608.010. TERMINATION OF DEDUCTION. (a) A department administrator or disbursing officer shall stop deducting money under this chapter from the compensation of an officer or employee if:

- (1) the individual stops being an officer or employee of the department or political subdivision;
- (2) the individual in writing notifies the department administrator or disbursing officer that the individual elects to cancel the authorization; or
- (3) the arrangement for deducting money by department administrators or disbursing officers is terminated.

(b) On termination as provided by Subsection (a), any money that has been deducted from an officer's or employee's compensation but has not been used to purchase savings bonds shall be remitted immediately by proper warrant to the individual from whose compensation the money has been deducted. (V.A.C.S. Art. 6252-3, Sec. 4.)

Sec. 608.011. NO LIABILITY ON OFFICIAL BOND. A department administrator or disbursing officer is not liable on a bond required of the individual as an official because of a duty imposed on the individual by this chapter. (V.A.C.S. Art. 6252-3, Sec. 5.)

## CHAPTER 609. DEFERRED COMPENSATION PLANS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 609.001. DEFINITIONS

Sec. 609.002. QUALIFICATIONS FOR QUALIFIED VENDOR

Sec. 609.003. QUALIFIED INVESTMENT PRODUCT

Sec. 609.004. PERMISSIBLE USE OF PUBLIC FUNDS

Sec. 609.005. PLAN AS COMPENSATION

Sec. 609.006. CONFORMANCE TO OR CONFLICT WITH FEDERAL LAW



- Sec. 609.007. CONTRACT FOR DEFERMENT OF COMPENSATION
- Sec. 609.008. CREDITING TRUST FUND INTEREST
- Sec. 609.009. OWNERSHIP UNDER 457 PLAN
- Sec. 609.010. LIABILITY; RESPONSIBILITY FOR MONITORING
- Sec. 609.011. NOTIFICATION BY 457 PLAN ADMINISTRATOR
- Sec. 609.012. TRANSFER FROM A 457 PLAN VENDOR
- Sec. 609.013. INABILITY TO DISTRIBUTE

[Sections 609.014 to 609.100 reserved for expansion]

#### SUBCHAPTER B. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

- Sec. 609.101. DEFINITIONS
- Sec. 609.102. CREATION OF PLAN
- Sec. 609.103. DESIGNATION OF PLAN ADMINISTRATOR
- Sec. 609.104. REMOVAL OF PLAN ADMINISTRATOR
- Sec. 609.105. DELEGATION OF 401(k) PLAN ADMINISTRATOR'S AUTHORITY AND RESPONSIBILITIES
- Sec. 609.106. OVERSIGHT COMMITTEE
- Sec. 609.107. AUTHORITY OF PLAN ADMINISTRATOR
- Sec. 609.108. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME
- Sec. 609.109. PARTICIPATION OF INDEPENDENT CONTRACTORS
- Sec. 609.110. CHANGING AMOUNT DEFERRED
- Sec. 609.111. DISTRIBUTION
- Sec. 609.112. FEE
- Sec. 609.113. EVALUATION AND APPROVAL OF QUALIFIED VENDOR
- Sec. 609.114. NUMBER OF VENDORS UNDER 457 PLAN
- Sec. 609.115. CONTRACT WITH QUALIFIED VENDOR
- Sec. 609.116. REGULATION OF QUALIFIED VENDORS
- Sec. 609.117. LOANS UNDER 401(k) PLAN
- Sec. 609.118. TRUST FOR 401(k) PLAN
- Sec. 609.119. TRANSFER ON VENDOR'S FAILURE

[Sections 609.120 to 609.500 reserved for expansion]

#### SUBCHAPTER C. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF STATE AGENCIES

- Sec. 609.501. DEFINITION
- Sec. 609.502. CREATION OF PLAN; PARTICIPATION
- Sec. 609.503. CHANGING AMOUNT DEFERRED
- Sec. 609.504. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME
- Sec. 609.505. QUALIFIED VENDOR
- Sec. 609.506. INSURANCE COMPANY AS QUALIFIED VENDOR
- Sec. 609.507. FINANCIAL INSTITUTION AS QUALIFIED VENDOR
- Sec. 609.508. RULES
- Sec. 609.509. CONTRACTS FOR GOODS AND SERVICES
- Sec. 609.510. EXEMPTION FOR CERTAIN CONTRACTS
- Sec. 609.511. FEE
- Sec. 609.512. DEFERRED COMPENSATION PLAN TRUST FUNDS
- Sec. 609.513. DISCRETIONARY TRANSFER
- Sec. 609.514. ALTERNATIVE TO FUND DEPOSIT
- Sec. 609.515. FIDUCIARY INSURANCE

CHAPTER 609. DEFERRED COMPENSATION PLANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 609.001. DEFINITIONS. In this chapter:

(1) "Board of trustees" means the board of trustees of the Employees Retirement System of Texas.

(2) "Employee" means an individual who is an officer or employee of a state agency or political subdivision, as appropriate.

(3) "Investment income" means the amount earned from investment in a qualified investment product of compensation deferred under a deferred compensation plan.

(4) "Participating employee" means an employee who contracts to participate in a deferred compensation plan.

(5) "Plan administrator" means the person responsible for administering a deferred compensation plan.

(6) "Political subdivision" means a governmental entity in the state that is not a state agency and includes a county, municipality, school district, river authority, other special purpose district or authority, and junior college district.

(7) "Qualified vendor" means a vendor approved by a plan administrator or with whom a plan administrator has contracted for participation in the deferred compensation plan.

(8) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government, including an institution of higher education as defined by Section 61.003, Education Code, but does not include a public junior college.

(9) "Vendor" means a private entity that sells investment products.

(10) "401(k) plan" means an employees' deferred compensation plan, the federal income tax treatment of which is governed by Section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(k)).

(11) "457 plan" means an employees' deferred compensation plan, the federal income tax treatment of which is governed by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457). (V.A.C.S. Art. 6252-3g, Secs. 1.01(4), (5), (6), (7), (9), (10), (11), (12), (14), 2.01(4), (5), (6), (7), (9), (10), (12), (13), (15); New.)

Sec. 609.002. QUALIFICATIONS FOR QUALIFIED VENDOR. A vendor may be a qualified vendor for a 457 plan or a 401(k) plan created by a political subdivision or group of political subdivisions only if the vendor satisfies the requirements for participation in the deferred compensation plan provided by:

(1) this chapter; and

(2) the plan administrator. (V.A.C.S. Art. 6252-3g, Secs. 1.22 (part), 2.05 (part).)

Sec. 609.003. QUALIFIED INVESTMENT PRODUCT. (a) To be classified as a qualified investment product for a deferred compensation plan, an investment product must be approved by the plan administrator to receive investments under the plan. The approval of an investment product for a 457 plan must be in writing.

(b) The approval of an investment product for a 401(k) plan of a political subdivision or group of political subdivisions must be in accordance with a contract between the plan administrator and a qualified vendor.

(c) A qualified investment product may be offered only by a qualified vendor of the deferred compensation plan. (V.A.C.S. Art. 6252-3g, Secs. 1.11(2), 1.31, 2.01(11), 2.04 (part).)

Sec. 609.004. PERMISSIBLE USE OF PUBLIC FUNDS. A deferred compensation plan governed by this chapter is a permissible use of the funds of a state agency or political subdivision. (V.A.C.S. Art. 6252-3g, Secs. 1.02 (part), 2.02 (part).)

Sec. 609.005. **PLAN AS COMPENSATION.** (a) A deferred compensation plan is a part of an employee's compensation and is in addition to a retirement, pension, or benefit system established by law.

(b) The deferral of compensation does not reduce retirement, pension, or other benefits provided by law unless the reduction is required by federal law. (V.A.C.S. Art. 6252-3g, Secs. 1.02 (part), 2.02 (part).)

Sec. 609.006. **CONFORMANCE TO OR CONFLICT WITH FEDERAL LAW.** (a) A deferred compensation plan must conform to federal law to provide that deferred amounts and investment income are not includable, for federal income tax purposes, in the gross income of a participating employee until distributed to the employee

(b) Federal law controls to the extent that this chapter materially conflicts with

(1) Section 401(k), Internal Revenue Code of 1986 (26 U.S.C. Section 401(k));

(2) Section 457, Internal Revenue Code of 1986 (26 U.S.C. Section 457);

(3) other federal law, including a federal rule governing deferred compensation plans.

(c) For the purposes of Subsection (b), a conflict is material only if, for federal income tax purposes, it is reasonably certain to result in the inclusion of an employee's deferred amounts or investment income in the employee's gross income before the amounts or income are distributed to the employee.

(d) The board of trustees of the Employees Retirement System of Texas may adopt rules necessary to make a deferred compensation plan established under Subchapter C a qualified plan under federal law, including federal rules and regulations. (V.A.C.S. Art. 6252-3g, Secs. 1.03, 1.05, 1.48, 2.03, 2.11, 2.54)

Sec. 609.007. **CONTRACT FOR DEFERMENT OF COMPENSATION.** (a) A political subdivision may contract with an employee of the political subdivision for the deferment of any part of the employee's compensation.

(b) The board of trustees of the Employees Retirement System of Texas may contract with an employee of a state agency participating in a deferred compensation plan for the deferment of any part of the employee's compensation.

(c) To participate in a deferred compensation plan, an employee must consent in the contract to automatic payroll deductions in an amount equal to the deferred amount. (V.A.C.S. Art. 6252-3g, Secs. 1.16 (part), 1.42 (part), 2.25 (part), 2.50 (part).)

Sec. 609.008. **CREDITING TRUST FUND INTEREST.** Interest earned on an employee's deferred amounts and investment income deposited in the deferred compensation trust fund, as defined by Section 609.101; or in the TexaSaver trust fund or the other deferred compensation trust fund to which Section 609.512 applies is credited to the employee. (V.A.C.S. Art. 6252-3g, Secs. 1.24, 1.45, 2.10.)

Sec. 609.009. **OWNERSHIP UNDER 457 PLAN.** An employee's deferred amounts and investment income under a 457 plan and the qualified investment products in which the amounts are invested are the property of the employing political subdivision or state agency, as appropriate, until the deferred amounts and investment income are distributed to the employee. (V.A.C.S. Art. 6252-3g, Sec. 2.06.)

Sec. 609.010. **LIABILITY; RESPONSIBILITY FOR MONITORING.** (a) The board of trustees, a state agency, a political subdivision, a plan administrator, or an employee of any of those persons is not liable to a participating employee for the diminution in value or loss of all or part of the participating employee's deferred amounts or investment income because of market conditions or the failure, insolvency, or bankruptcy of a qualified vendor.

(b) A participating employee is responsible for monitoring:

(1) the financial status of the qualified vendor in whose products the employee's deferred amounts and investment income are invested;

(2) market conditions; and

(3) the amount of the employee's deferred amounts and investment income that is invested in the qualified vendor's product. (V.A.C.S. Art. 6252-3g, Secs. 1.04, 2.07.)

Sec. 609.113. EVALUATION AND APPROVAL OF QUALIFIED VENDOR. (a) A plan administrator shall develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor:

(b) A plan administrator may not approve a vendor's application if the vendor is:

(1) a state or national bank or savings and loan association, the deposits of which are not insured by the Federal Deposit Insurance Corporation;

(2) a credit union, the deposits of which are not insured by the National Credit Union Administration Board or the Texas Share Guaranty Credit Union; or

(3) an insurance company that:

(A) is not a member of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association; or

(B) is an impaired or insolvent insurer under Article 21.28-D, Insurance Code.

(c) On written request, the Texas Department of Insurance shall certify in writing to a plan administrator whether an insurance company is prohibited from being approved as a qualified vendor under Subsection (b)(3). The plan administrator may rely on the certification. (V.A.C.S. Art. 6252-3g, Secs. 1.18(c)(4), 1.19, 1.20, 2.27(c)(5), 2.28, 2.29, 2.31 (part).)

Sec. 609.114. NUMBER OF VENDORS UNDER 457 PLAN. The plan administrator of a 457 plan shall determine the minimum and maximum number of vendors that may be qualified vendors for the plan at any given time. (V.A.C.S. Art. 6252-3g, Sec. 2.27(c)(3).)

Sec. 609.115. CONTRACT WITH QUALIFIED VENDOR. (a) After a plan administrator approves an application of a vendor to become a qualified vendor or, under a 401(k) plan, after the plan administrator approves an application of a vendor to become a qualified vendor and approves the vendor's investment products, the plan administrator shall execute a written contract with the vendor to participate in the deferred compensation plan.

(b) A plan administrator shall develop and implement criteria and procedures for evaluating a qualified vendor's investment products to determine whether those products are acceptable as qualified investment products.

(c) A qualified vendor may offer to employees participating in a 457 plan only qualified investment products. (V.A.C.S. Art. 6252-3g, Secs. 1.18(c)(6), 1.21, 2.27(c)(7), 2.30.)

Sec. 609.116. REGULATION OF QUALIFIED VENDORS. A plan administrator shall develop and implement requirements for qualified vendors and their employees concerning disclosure, reporting, standards of conduct, solicitation, advertising, relationships with participating employees, the nature and quality of services provided to those employees, and other matters. (V.A.C.S. Art. 6252-3g, Secs. 1.18(c)(5), 2.27(c)(6).)

Sec. 609.117. LOANS UNDER 401(k) PLAN. The plan administrator of a 401(k) plan shall develop and implement procedures to efficiently administer a program that allows a qualified vendor to lend money to a participating employee. (V.A.C.S. Art. 6252-3g, Sec. 1.18(c)(7).)

Sec. 609.118. TRUST FOR 401(k) PLAN. A political subdivision or group of political subdivisions that creates a 401(k) plan may:

(1) establish a trust to hold deferred amounts and investment income for the benefit of participating employees; and

(2) act as trustee of the trust. (V.A.C.S. Art. 6252-3g, Sec. 1.13.)

Sec. 609.119. TRANSFER ON VENDOR'S FAILURE. A political subdivision or group of subdivisions that creates a deferred compensation plan may authorize or require as a part of the plan that the plan administrator immediately transfer to the deferred compensation trust fund all deferred amounts and investment income from a vendor who fails to satisfy the requirements of this subchapter or the plan administrator. (V.A.C.S. Art. 6252-3g, Secs. 1.22 (part), 2.31 (part).)

SUBCHAPTER C. DEFERRED COMPENSATION PLANS  
FOR EMPLOYEES OF STATE AGENCIES

Sec. 609.501. DEFINITION. In this subchapter, "deferred compensation plan" means a plan established under this subchapter. (New.)

Sec. 609.502. CREATION OF PLAN; PARTICIPATION. (a) The board of trustees of the Employees Retirement System of Texas is the plan administrator of a 401(k) plan known as TexaSaver established under this subchapter.

(b) The board of trustees is the plan administrator of a 457 plan established under this subchapter.

(c) The board of trustees shall administer all aspects of each plan.

(d) The board of trustees may designate a person to assist in the execution of the board's authority and responsibilities as plan administrator.

(e) A state agency may participate in either or both plans. (V.A.C.S. Art. 6252-3g, Secs. 1.01(2), 1.32, 1.35, 2.01(2), 2.41, 2.44.)

Sec. 609.503. CHANGING AMOUNT DEFERRED. An employee may change the amount to be deferred by giving written notification of the change to the board of trustees. (V.A.C.S. Art. 6252-3g, Secs. 1.42 (part), 2.50 (part).)

Sec. 609.504. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. After execution of a contract under Section 609.007, the board of trustees shall:

(1) invest the deferred amounts and investment income of the employee in the qualified investment products designated in writing by the employee; and

(2) promptly transfer the deferred amounts and investment income of the employee from one qualified investment product to another on the employee's written request. (V.A.C.S. Art. 6252-3g, Secs. 1.43, 2.04 (part), 2.51.)

Sec. 609.505. QUALIFIED VENDOR. (a) The board of trustees, in accordance with rules adopted under this subchapter, may contract with a qualified vendor to participate in a deferred compensation plan.

(b) In a contract under Subsection (a), the board of trustees may require the vendor to be audited annually by an independent auditor paid by the vendor. (V.A.C.S. Art. 6252-3g, Secs. 1.39, 2.48.)

Sec. 609.506. INSURANCE COMPANY AS QUALIFIED VENDOR. On written request, the Texas Department of Insurance shall certify in writing to the board of trustees whether an insurance company is eligible to be a qualified vendor under rules adopted by the board. The board is entitled to rely on the certification. (V.A.C.S. Art. 6252-3g, Secs. 1.38, 2.47.)

Sec. 609.507. FINANCIAL INSTITUTION AS QUALIFIED VENDOR. (a) Each bank or savings and loan association that is a qualified vendor shall:

(1) treat deferred amounts and investment income as state funds; and

(2) comply with Chapter 404.

(b) The state treasurer shall monitor each bank or savings and loan association that is a qualified vendor for compliance with Chapter 404. The state treasurer shall immediately notify the board of trustees of a violation of that chapter that the treasurer observes.

(c) The board of trustees is entitled to rely on the supervision of the state treasurer. (V.A.C.S. Art. 6252-3g, Secs. 1.37, 2.46.)

Sec. 609.508. RULES. The board of trustees may adopt rules, including plans and procedures, and orders necessary to carry out the purposes of this subchapter, including rules or orders relating to:

(1) the selection and regulation of vendors for a deferred compensation plan;

(2) the regulation of the practices of agents employed by vendors;

(3) the disclosure of information concerning investment products;

(4) the regulation of advertising materials to be used by vendors; and

(5) the submission of financial information by a vendor. (V.A.C.S. Art. 6252-3g, Secs. 1.36, 2.45.)

Sec. 609.509. **CONTRACTS FOR GOODS AND SERVICES.** (a) The board of trustees may contract for necessary goods and consolidated billing, accounting, and other services to be provided in connection with a deferred compensation plan.

(b) In a contract under Subsection (a), the board of trustees may provide for the board to audit periodically the person with whom the contract is made. The audit may cover:

(1) the proper handling and accounting of state funds; and

(2) other matters related to the proper performance of the contract.

(c) The board of trustees may contract with a private entity to conduct the audit under Subsection (b). (V.A.C.S. Art. 6252-3g, Secs. 1.40, 2.49(a), (b).)

Sec. 609.510. **EXEMPTION FOR CERTAIN CONTRACTS.** A contract authorized by Section 609.505 for TexaSaver or by Section 609.509 for either deferred compensation plan is exempt from:

(1) the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes);

(2) Chapter 463; and

(3) Chapter 2254. (V.A.C.S. Art. 6252-3g, Secs. 1.41, 2.49(c).)

Sec. 609.511. **FEE.** (a) The board of trustees may assess a fee against participating employees or qualified vendors, or both the employees and the qualified vendors, in the manner and to the extent it determines necessary to cover the costs of administering the plan.

(b) The board of trustees shall determine the method for computing and assessing a fee under this section. (V.A.C.S. Art. 6252-3g, Secs. 1.34(a), 2.43(a).)

Sec. 609.512. **DEFERRED COMPENSATION PLAN TRUST FUNDS.** (a) The TexaSaver trust fund is in the state treasury. The fund is for the benefit of TexaSaver.

(b) The deferred compensation trust fund is in the state treasury. The fund is for the benefit of the deferred compensation plan described by Section 609.502(a).

(c) The board of trustees shall administer each trust fund.

(d) Deferred amounts, fees collected under Section 609.511, and state appropriations for the administration of a deferred compensation plan shall be credited to the appropriate trust fund.

(e) The interest on and earnings of amounts in a trust fund and the proceeds from the sale of investments shall be credited to the fund.

(f) The amounts credited to a trust fund are available without fiscal year limitation:

(1) to pay expenses for administering the deferred compensation plan for which the trust fund was established; and

(2) to purchase qualified investment products for participants of the appropriate plan.

(g) The board of trustees may establish accounts in a trust fund that it considers necessary, including an account for the administration of the deferred compensation plan for which the trust fund was established.

(h) The board of trustees may transfer assets from one account of a trust fund to another account of the fund for financial management purposes if adequate arrangements are made to:

(1) reimburse the account from which the transfer is made; and

(2) pay administrative expenses.

(i) The board of trustees may invest and reinvest money in a trust fund subject only to the duty of care provided by Section 815.307 that would apply if the investments were being made for the Employees Retirement System of Texas. (V.A.C.S. Art. 6252-3g, Secs. 1.33, 1.34(b) (part), 2.42, 2.43(b).)

Sec. 609.513. DISCRETIONARY TRANSFER. (a) The board of trustees may transfer an employee's deferred amounts and investment income from a qualified investment product to the trust fund of the deferred compensation plan in which the employee participates if the board of trustees determines that the transfer is in the best interest of the plan and the employee.

(b) The board of trustees is not required to give notice of a transfer under Subsection (a) to the employee before the transfer occurs.

(c) Promptly after a transfer under Subsection (a) occurs, the board of trustees shall give to the employee a notice that:

(1) states the reason for the transfer; and

(2) requests that the employee promptly designate another qualified investment product to receive the transferred amount. (V.A.C.S. Art. 6252-3g, Secs. 1.46, 2.52.)

Sec. 609.514. ALTERNATIVE TO FUND DEPOSIT. Instead of depositing deferred amounts and investment income in the trust fund of the deferred compensation plan, the board of trustees may invest them in a qualified investment product specifically designated by the board for that purpose. (V.A.C.S. Art. 6252-3g, Secs. 1.47, 2.53.)

Sec. 609.515. FIDUCIARY INSURANCE. In the administration of a deferred compensation plan, the board of trustees may purchase liability insurance for the coverage of the trustees, employees, and agents of the board in the amounts that the board, in its sole discretion, considers reasonable and necessary. (V.A.C.S. Art. 6252-3g, Sec. 2.55.)

CHAPTER 610. CHILD CARE EXPENSE SALARY REDUCTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 610.001. DEFINITIONS

Sec. 610.002. ELIGIBLE EXPENSES

[Sections 610.003 to 610.010 reserved for expansion]

SUBCHAPTER B. STATE EMPLOYEES

Sec. 610.011. SALARY REDUCTION AGREEMENTS FOR STATE EMPLOYEES

Sec. 610.012. STATE EMPLOYEES PAID THROUGH COMPTROLLER

Sec. 610.013. STATE EMPLOYEES NOT PAID THROUGH COMPTROLLER

Sec. 610.014. RULES

[Sections 610.015 to 610.020 reserved for expansion]

SUBCHAPTER C. OTHER PUBLIC EMPLOYEES

Sec. 610.021. SALARY REDUCTION AGREEMENTS FOR SCHOOL DISTRICT EMPLOYEES

CHAPTER 610. CHILD CARE EXPENSE SALARY REDUCTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 610.001. DEFINITIONS. In this chapter:

(1) "Program administrator" means:

(A) for a state employee employed by The University of Texas System or The Texas A&M University System, the applicable system; or

(B) for every other state employee, the Employees Retirement System of Texas.

(2) "School district" has the meaning assigned by Section 11.13, Tax Code.

(3) "School district employee" means a person who receives compensation for service performed, other than as an independent contractor, for a school district.

(4) "State agency" means:

(A) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or a state judicial agency.

(5) "State employee" means:

(A) a person who receives compensation for service performed, other than as an independent contractor, for a state agency; or

(B) a district judge. (V.A.C.S. Art. 6252-3d, Sec. 1.)

Sec. 610.002. **ELIGIBLE EXPENSES.** Child care expenses are eligible for payment under a salary reduction agreement entered into under this chapter only if the expenses meet the requirements for exclusion from gross income as provided by Section 129 of the federal Internal Revenue Code of 1986 (26 U.S.C. Section 129). (V.A.C.S. Art. 6252-3d, Secs. 2(a) (part), 3 (part).)

[Sections 610.003 to 610.010 reserved for expansion]

#### SUBCHAPTER B. STATE EMPLOYEES

Sec. 610.011. **SALARY REDUCTION AGREEMENTS FOR STATE EMPLOYEES.**

(a) The state may enter into an agreement with a state employee to reduce the employee's periodic compensation paid by the state by an amount to be paid for child care expenses.

(b) A state employee may request the salary reduction agreement by filing a written request for the reduction, on a form prescribed by the program administrator, with the payroll officer of the state agency with which the employee is employed.

(c) A state employee is entitled to select the recipient of payments under the salary reduction agreement. (V.A.C.S. Art. 6252-3d, Secs. 2(a) (part), (e).)

Sec. 610.012. **STATE EMPLOYEES PAID THROUGH COMPTROLLER.** (a) The payroll officer of a state agency having employees who are paid by warrant issued by the comptroller shall send to the program administrator a copy of each request filed by an employee of the agency under Section 610.011.

(b) If the program administrator determines that an employee's request meets the applicable requirements for exclusion from gross income for federal tax purposes, the program administrator, on the state's behalf, shall enter into a salary reduction agreement with the requesting employee.

(c) The comptroller shall make payments in the amount by which an employee's compensation is reduced in the manner specified by the employee's salary reduction agreement. (V.A.C.S. Art. 6252-3d, Sec. 2(c).)

Sec. 610.013. **STATE EMPLOYEES NOT PAID THROUGH COMPTROLLER.** (a) The payroll officer of a state agency having employees who are not paid by warrant issued by the comptroller may enter into a salary reduction agreement with a requesting employee of the agency.

(b) A payroll officer who enters into the salary reduction agreement shall make payments in the amount by which an employee's compensation is reduced in the manner specified by the agreement.

(c) A payroll officer's actions under this section are subject to applicable rules adopted by the program administrator under this subchapter. (V.A.C.S. Art. 6252-3d, Sec. 2(d).)

Sec. 610.014. **RULES.** The program administrator shall adopt rules for administering the program authorized by Section 610.011, including rules for determining eligibility for



exclusion from gross income for federal tax purposes of amounts by which a state employee's salary may be reduced. (V.A.C.S. Art. 6252-3d, Sec. 2(b).)

[Sections 610.015 to 610.020 reserved for expansion]

### SUBCHAPTER C. OTHER PUBLIC EMPLOYEES

Sec. 610.021. SALARY REDUCTION AGREEMENTS FOR SCHOOL DISTRICT EMPLOYEES. (a) The governing body of a school district may authorize a school district employee to enter into an agreement with the school district to reduce the periodic compensation paid the employee by the school district by an amount to be paid for child care expenses.

(b) The governing body of a school district may adopt rules for participating in and administering the program authorized by this section. (V.A.C.S. Art. 6252-3d, Sec. 3 (part).)

### CHAPTER 611. LODGING, MEAL, AND TRAVEL REIMBURSEMENT

Sec. 611.001. LODGING AND MEAL EXPENSES

Sec. 611.002. COMMON CARRIER FARES

### CHAPTER 611. LODGING, MEAL, AND TRAVEL REIMBURSEMENT

Sec. 611.001. LODGING AND MEAL EXPENSES. (a) An officer or employee of the state or of a political subdivision, including any special-purpose district or authority, may be reimbursed with public funds for lodging or meal expenses only to the extent the expenses are reasonable and necessary under guidelines issued by the Texas Ethics Commission.

(b) This section does not apply if the expenses are restricted by other law. (V.A.C.S. Art. 6823b, Sec. 1.)

Sec. 611.002. COMMON CARRIER FARES. An officer or employee described by Section 611.001 may not be reimbursed for transportation expenses on a common carrier in an amount exceeding the lowest available fare. (V.A.C.S. Art. 6823b, Sec. 2.)

### CHAPTER 612. LIABILITY INSURANCE

Sec. 612.001. MOTOR VEHICLE LIABILITY INSURANCE FOR PEACE OFFICERS AND FIRE FIGHTERS

Sec. 612.002. LIABILITY INSURANCE FOR CERTAIN STATE EMPLOYEES

Sec. 612.003. LIABILITY INSURANCE FOR CERTAIN STATE PROGRAMS

### CHAPTER 612. LIABILITY INSURANCE

Sec. 612.001. MOTOR VEHICLE LIABILITY INSURANCE FOR PEACE OFFICERS AND FIRE FIGHTERS. (a) The state shall provide for insuring each peace officer and fire fighter in its employ against liability to third persons arising out of the operation, maintenance, or use of a motor vehicle owned or leased by the state.

(b) The liability coverage provided under this section must be in amounts not less than those required by the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) to provide proof of financial responsibility.

(c) The state may elect to be self-insured or to reimburse the actual cost of an extended automobile liability insurance endorsement obtained by a peace officer or fire fighter on an individually owned automobile liability insurance policy. The extended endorsement must:

(1) be in the amount required by Subsection (b); and

(2) extend the coverage to include the operation and use of vehicles by a peace officer or fire fighter in the scope of the officer's or fire fighter's employment.

(d) If the reimbursement method is used, the state may require a peace officer or fire fighter who operates and uses a motor vehicle to present proof that an extended coverage endorsement has been purchased and is in effect for the period of reimbursement.

(e) In this section, "motor vehicle" means any motor vehicle for which motor vehicle automobile insurance may be written under Subchapter A, Chapter 5, Insurance Code. (V.A.C.S. Art. 999e.)

Sec. 612.002. **LIABILITY INSURANCE FOR CERTAIN STATE EMPLOYEES.** (a) A state agency that owns and operates a motor vehicle, an item of power equipment, an aircraft, or a motorboat or other watercraft of any type or size may insure its employees against liability arising out of the operation, maintenance, or use of the motor vehicle, item of power equipment, aircraft, or motorboat or other watercraft.

(b) A state agency that elects to provide insurance under this section shall purchase one or more policies from a liability insurance company authorized to transact business in this state. The liability insurance purchased under this section must be provided on policy forms approved by the State Board of Insurance as to form and by the attorney general as to liability coverage.

(c) An employee of a state agency that elects not to insure its employees against liability under Subsection (a) is entitled to reimbursement, in addition to any compensation provided in the General Appropriations Act, from maintenance funds of the agency, for any amount spent by the employee for liability insurance that is required by the agency.

(d) The comptroller shall provide forms for claims of employee reimbursement under Subsection (c). The forms shall require a certification from the head of the state agency that:

(1) a regular part of the employee's duties is the operation of a state-owned motor vehicle, item of power equipment, aircraft, or motorboat or other watercraft; and

(2) the agency requires the employee to maintain liability insurance as a prerequisite to the operation of a state-owned motor vehicle, item of power equipment, aircraft, or motorboat or other watercraft.

(e) This section does not waive state immunity from liability for the torts of negligence of its employees.

(f) In this section:

(1) "Employee" includes an officer of a state agency.

(2) "State agency" means an agency, a department, board, commission, or other entity in the executive, legislative, or judicial branch of state government. (V.A.C.S. Art. 6252-19a, Secs. 1 (part), 2-5; New.)

Sec. 612.003. **LIABILITY INSURANCE FOR CERTAIN STATE PROGRAMS.** (a) A state agency that receives federal grant funds for a foster grandparent program may spend those funds to insure the persons and property of the foster grandparents as required by the grant.

(b) A state agency that operates an integrated day-care program that serves children with mental illness or developmental disabilities or who participate in an early childhood intervention program, as well as other children, may purchase insurance to cover liability arising from the operation of the program. (V.A.C.S. Art. 6252-19a, Sec. 1 (part).)

## CHAPTER 613. REEMPLOYMENT FOLLOWING MILITARY SERVICE

### SUBCHAPTER A. REEMPLOYMENT

Sec. 613.001. **DEFINITIONS**

Sec. 613.002. **REEMPLOYMENT TO SAME POSITION FOLLOWING MILITARY SERVICE**

Sec. 613.003. **REEMPLOYMENT TO ANOTHER POSITION FOLLOWING MILITARY SERVICE**

Sec. 613.004. **APPLICATION FOR REEMPLOYMENT**

Sec. 613.005. **DISCHARGE FOLLOWING REEMPLOYMENT**

Sec. 613.006. **ENTITLEMENT TO RETIREMENT OR OTHER BENEFITS**

[Sections 613.007 to 613.020 reserved for expansion]

## SUBCHAPTER B. ENFORCEMENT

- Sec. 613.021. COMPLIANCE WITH LAW; HEARING  
 Sec. 613.022. DISTRICT ATTORNEY  
 Sec. 613.023. COURT COSTS AND FEES

## CHAPTER 613. REEMPLOYMENT FOLLOWING MILITARY SERVICE

## SUBCHAPTER A. REEMPLOYMENT

Sec. 613.001. DEFINITIONS. In this subchapter:

- (1) "Local governmental entity" means a county, municipality, or other political subdivision of this state.
- (2) "Military service" means service as a member of:
- (A) the Armed Forces of the United States;
  - (B) the Texas National Guard;
  - (C) the Texas State Guard; or
  - (D) a reserve component of the Armed Forces of the United States.

(3) "Public employee" means an employee of the state, a state institution, or a local governmental entity. The term does not include a temporary employee, an elected official, or an individual serving under an appointment that requires confirmation by the senate. (New.)

Sec. 613.002. REEMPLOYMENT TO SAME POSITION FOLLOWING MILITARY SERVICE. (a) A public employee who leaves a state position or a position with a local governmental entity to enter active military service is entitled to be reemployed:

- (1) by the state or the local governmental entity;
- (2) in the same department, office, commission, or board of this state, a state institution, or local governmental entity in which the employee was employed at the time of the employee's induction or enlistment in, or order to, active military service; and
- (3) in:
  - (A) the same position held at the time of the induction, enlistment, or order; or
  - (B) a position of similar seniority, status, and pay.

(b) To be entitled to reemployment under Subsection (a), the employee must be:

- (1) discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary of the date of induction, enlistment, or call to active military service; and
- (2) physically and mentally qualified to perform the duties of that position. (V.A.C.S. Art. 6252-4a, Sec. 1.)

Sec. 613.003. REEMPLOYMENT TO ANOTHER POSITION FOLLOWING MILITARY SERVICE. A public employee who cannot perform the duties of a position to which the employee is otherwise entitled under Section 613.002 because of a disability the employee sustained during military service is entitled to be reemployed in the department, office, commission, or board of the state, a state institution, or a local governmental entity in a position that the employee can perform and that has:

- (1) like seniority, status, and pay as the former position; or
- (2) the nearest possible seniority, status, and pay to the former position. (V.A.C.S. Art. 6252-4a, Sec. 2.)

Sec. 613.004. APPLICATION FOR REEMPLOYMENT. (a) A veteran eligible for reemployment under this chapter must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service.

(b) An application for reemployment must:

(1) be made to the head of the department, office, commission, or board of this state, the state institution, or the local governmental entity that employed the veteran before the veteran entered military service;

(2) be in writing; and

(3) have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions. (V.A.C.S. Art. 6252-4a, Sec. 4.)

Sec. 613.005. DISCHARGE FOLLOWING REEMPLOYMENT. An individual reemployed under this chapter may not be discharged from the position without cause before the first anniversary of the date of reemployment. (V.A.C.S. Art. 6252-4a, Sec. 3 (part).)

Sec. 613.006. ENTITLEMENT TO RETIREMENT OR OTHER BENEFITS. An individual reemployed under this chapter is considered to have been on furlough or leave of absence during the time the individual was in military service and may participate in retirement or other benefits to which a public employee is or may be entitled. (V.A.C.S. Art. 6252-4a, Sec. 3 (part).)

[Sections 613.007 to 613.020 reserved for expansion]

#### SUBCHAPTER B. ENFORCEMENT

Sec. 613.021. COMPLIANCE WITH LAW; HEARING. (a) If a public official fails to comply with a provision of Subchapter A, a district court in the district in which the individual is a public official may require the public official to comply with the provision on the filing of a motion, petition, or other appropriate pleading by an individual entitled to a benefit under the provision.

(b) The court shall order a speedy hearing and shall advance the hearing on the calendar. (V.A.C.S. Art. 6252-4a, Sec. 5 (part).)

Sec. 613.022. DISTRICT ATTORNEY. On application to the district attorney of the appropriate district by an individual who the district attorney reasonably believes is entitled to the benefit of a provision of Subchapter A, the district attorney shall:

(1) appear and act as attorney for the individual in an amicable adjustment of the claim; or

(2) file or prosecute a motion, petition, or other appropriate pleading to specifically require compliance with the provision. (V.A.C.S. Art. 6252-4a, Sec. 5 (part).)

Sec. 613.023. COURT COSTS AND FEES. A person applying for benefits under Subchapter A may not be charged court costs or fees for a claim, motion, petition, or other pleading filed under Section 613.021. (V.A.C.S. Art. 6252-4a, Sec. 5 (part).)

### CHAPTER 614. PEACE OFFICERS AND FIRE FIGHTERS

#### SUBCHAPTER A. LEGISLATIVE LEAVE FOR PEACE OFFICER OR FIRE FIGHTER

Sec. 614.001. DEFINITIONS

Sec. 614.002. APPLICABILITY OF SUBCHAPTER

Sec. 614.003. ENTITLEMENT TO LEGISLATIVE LEAVE

Sec. 614.004. ELIGIBILITY FOR LEGISLATIVE LEAVE

Sec. 614.005. MONEY REQUIRED TO OFFSET COSTS OF LEGISLATIVE LEAVE

Sec. 614.006. EMPLOYER TO GRANT LEGISLATIVE LEAVE; EXCEPTIONS

Sec. 614.007. INSUFFICIENCY IN NUMBER OF EMPLOYEES; EXCHANGE OF  
TIME BY OTHER EMPLOYEES

Sec. 614.008. LEGISLATIVE LEAVE NOT A BREAK IN SERVICE

Sec. 614.009. LEGISLATIVE LEAVE TO ATTEND SESSION OF CONGRESS

Sec. 614.010. EMPLOYEES' ASSOCIATION MAY NOT REIMBURSE CERTAIN  
COSTS

[Sections 614.011 to 614.020 reserved for expansion]

SUBCHAPTER B. COMPLAINT AGAINST LAW ENFORCEMENT  
OFFICER OR FIRE FIGHTER

- Sec. 614.021. APPLICABILITY OF SUBCHAPTER
- Sec. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT
- Sec. 614.023. COPY OF COMPLAINT TO BE GIVEN TO OFFICER OR EMPLOYEE

[Sections 614.024 to 614.040 reserved for expansion]

SUBCHAPTER C. PROHIBITION AGAINST COLLECTING DEBT FOR ANOTHER

- Sec. 614.041. COLLECTING DEBT FOR ANOTHER; OFFENSE

[Sections 614.042 to 614.050 reserved for expansion]

SUBCHAPTER D. PURCHASE OF AGENCY-ISSUED FIREARM OF  
HONORABLY RETIRED OR DECEASED PEACE OFFICER

- Sec. 614.051. PURCHASE OF FIREARM BY HONORABLY RETIRED PEACE OFFICER
- Sec. 614.052. PURCHASE OF FIREARM BY SURVIVING SPOUSE, CHILD, OR PARENT OF DECEASED PEACE OFFICER
- Sec. 614.053. PURCHASE PRICE OF FIREARM
- Sec. 614.054. WHEN FIREARM MAY BE PURCHASED FROM STATE AGENCY; DELAY OF SALE BY AGENCY

CHAPTER 614. PEACE OFFICERS AND FIRE FIGHTERS

SUBCHAPTER A. LEGISLATIVE LEAVE FOR  
PEACE OFFICER OR FIRE FIGHTER

Sec. 614.001. DEFINITIONS. In this subchapter:

- (1) "Employer" means the governmental entity that employs or appoints a peace officer or fire fighter or that the peace officer or fire fighter is elected to serve.
- (2) "Fire fighter" means a member of a fire department who performs a function listed in Section 143.003(4), Local Government Code, without regard to whether the individual is subject to a civil service system or program.
- (3) "Peace officer" means an individual elected, appointed, or employed to serve as a peace officer for a governmental entity under Article 2.12, Code of Criminal Procedure, or other law. (V.A.C.S. Art. 6252-4c, Sec. 2.)

Sec. 614.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a peace officer or fire fighter employed by:

- (1) the state;
- (2) a municipality with a population of 200,000 or more; or
- (3) a county with a population of 500,000 or more. (V.A.C.S. Art. 6252-4c, Sec. 1.)

Sec. 614.003. ENTITLEMENT TO LEGISLATIVE LEAVE. A peace officer or fire fighter is entitled as provided by this subchapter to legislative leave to serve in, appear before, or petition a governmental body during a regular or special session of the body. (V.A.C.S. Art. 6252-4c, Sec. 3(a).)

Sec. 614.004. ELIGIBILITY FOR LEGISLATIVE LEAVE. (a) To be eligible for legislative leave, a peace officer or fire fighter must submit a written application to the individual's employer on or before the 30th day before the date the individual intends to begin the legislative leave.

(b) The application must state the length of the requested leave and that the peace officer or fire fighter is willing to reimburse the employer for any wages, pension, or other costs the employer will incur as a result of the leave.

(c) The length of requested leave may not exceed the length of the session. (V.A.C.S. Art. 6252-4c, Sec. 3(b).)

**Sec. 614.005. MONEY REQUIRED TO OFFSET COSTS OF LEGISLATIVE LEAVE.**

(a) An employer may require reimbursement of all costs associated with legislative leave under this subchapter.

(b) Within 30 days after the date an employer receives an application, the employer shall notify the peace officer or fire fighter in writing of the actual amount of money required to offset the costs the employer will incur.

(c) An employer may require a peace officer or fire fighter to post the money before granting the leave.

(d) A peace officer or fire fighter shall give to the employer a sworn statement identifying the source of the money posted. (V.A.C.S. Art. 6252-4c, Secs. 3(c), (f) (part).)

**Sec. 614.006. EMPLOYER TO GRANT LEGISLATIVE LEAVE; EXCEPTIONS.** An employer shall grant legislative leave to a peace officer or fire fighter who submits an application as prescribed by this subchapter and who complies with any requirement relating to payment of costs:

(1) except in an emergency; or

(2) unless granting the leave will result in having an insufficient number of employees to carry out the normal functions of the employer. (V.A.C.S. Art. 6252-4c, Sec. 3(d).)

**Sec. 614.007. INSUFFICIENCY IN NUMBER OF EMPLOYEES; EXCHANGE OF TIME BY OTHER EMPLOYEES.** (a) If an employer determines that granting a legislative leave will result in having an insufficient number of employees to carry out the normal functions of the employer, another peace officer or fire fighter of equal rank may volunteer to exchange time of work with the applicant if overtime does not result.

(b) The employer shall allow a volunteer under Subsection (a) to work for the applicant and shall grant the legislative leave, if overtime will not result and if the volunteer work will result in having a sufficient number of employees. (V.A.C.S. Art. 6252-4c, Sec. 3(e).)

**Sec. 614.008. LEGISLATIVE LEAVE NOT A BREAK IN SERVICE.** Legislative leave under this subchapter is not a break in service for any purpose and is treated as any other paid leave, except as provided by Section 614.005. (V.A.C.S. Art. 6252-4c, Sec. 3(f).)

**Sec. 614.009. LEGISLATIVE LEAVE TO ATTEND SESSION OF CONGRESS.** Legislative leave granted under this subchapter to a peace officer or fire fighter to attend a session of the Congress of the United States shall be granted for not longer than 30 percent of the applicant's total annual working days during each year in which leave is requested. (V.A.C.S. Art. 6252-4c, Sec. 3(g).)

**Sec. 614.010. EMPLOYEES' ASSOCIATION MAY NOT REIMBURSE CERTAIN COSTS.** A peace officers' or fire fighters' association may not reimburse a member of the legislature or an employer of a peace officer or fire fighter who serves as a member of the legislature for wages, pension contributions, or other costs incurred as a result of legislative leave taken under this subchapter. (V.A.C.S. Art. 6252-4c, Sec. 3(h).)

[Sections 614.011 to 614.020 reserved for expansion]

**SUBCHAPTER B. COMPLAINT AGAINST LAW ENFORCEMENT  
OFFICER OR FIRE FIGHTER**

**Sec. 614.021. APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to a complaint against:

(1) a law enforcement officer of the State of Texas, including an officer of the Department of Public Safety or of the Texas Alcoholic Beverage Commission;

(2) a fire fighter who is not covered by a civil service statute; or

(3) a police officer who is not covered by a civil service statute. (V.A.C.S. Art. 6252-20 (part).)

Sec. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT. To be considered by the head of a state agency or by the head of a fire or police department, the complaint must be:

(1) in writing; and

(2) signed by the person making the complaint. (V.A.C.S. Art. 6252-20 (part).)

Sec. 614.023. COPY OF COMPLAINT TO BE GIVEN TO OFFICER OR EMPLOYEE. (a) A copy of a signed complaint against a law enforcement officer, fire fighter, or police officer shall be given to the officer or employee within a reasonable time after the complaint is filed.

(b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee. (V.A.C.S. Art. 6252-20 (part).)

[Sections 614.024 to 614.040 reserved for expansion]

### SUBCHAPTER C. PROHIBITION AGAINST COLLECTING DEBT FOR ANOTHER

Sec. 614.041. COLLECTING DEBT FOR ANOTHER; OFFENSE. (a) A peace officer commits an offense if the officer:

(1) accepts for collection or undertakes the collection of a claim for debt for another, unless the officer acts under a law that prescribes the duties of the officer; or

(2) accepts compensation not prescribed by law for accepting for collection or undertaking the collection of a claim for debt for another.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than \$200 or more than \$500.

(c) In addition to the fine, the peace officer may be removed from office. (V.A.C.S. Art. 6252-24 (part).)

[Sections 614.042 to 614.050 reserved for expansion]

### SUBCHAPTER D. PURCHASE OF AGENCY-ISSUED FIREARM OF HONORABLY RETIRED OR DECEASED PEACE OFFICER

Sec. 614.051. PURCHASE OF FIREARM BY HONORABLY RETIRED PEACE OFFICER. (a) An individual may purchase a firearm from a state agency if:

(1) the individual was a peace officer commissioned by the agency;

(2) the individual was honorably retired from the individual's commission by the state;

(3) the firearm had been previously issued to the individual by the agency; and

(4) the firearm is not a prohibited weapon under Section 46.06, Penal Code.

(b) An individual may purchase only one firearm from a state agency under this section. (V.A.C.S. Art. 4413(29aa-3), Sec. 1(a) (part).)

Sec. 614.052. PURCHASE OF FIREARM BY SURVIVING SPOUSE, CHILD, OR PARENT OF DECEASED PEACE OFFICER. (a) An individual listed under Subsection (b) may purchase a firearm from a state agency if:

(1) the firearm had been previously issued by the agency to a peace officer commissioned by the agency who died while commissioned, without regard to whether the officer died while discharging the officer's official duties; and

(2) the firearm is not a prohibited weapon under Section 46.06, Penal Code.

(b) Individuals who may purchase the firearm under Subsection (a) are, in order of precedence:

(1) the surviving spouse of the deceased peace officer;

(2) a child of the deceased peace officer; and

(3) a parent of the deceased peace officer. (V.A.C.S. Art. 4413(29aa-3), Sec. 2.)

Sec. 614.053. PURCHASE PRICE OF FIREARM. A state agency shall establish the amount, which may not exceed fair market value, for which a firearm may be purchased under this subchapter. (V.A.C.S. Art. 4413(29aa-3), Secs. 1(a) (part), 2 (part).)

Sec. 614.054. WHEN FIREARM MAY BE PURCHASED FROM STATE AGENCY; DELAY OF SALE BY AGENCY. (a) Except as provided by Subsection (b), an individual must purchase a firearm under Section 614.051 before the second anniversary of the date of the person's retirement or under Section 614.052 before the second anniversary of the date of the officer's death.

(b) A state agency that cannot immediately replace the firearm may delay the sale of the firearm until the agency can replace the firearm. (V.A.C.S. Art. 4413(29aa-3), Secs. 1(a) (part), (b), 2 (part).)

## CHAPTER 615. FINANCIAL ASSISTANCE TO SURVIVORS OF CERTAIN LAW ENFORCEMENT OFFICERS, FIRE FIGHTERS, AND OTHERS

### SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 615.001. DEFINITION
- Sec. 615.002. ADMINISTRATION OF CHAPTER
- Sec. 615.003. APPLICABILITY
- Sec. 615.004. EFFECT OF AWARD
- Sec. 615.005. ASSISTANCE NOT ASSIGNABLE; PAYMENTS EXEMPT
- Sec. 615.006. DESIGNATION OF CUSTODIAL PERSONNEL
- Sec. 615.007. CERTAIN VOLUNTEER FIRE-FIGHTING UNITS CONSIDERED  
AGENTS OF POLITICAL SUBDIVISION
- Sec. 615.008. CERTAIN POLICE RESERVE OR AUXILIARY UNITS CONSIDERED  
AGENTS OF POLITICAL SUBDIVISION

[Sections 615.009 to 615.020 reserved for expansion]

### SUBCHAPTER B. PAYMENTS TO ELIGIBLE SURVIVORS

- Sec. 615.021. ELIGIBLE SURVIVORS
- Sec. 615.022. PAYMENT TO SURVIVING SPOUSE
- Sec. 615.023. PAYMENT TO SURVIVING MINOR CHILD
- Sec. 615.024. PAYMENT TO SURVIVING DEPENDENT PARENT
- Sec. 615.025. PAYMENT TO SURVIVING DEPENDENT SIBLING

[Sections 615.026 to 615.040 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATION AND PROCEDURE

- Sec. 615.041. PROOF OF CLAIM
- Sec. 615.042. AWARD AND PAYMENT OF ASSISTANCE
- Sec. 615.043. DENIAL OF CLAIM
- Sec. 615.044. APPEALS

## CHAPTER 615. FINANCIAL ASSISTANCE TO SURVIVORS OF CERTAIN LAW ENFORCEMENT OFFICERS, FIRE FIGHTERS, AND OTHERS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 615.001. DEFINITION. In this chapter, "minor child" means a child who, on the date of the death of an individual listed under Section 615.003, is younger than 21 years of age. (V.A.C.S. Art. 6228f, Sec. 2(a) (part).)



Sec. 615.002. **ADMINISTRATION OF CHAPTER.** The board of trustees of the Employees Retirement System of Texas shall administer this chapter under rules adopted by the board. (V.A.C.S. Art. 6228f, Sec. 4 (part).)

Sec. 615.003. **APPLICABILITY.** This chapter applies only to eligible survivors of the following individuals:

- (1) a peace officer as defined by Article 2.12, Code of Criminal Procedure;
- (2) a paid probation officer appointed by the director of a community supervision and corrections department who has the duties set out in Section 2 and the qualifications set out in Section 5, Article 42.131, Code of Criminal Procedure, or who was appointed in accordance with prior law;
- (3) a parole officer employed by the pardons and paroles division of the Texas Department of Criminal Justice who has the duties set out in Section 2 and the qualifications set out in Section 19, Article 42.18, Code of Criminal Procedure;
- (4) a paid jailer;
- (5) a member of an organized police reserve or auxiliary unit who regularly assists peace officers in enforcing criminal laws;
- (6) a member of the class of employees of the institutional division of the Texas Department of Criminal Justice formally designated as custodial personnel under Section 615.006 by the Texas Board of Criminal Justice or its predecessor in function;
- (7) a jailer or guard of a county jail who is appointed by the sheriff and who:
  - (A) performs a security, custodial, or supervisory function over the admittance, confinement, or discharge of prisoners; and
  - (B) is certified by the Texas Commission on Law Enforcement Officer Standards and Education;
- (8) a juvenile correctional employee of the Texas Youth Commission;
- (9) an employee of the maximum security unit of the Texas Department of Mental Health and Mental Retardation;
- (10) an individual who is employed by the state or a political or legal subdivision and is subject to certification by the Texas Commission on Fire Protection;
- (11) an individual employed by the state or a political or legal subdivision whose principal duties are aircraft crash and rescue fire fighting;
- (12) a member of an organized volunteer fire-fighting unit that:
  - (A) renders fire-fighting services without remuneration;
  - (B) consists of not fewer than 20 active members, a majority of which are present at each meeting; and
  - (C) conducts a minimum of two drills each month, each two hours long; or
- (13) a game warden who is an employee of the state and who receives full-time pay for the enforcement of game laws and rules. (V.A.C.S. Art. 6228f, Secs. 2(a) (part); 3(a) (part), (b) (part).)

Sec. 615.004. **EFFECT OF AWARD.** (a) A finding that assistance is payable to an eligible survivor of an individual listed under Section 615.003 is not a declaration of the cause, nature, or effect of a death for any other purpose.

(b) A finding that a death is within the provisions of this chapter does not affect another claim or cause of action arising from or connected to the death. (V.A.C.S. Art. 6228f, Sec. 7.)

Sec. 615.005. **ASSISTANCE NOT ASSIGNABLE; PAYMENTS EXEMPT.** (a) Assistance payable under this chapter is not transferable or assignable at law or in equity.

(b) Money paid or payable under this chapter is not subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any insolvency law. (V.A.C.S. Art. 6228f, Sec. 8.)

Sec. 615.006. **DESIGNATION OF CUSTODIAL PERSONNEL.** The Texas Board of Criminal Justice shall adopt and include in its minutes a formal designation identifying the

classes of persons who are custodial personnel of the agency so that there is no uncertainty about which persons are custodial personnel. (V.A.C.S. Art. 6228f, Sec. 9.)

Sec. 615.007. CERTAIN VOLUNTEER FIRE-FIGHTING UNITS CONSIDERED AGENTS OF POLITICAL SUBDIVISION. For the purposes of this chapter, an organized volunteer fire-fighting unit described by Section 615.003(12) is considered an agent of a political subdivision, including a municipality, county, or district, that the unit serves if:

(1) the unit receives any financial aid from the political subdivision for the maintenance, upkeep, or storage of equipment; or

(2) the governing body of the political subdivision designates the unit as an agent of the political subdivision. (V.A.C.S. Art. 6228f, Sec. 2(b) (part).)

Sec. 615.008. CERTAIN POLICE RESERVE OR AUXILIARY UNITS CONSIDERED AGENTS OF POLITICAL SUBDIVISION. For the purposes of this chapter, an organized police reserve or auxiliary unit is considered an agent of a political subdivision, including a municipality, county, or district, that the unit serves if the governing body of the political subdivision designates the unit as an agent of the political subdivision. (V.A.C.S. Art. 6228f, Sec. 2(b) (part).)

[Sections 615.009 to 615.020 reserved for expansion]

#### SUBCHAPTER B. PAYMENTS TO ELIGIBLE SURVIVORS

Sec. 615.021. ELIGIBLE SURVIVORS. A survivor of an individual listed under Section 615.003 is eligible for the payment of assistance under this chapter if:

(1) the listed individual died in the course of the individual's duty performed in the individual's position as described by Section 615.003 as a result of exposure to a risk:

(A) that is inherent in the duty; and

(B) to which the general public is not customarily exposed; and

(2) the survivor is:

(A) the surviving spouse of the listed individual;

(B) a minor child of the listed individual;

(C) a surviving parent of the listed individual, if:

(i) there is no surviving spouse or minor child; and

(ii) the parent was claimed as a dependent on the income tax return filed with the Internal Revenue Service by the listed individual in the year preceding the year in which the listed individual died; or

(D) a surviving sibling of the listed individual and is younger than 18 years of age, if:

(i) there is no surviving spouse or minor child; and

(ii) the sibling was claimed as a dependent on the income tax return filed with the Internal Revenue Service by the listed individual in the year preceding the year in which the listed individual died. (V.A.C.S. Art. 6228f, Secs. 2(a) (part); 3(a) (part), (b) (part).)

Sec. 615.022. PAYMENT TO SURVIVING SPOUSE. The state shall pay \$20,000 to an eligible surviving spouse. (V.A.C.S. Art. 6228f, Sec. 3(a) (part).)

Sec. 615.023. PAYMENT TO SURVIVING MINOR CHILD. (a) The state shall pay to the duly appointed or qualified guardian or other legal representative of an eligible surviving minor child:

(1) \$200 each month, if there is one surviving minor child;

(2) \$300 each month, if there are two surviving minor children; or

(3) \$400 each month, if there are three or more surviving minor children.

(b) A child's entitlement to assistance payable under this section ends on the child's 21st birthday. At that time, payments to any other surviving minor children shall be adjusted, as necessary, to conform to the amounts payable under Subsection (a).

(c) A payment under this section is in addition to any payment made under Section 615.022. (V.A.C.S. Art. 6228f, Sec. 3(a) (part).)

Sec. 615.024. PAYMENT TO SURVIVING DEPENDENT PARENT. The state shall pay an eligible surviving dependent parent:

- (1) \$20,000, if there is only one eligible surviving dependent parent; or
- (2) \$10,000 each, if there are two eligible surviving dependent parents. (V.A.C.S. Art. 6228f, Sec. 3(b) (part).)

Sec. 615.025. PAYMENT TO SURVIVING DEPENDENT SIBLING. (a) The state shall pay to an eligible surviving dependent sibling or to the sibling's duly appointed or qualified guardian or other legal representative:

- (1) \$200 each month, if there is one eligible surviving dependent sibling;
- (2) \$300 each month, if there are two eligible surviving dependent siblings; or
- (3) \$400 each month, if there are three or more eligible surviving dependent siblings.

(b) A sibling's entitlement to assistance payable under this section ends on the sibling's 18th birthday. At that time, payments to any other eligible surviving dependent siblings shall be adjusted, if necessary, to conform with the amounts specified by Subsection (a).

(c) A payment under this section is in addition to any payment made under Section 615.024. (V.A.C.S. Art. 6228f, Sec. 3(b) (part).)

[Sections 615.026 to 615.040 reserved for expansion]

#### SUBCHAPTER C. ADMINISTRATION AND PROCEDURE

Sec. 615.041. PROOF OF CLAIM. Proof of the death of an individual listed under Section 615.003 that is claimed to meet the requirements of Section 615.021(1) shall be furnished to the board of trustees of the Employees Retirement System of Texas in the form and with additional evidence and information required by the board. (V.A.C.S. Art. 6228f, Sec. 4 (part).)

Sec. 615.042. AWARD AND PAYMENT OF ASSISTANCE. (a) The board of trustees of the Employees Retirement System of Texas shall notify the comptroller of the board's determination that a claim under this chapter is valid and justifies payment.

(b) On receipt of the notice, the comptroller shall issue a warrant to each claimant in the proper amount from the fund appropriated for that purpose.

(c) Payments under this chapter on behalf of a surviving child or dependent sibling are payable beginning on the first day of the first month after the death of the individual listed in Section 615.003. (V.A.C.S. Art. 6228f, Sec. 5 (part).)

Sec. 615.043. DENIAL OF CLAIM. If the board of trustees of the Employees Retirement System of Texas denies a claim, the board shall send a notice of the denial to:

- (1) the person making the claim; or
- (2) the duly qualified guardian or legal representative of a surviving minor child or dependent sibling, if a claim is being made on behalf of the child or sibling. (V.A.C.S. Art. 6228f, Sec. 5 (part).)

Sec. 615.044. APPEALS. (a) A person whose claim for payment to a surviving spouse, minor child, or dependent parent or sibling is denied or the person's legal representative may appeal the denial to a district court of the residence of the surviving spouse, minor child, or dependent parent or sibling or to a district court in Travis County.

(b) An appeal under this section must be made not later than the 20th day after the date the claimant or legal representative receives notice of the denial.

(c) Proceedings on the appeal are by trial de novo, as that term is used in an appeal from a justice court to the county court. (V.A.C.S. Art. 6228f, Sec. 6.)

CHAPTER 616. EMERGENCY INTERIM PUBLIC OFFICE SUCCESSION

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 616.001. SHORT TITLE
- Sec. 616.002. DEFINITIONS
- Sec. 616.003. DISPUTES

[Sections 616.004 to 616.020 reserved for expansion]

SUBCHAPTER B. EMERGENCY INTERIM SUCCESSORS

- Sec. 616.021. POWERS AND DUTIES OF EMERGENCY INTERIM SUCCESSOR
- Sec. 616.022. DESIGNATION OF EMERGENCY INTERIM SUCCESSOR TO STATE OR POLITICAL SUBDIVISION OFFICER
- Sec. 616.023. DESIGNATION OF EMERGENCY INTERIM SUCCESSOR TO LOCAL OFFICER
- Sec. 616.024. TERM OF DESIGNATION
- Sec. 616.025. OATH; BOND
- Sec. 616.026. TERMINATION OF POWERS AND DUTIES BY LEGISLATURE

CHAPTER 616. EMERGENCY INTERIM PUBLIC OFFICE SUCCESSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 616.001. SHORT TITLE. This chapter may be cited as the Emergency Interim Public Office Succession Act. (V.A.C.S. Art. 6252-10a, Sec. 1.)

Sec. 616.002. DEFINITIONS. In this chapter:

(1) "Emergency interim successor" means an individual designated under this chapter to exercise the powers and perform the duties of an office.

(2) "Office" includes:

(A) a state office, the powers and duties of which are defined by the constitution or laws of this state, except the governor, a member of the judiciary, and a member of the legislature; and

(B) a local office, the powers and duties of which are defined by the constitution or laws of this state or by a charter or an ordinance.

(3) "Political subdivision" includes a municipality, a county, and a fire, power, or drainage district that is not included under Section 616.023. (V.A.C.S. Art. 6252-10a, Secs. 2 (part), 5 (part).)

Sec. 616.003. DISPUTES. (a) A dispute of fact under this chapter that relates to an office in the executive branch of state government, except a dispute of fact relating to the governor, shall be resolved by the governor or other official authorized to exercise the powers and perform the duties of the governor.

(b) A decision made by the governor or the official under this section is final. (V.A.C.S. Art. 6252-10a, Sec. 9.)

[Sections 616.004 to 616.020 reserved for expansion]

SUBCHAPTER B. EMERGENCY INTERIM SUCCESSORS

Sec. 616.021. POWERS AND DUTIES OF EMERGENCY INTERIM SUCCESSOR. (a) The powers and duties of an office of the state or of a political subdivision may be exercised by an emergency interim successor under this chapter only if there has been an attack or series of attacks on the United States by an enemy of the United States that causes or may cause substantial damage or injury to civilian property or individuals in the United States by:

(1) sabotage;

(2) the use of bombs, missiles, shell fire, or atomic, radiological, chemical, bacteriological, or biological means; or

(3) the use of other weapons or processes.

(b) The designated emergency interim successor to an officer of the state or of a political subdivision, in the order specified, shall exercise the powers and perform the duties of the office if:

(1) the officer and the officer's deputy are absent or unable to exercise the powers and perform the duties of the office; or

(2) the office is vacant and a deputy is not authorized to perform the duties of the office.

(c) The emergency interim successor to a state officer shall exercise the powers and perform the duties of the office until:

(1) the governor or other official authorized to exercise the powers and perform the duties of the governor appoints a successor to fill the vacancy;

(2) a successor is otherwise appointed or elected and qualifies; or

(3) the officer, the officer's deputy, or a preceding named emergency interim successor is available to exercise the powers and perform the duties of the office.

(d) The emergency interim successor to an officer of a political subdivision shall exercise the powers and perform the duties of the office until:

(1) the vacancy is filled; or

(2) the officer, the officer's deputy, or a preceding emergency interim successor is available to exercise the powers and perform the duties of the office. (V.A.C.S. Art. 6252-10a, Secs. 2 (part), 3 (part), 5 (part), 7 (part).)

Sec. 616.022. DESIGNATION OF EMERGENCY INTERIM SUCCESSOR TO STATE OR POLITICAL SUBDIVISION OFFICER. (a) An officer of the state or of a political subdivision shall:

(1) designate by title emergency interim successors, if the officer is a state officer;

(2) designate by title or, if designation by title is not feasible, by name emergency interim successors, if the officer is an officer of a political subdivision;

(3) specify the order of succession; and

(4) review and revise, as necessary, the designations to ensure their current status.

(b) The officer shall designate a sufficient number of emergency interim successors, in addition to deputies authorized by law to exercise the powers and perform the duties of the office, so that there is a total of at least three and not more than seven emergency interim successors and deputies.

(c) The governor or an official authorized to exercise the powers and perform the duties of governor may adopt regulations governing designations made by state officers under this section.

(d) The chief executive of a political subdivision may adopt regulations governing designations made by officers of the subdivision under this section. (V.A.C.S. Art. 6252-10a, Secs. 3 (part), 5 (part).)

Sec. 616.023. DESIGNATION OF EMERGENCY INTERIM SUCCESSOR TO LOCAL OFFICER. (a) This section applies only to a local office for which the governing body of the local governmental entity may determine by ordinance or resolution the manner in which a vacancy is filled or temporary appointment is made.

(b) The governing body of the local governmental entity may enact a resolution or an ordinance providing for the designation under this chapter of emergency interim successors to local officers.

(c) In this section, "local governmental entity" includes a municipality or county. (V.A.C.S. Art. 6252-10a, Sec. 4.)

Sec. 616.024. TERM OF DESIGNATION. The designation of an individual as an emergency interim successor continues at the pleasure of the designating authority and may

be terminated with or without cause until the individual is authorized to exercise the powers and perform the duties of office in accordance with this chapter. (V.A.C.S. Art. 6252-10a, Sec. 8.)

Sec. 616.025. OATH; BOND. (a) An emergency interim successor at the time of designation shall take the oath required to exercise the powers and perform the duties of office.

(b) An individual, before exercising the powers or performing the duties of an office to which that individual succeeds, shall comply with the law relating to taking office, including provisions for a bond and an oath. (V.A.C.S. Art. 6252-10a, Sec. 6.)

Sec. 616.026. TERMINATION OF POWERS AND DUTIES BY LEGISLATURE. The legislature, by concurrent resolution, may terminate the authority of emergency interim successors to exercise the powers and perform the duties of office. (V.A.C.S. Art. 6252-10a, Sec. 7 (part).)

## CHAPTER 617. COLLECTIVE BARGAINING AND STRIKES

Sec. 617.001. DEFINITION

Sec. 617.002. COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES PROHIBITED

Sec. 617.003. PROHIBITION ON STRIKES BY PUBLIC EMPLOYEES

Sec. 617.004. RIGHT TO WORK

Sec. 617.005. EFFECT OF CHAPTER

## CHAPTER 617. COLLECTIVE BARGAINING AND STRIKES

Sec. 617.001. DEFINITION. In this chapter, "labor organization" means any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions. (V.A.C.S. Art. 5154c, Sec. 5.)

Sec. 617.002. COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES PROHIBITED. (a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.

(b) A contract entered into in violation of Subsection (a) is void.

(c) An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of public employees. (V.A.C.S. Art. 5154c, Secs. 1, 2.)

Sec. 617.003. PROHIBITION ON STRIKES BY PUBLIC EMPLOYEES. (a) Public employees may not strike or engage in an organized work stoppage against the state or a political subdivision of the state.

(b) A public employee who violates Subsection (a) forfeits all civil service rights, reemployment rights, and any other rights, benefits, and privileges the employee enjoys as a result of public employment or former public employment.

(c) The right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage. (V.A.C.S. Art. 5154c, Sec. 3.)

Sec. 617.004. RIGHT TO WORK. An individual may not be denied public employment because of the individual's membership or nonmembership in a labor organization. (V.A.C.S. Art. 5154c, Sec. 4.)

Sec. 617.005. EFFECT OF CHAPTER. This chapter does not impair the right of public employees to present grievances concerning their wages, hours of employment, or conditions of work either individually or through a representative that does not claim the right to strike. (V.A.C.S. Art. 5154c, Sec. 6.)

[Chapters 618 to 650 reserved for expansion]

SUBTITLE B. STATE OFFICERS AND EMPLOYEES

CHAPTER 651. GENERAL PROVISIONS

- Sec. 651.001. DEFINITION
- Sec. 651.002. BENEFITS OF AND RESTRICTIONS ON STATE EMPLOYEES WORKING OUT OF STATE
- Sec. 651.003. WRITTEN STATEMENT OF DISSENTING BOARD MEMBER

SUBTITLE B. STATE OFFICERS AND EMPLOYEES

CHAPTER 651. GENERAL PROVISIONS

Sec. 651.001: DEFINITION. In any state statute, "officer" means an officer of this state unless otherwise expressly provided. (V.A.C.S. Art. 22.)

Sec. 651.002. BENEFITS OF AND RESTRICTIONS ON STATE EMPLOYEES WORKING OUT OF STATE. A state employee who is required to work outside of this state is entitled to the same benefits and is subject to the same restrictions provided by law for other state employees, including vacation, leave from employment, and the employment policies and restrictions provided by the General Appropriations Act. (V.A.C.S. Art. 6252-8c.)

Sec. 651.003. WRITTEN STATEMENT OF DISSENTING BOARD MEMBER. A member of the governing board of an agency in the executive branch of state government may dissent from an action taken by the board and is entitled to enter a written statement of dissent into the minutes of the meeting. (V.A.C.S. Art. 6252-17c.)

CHAPTER 652. VACANCIES

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 652.001. TERM OF APPOINTMENT TO VACANCY

[Sections 652.002 to 652.020 reserved for expansion]

SUBCHAPTER B. PROHIBITIONS ON FILLING VACANCIES

- Sec. 652.021. SCOPE OF SUBCHAPTER
- Sec. 652.022. DEFINITION
- Sec. 652.023. PROHIBITION AGAINST FILLING CERTAIN VACANCIES
- Sec. 652.024. EXCEPTIONS
- Sec. 652.025. APPOINTMENT VOID
- Sec. 652.026. VACANCY DURING TRANSITION PERIOD

CHAPTER 652. VACANCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 652.001. TERM OF APPOINTMENT TO VACANCY. An appointment made by the governor to a vacancy in the office of a commissioner, commission, or board created by law is for the unexpired term, unless otherwise provided by law. (V.A.C.S. Art. 21.)

[Sections 652.002 to 652.020 reserved for expansion]

SUBCHAPTER B. PROHIBITIONS ON FILLING VACANCIES

Sec. 652.021. SCOPE OF SUBCHAPTER. (a) This subchapter applies to a vacancy in a state or district office that is to be filled by appointment by the governor.

(b) For purposes of this subchapter, the expiration of a state or district officer's term of office creates a vacancy in the office. (V.A.C.S. Art. 19a, Sec. 1.)

Sec. 652.022. DEFINITION. In this subchapter, "transition period" means the period beginning on November 1 preceding the day of a general election for the office of governor and ending on the day the individual elected governor, or the individual's successor if the individual elected governor is unable to serve, takes office as governor. (V.A.C.S. Art. 19a, Sec. 2(a) (part); New.)

Sec. 652.023. PROHIBITION AGAINST FILLING CERTAIN VACANCIES. An incumbent governor may not, during the transition period, appoint an individual to fill a vacancy that occurred before the beginning of the transition period. (V.A.C.S. Art. 19a, Sec. 2(a) (part).)

Sec. 652.024. EXCEPTIONS. Section 652.023 does not apply to:

(1) an incumbent governor if the secretary of state proclaims that, according to the secretary's count of returns from the general election, the governor is reelected; or

(2) a vacancy that:

(A) first occurs after October 1 preceding the transition period and before the transition period begins;

(B) is caused by the death of the officeholder; and

(C) would not have occurred during the period described by Paragraph (A) by the expiration of the officeholder's term of office. (V.A.C.S. Art. 19a, Secs. 2(a) (part), (b), (d).)

Sec. 652.025. APPOINTMENT VOID. An appointment made in violation of Section 652.023 is void. (V.A.C.S. Art. 19a, Sec. 2(c).)

Sec. 652.026. VACANCY DURING TRANSITION PERIOD. (a) If a vacancy first occurs during the transition period, the incumbent governor may appoint an individual to fill the vacancy only for a partial term expiring February 1 following the occurrence of the vacancy.

(b) This section does not apply to:

(1) a vacancy for which Article V of the Texas Constitution prescribes a different term; or

(2) an appointee of an incumbent governor if the secretary of state proclaims that, according to the secretary's count of the returns from the general election, the governor is reelected. (V.A.C.S. Art. 19a, Secs. 3(a), (b).)

CHAPTER 653. BONDS COVERING CERTAIN  
STATE OFFICERS AND EMPLOYEES

Sec. 653.001. SHORT TITLE

Sec. 653.002. LEGISLATIVE INTENT

Sec. 653.003. DEFINITIONS

Sec. 653.004. AUTHORITY TO PURCHASE BONDS

Sec. 653.005. AMOUNT OF BOND COVERAGE

Sec. 653.006. TERMS OF BONDS

Sec. 653.007. WRITING OF BONDS

Sec. 653.008. FILING AND CUSTODY OF BONDS

Sec. 653.009. PAYMENT OF PREMIUMS

Sec. 653.010. ATTORNEY GENERAL AUTHORIZED TO RECOVER LOSS

Sec. 653.011. DEPOSIT OF RECOVERY



CHAPTER 653. BONDS COVERING CERTAIN  
STATE OFFICERS AND EMPLOYEES

Sec. 653.001. **SHORT TITLE.** This chapter may be cited as the State Employee Bonding Act. (V.A.C.S. Art. 6003b, Sec. 1.)

Sec. 653.002. **LEGISLATIVE INTENT.** The intent of the legislature in enacting this chapter is to prescribe:

(1) uniform standards for the bonding of officers and employees of state agencies to provide protection against loss; and

(2) a uniform bond to cover those officers and employees. (V.A.C.S. Art. 6003b, Sec. 2.)

Sec. 653.003. **DEFINITIONS.** In this chapter:

(1) "Bond" means an agreement obligating an insurance company, as a surety, to pay within certain limits a loss caused by a:

(A) dishonest act of an officer or employee of a state agency; or

(B) failure of an officer or employee of a state agency to faithfully perform a duty of the officer's or employee's office or position.

(2) "Faithful performance blanket position bond" means a bond that:

(A) covers all positions in a state agency; and

(B) is conditioned on the faithful performance of the officers' and employees' duties.

(3) "Honesty blanket position bond" means a bond that covers all positions in a state agency for a specific amount for each position.

(4) "Position schedule honesty bond" means a bond that covers, for a specific amount for each position, the honesty of an employee of a state agency who occupies and performs the duties of a position listed in a schedule attached to the bond.

(5) "Specific excess indemnity" means additional bond coverage that exceeds the coverage specified in a faithful performance blanket position bond, honesty blanket position bond, or position schedule honesty bond.

(6) "State agency" means a state department, commission, board, institution, court, or institution of higher education. The term also includes a soil conservation district of the state but does not include any other political subdivision of the state. (V.A.C.S. Art. 6003b, Sec. 3.)

Sec. 653.004. **AUTHORITY TO PURCHASE BONDS.** (a) The head of a state agency may contract for:

(1) a position schedule honesty bond covering not more than 10 offices or positions of the state agency; or

(2) a blanket position bond for more than two offices or positions of the state agency.

(b) The head of a state agency may not contract for coverage of the same office or position under more than one type of bond, other than for specific excess indemnity authorized under Subsection (c).

(c) The head of a state agency, other than the comptroller or the state treasurer, may contract for specific excess indemnity coverage in addition to a blanket bond. The comptroller or the state treasurer may contract for:

(1) specific excess indemnity coverage in addition to an honesty blanket position bond or to a position schedule honesty bond; and

(2) a faithful performance blanket position bond.

(d) A bond covers the office or position rather than the officer or employee in the office or position. (V.A.C.S. Art. 6003b, Secs. 4 (part), 5(b), 6(d) (part).)

Sec. 653.005. **AMOUNT OF BOND COVERAGE.** (a) The head of a state agency shall determine the necessary amount of bond coverage for the agency within the maximum bond coverage limit.

(b) The maximum bond coverage on a state officer or employee, including specific excess indemnity coverage, may not exceed \$10,000 unless the state auditor recommends and approves specific excess indemnity coverage of more than \$10,000 as necessary to protect the state. (V.A.C.S. Art. 6003b, Secs. 4 (part), 5(a), (c).)

Sec. 653.006. TERMS OF BONDS. A bond may be purchased for three-year coverage. (V.A.C.S. Art. 6003b, Sec. 6(d) (part).)

Sec. 653.007. WRITING OF BONDS. (a) Only an insurance company authorized to act as surety in this state may write a bond under this chapter.

(b) A bond under this chapter must be written in triplicate originals on a form approved by the State Board of Insurance. (V.A.C.S. Art. 6003b, Secs. 4 (part), 6(a), (c) (part).)

Sec. 653.008. FILING AND CUSTODY OF BONDS. (a) One original of each bond shall be filed with the secretary of state.

(b) One original of each bond shall be filed with the comptroller.

(c) One original of each bond shall be filed with the state agency covered by the bond.

(d) Each state agency is responsible for custody of the bond. (V.A.C.S. Art. 6003b, Sec. 6(c) (part).)

Sec. 653.009. PAYMENT OF PREMIUMS. The state, as beneficiary, shall pay premiums on bonds under this chapter from:

- (1) money appropriated by the legislature for that purpose;
- (2) money appropriated by the legislature to a state agency for:
  - (A) administration or administration expense;
  - (B) operation expense;
  - (C) general operation expense;
  - (D) maintenance;
  - (E) miscellaneous expense; or
  - (F) contingencies; or

(3) money of a state agency that:

(A) is outside the state treasury; and

(B) may be used by the agency for operational expenses of the agency. (V.A.C.S. Art. 6003b, Sec. 6(b).)

Sec. 653.010. ATTORNEY GENERAL AUTHORIZED TO RECOVER LOSS. The attorney general, on notice by an agency of a loss covered by a bond under this chapter, may:

(1) immediately bring or cause to be brought an action to recover the loss; and

(2) take any action necessary for recovery of the obligation of the surety. (V.A.C.S. Art. 6003b, Sec. 7 (part).)

Sec. 653.011. DEPOSIT OF RECOVERY. A recovery of a loss or a recovery on a bond under this chapter shall be deposited to the credit of the fund from which the loss occurred. (V.A.C.S. Art. 6003b, Sec. 7 (part).)

## CHAPTER 654. POSITION CLASSIFICATION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 654.001. SHORT TITLE

Sec. 654.002. POSITION CLASSIFICATION PLAN

[Sections 654.003 to 654.010 reserved for expansion]

### SUBCHAPTER B. POSITION CLASSIFICATION PLAN

Sec. 654.011. APPLICATION OF POSITION CLASSIFICATION PLAN

- Sec. 654.012. EXCEPTIONS FROM POSITION CLASSIFICATION PLAN
- Sec. 654.013. DEFERRAL FROM POSITION CLASSIFICATION PLAN
- Sec. 654.014. APPOINTMENTS TO CONFORM WITH POSITION CLASSIFICATION PLAN AND GENERAL APPROPRIATIONS ACT
- Sec. 654.015. QUALIFICATION REQUIREMENTS AND SPECIFICATIONS IN POSITION CLASSIFICATION PLAN
- Sec. 654.016. NEW CLASS OR KIND OF WORK

[Sections 654.017 to 654.030 reserved for expansion]

SUBCHAPTER C. CLASSIFICATION OFFICER

- Sec. 654.031. POSITION OF CLASSIFICATION OFFICER
- Sec. 654.032. APPOINTMENT OF CLASSIFICATION OFFICER
- Sec. 654.033. QUALIFICATIONS OF CLASSIFICATION OFFICER
- Sec. 654.034. SALARY OF CLASSIFICATION OFFICER
- Sec. 654.035. FIRST ASSISTANT CLASSIFICATION OFFICER
- Sec. 654.036. GENERAL DUTIES OF CLASSIFICATION OFFICER
- Sec. 654.037. SALARY STUDIES AND RECOMMENDATIONS
- Sec. 654.038. PERSONNEL AUDITS; NOTIFICATION AND VOLUNTARY CORRECTION OF NONCONFORMITY
- Sec. 654.039. REPORT OF INACTION
- Sec. 654.040. ACTION BY GOVERNOR
- Sec. 654.041. EXAMINATION FOR COMPLIANCE BY STATE AUDITOR; REPORTS
- Sec. 654.042. ASSISTANCE FROM STATE AUDITOR
- Sec. 654.043. FREE USE OF COMPTROLLER'S DATA PROCESSING CENTER

[Sections 654.044 to 654.060 reserved for expansion]

SUBCHAPTER D. OTHER LAWS

- Sec. 654.061. CONSTRUCTION WITH OTHER LAWS
- Sec. 654.062. CONFLICT WITH LAWS RELATING TO EMPLOYEE MERIT SYSTEMS IN CERTAIN AGENCIES

CHAPTER 654. POSITION CLASSIFICATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 654.001. SHORT TITLE. This chapter may be cited as the Position Classification Act. (V.A.C.S. Art. 6252-11, Sec. 1.)

Sec. 654.002. POSITION CLASSIFICATION PLAN. In this chapter, the position classification plan is the Texas Position Classification Plan, 1961, that was filed with the governor, as changed under this chapter, and that provides the salary structure for specified state employments. (V.A.C.S. Art. 6252-11, Sec. 3.)

[Sections 654.003 to 654.010 reserved for expansion]

SUBCHAPTER B. POSITION CLASSIFICATION PLAN

Sec. 654.011. APPLICATION OF POSITION CLASSIFICATION PLAN. (a) The position classification plan and the salary rates and provisions in the General Appropriations Act apply to all regular, full-time salaried employments in the state departments, agencies, or judicial entities specified in the articles of the General Appropriations Act that appropriate money to:

- (1) executive and administrative departments and agencies;
- (2) health, welfare, and rehabilitation agencies;

(3) the judiciary, except for judges, district attorneys, and assistant district attorneys; and

(4) agencies of public education, but only the Central Education Agency, the Texas School for the Blind and Visually Impaired, and the Texas School for the Deaf.

(b) Except as provided by this chapter, the position classification plan and the salary rates and provisions in the General Appropriations Act apply to all regular, full-time salaried employments in executive and administrative agencies of the state without regard to whether the money of the agency is kept in the state treasury. (V.A.C.S. Art. 6252-11, Sec. 2 (part).)

Sec. 654.012. EXCEPTIONS FROM POSITION CLASSIFICATION PLAN. The position classification plan does not apply to:

- (1) a constitutional officer or official;
- (2) an elected officer or official;
- (3) an officer appointed by the governor;
- (4) the chief executive of a state agency;
- (5) a teacher in a public school, special school of the state, or state institution of higher education;
- (6) research personnel in state institutions of higher education;
- (7) a medical doctor;
- (8) a professional compensated for services on a fee basis;
- (9) an hourly employee;
- (10) a part-time employee;
- (11) a temporary employee; and
- (12) an employment excluded from the plan:

(A) by executive order of the governor; or

(B) at the direction of the legislature. (V.A.C.S. Art. 6252-11, Sec. 2 (part).)

Sec. 654.013. DEFERRAL FROM POSITION CLASSIFICATION PLAN. Nonacademic employments in state institutions of higher education are deferred from the application of the position classification plan until the governor orders or the legislature directs otherwise. (V.A.C.S. Art. 6252-11, Sec. 2 (part).)

Sec. 654.014. APPOINTMENTS TO CONFORM WITH POSITION CLASSIFICATION PLAN AND GENERAL APPROPRIATIONS ACT. Each employment to which this subchapter applies shall conform to:

- (1) the classes of work described in the position classification plan;
- (2) the titles authorized by the plan; and
- (3) the salary rates and provisions in the General Appropriations Act. (V.A.C.S. Art. 6252-11, Secs. 2 (part), 4 (part).)

Sec. 654.015. QUALIFICATION REQUIREMENTS AND SPECIFICATIONS IN POSITION CLASSIFICATION PLAN. General qualification requirements or similar requirements in the position classification plan, including specifications for experience, training, education, knowledge, skills, abilities, and physical conditions:

- (1) are only meant to represent the qualifications commonly wanted by employing officers of the state; and
- (2) do not have the force of law. (V.A.C.S. Art. 6252-11, Sec. 5 (part).)

Sec. 654.016. NEW CLASS OR KIND OF WORK. (a) A governing board or a chief executive of an agency needing to employ a person in a class or kind of work that is subject to but not described in the position classification plan shall notify the classification officer of the situation.

(b) The classification officer shall, to permit the needed employment, promptly:

- (1) include the employment in an existing class description of work or provide a new class description of work for the employment; and

- (2) set a salary range for the class.
- (c) The classification officer shall notify the comptroller of the actions.
- (d) An action of the classification officer under this section is subject to:
- (1) any limitation established for the agency in the General Appropriations Act, including limitations on the number of positions and amount of appropriations; and
  - (2) the approval of the state auditor with advice from the Legislative Audit Committee. (V.A.C.S. Art. 6252-11, Sec. 5 (part).)

[Sections 654.017 to 654.030 reserved for expansion]

### SUBCHAPTER C. CLASSIFICATION OFFICER

**Sec. 654.031. POSITION OF CLASSIFICATION OFFICER.** The position of classification officer is in the office of the state auditor. (V.A.C.S. Art. 6252-11, Sec. 6(a) (part).)

**Sec. 654.032. APPOINTMENT OF CLASSIFICATION OFFICER.** The state auditor shall appoint the classification officer, subject to the advice and approval of the Legislative Audit Committee. (V.A.C.S. Art. 6252-11, Sec. 6(a) (part).)

**Sec. 654.033. QUALIFICATIONS OF CLASSIFICATION OFFICER.** To be eligible for appointment as classification officer, an individual must have:

- (1) at least six years' experience in position classification or personnel management; or
- (2) a period of experience equivalent to that described in Subdivision (1) in related work in state employment that specially qualifies the person for the position. (V.A.C.S. Art. 6252-11, Sec. 6(a) (part).)

**Sec. 654.034. SALARY OF CLASSIFICATION OFFICER.** The classification officer is entitled to the salary set by the General Appropriations Act. (V.A.C.S. Art. 6252-11, Sec. 6(a) (part).)

**Sec. 654.035. FIRST ASSISTANT CLASSIFICATION OFFICER.** The classification officer, subject to the approval of the state auditor and the Legislative Audit Committee, may appoint a first assistant classification officer to whom the classification officer may delegate the statutory powers and duties of the classification officer when the classification officer is absent. (V.A.C.S. Art. 6252-11, Sec. 6(b).)

**Sec. 654.036. GENERAL DUTIES OF CLASSIFICATION OFFICER.** The classification officer shall:

- (1) maintain and keep current the position classification plan;
- (2) advise and assist state agencies in equitably and uniformly applying the plan;
- (3) assist in personnel audits to ensure conformity with the plan; and
- (4) make recommendations that the classification officer finds necessary and desirable about the operation and for improvement of the plan to the governor and the legislature. (V.A.C.S. Art. 6252-11, Sec. 6(d) (part).)

**Sec. 654.037. SALARY STUDIES AND RECOMMENDATIONS.** The classification officer shall:

- (1) make periodic studies of salary rates in other governmental units and in industry for similar work performed in state government; and
- (2) report the classification officer's findings and recommendations for adjusting state salary ranges to the governor's budget office and the Legislative Budget Board not later than October 1 preceding each regular session of the legislature. (V.A.C.S. Art. 6252-11, Sec. 6(d) (part).)

**Sec. 654.038. PERSONNEL AUDITS; NOTIFICATION AND VOLUNTARY CORRECTION OF NONCONFORMITY.** (a) The classification officer shall notify the chief executive of the agency in writing when a personnel audit reveals nonconformity with the position classification plan or with prescribed salary ranges. The notification shall specify the points of nonconformity.

(b) The chief executive is entitled to a reasonable opportunity to resolve the nonconformity by:

- (1) reassigning the employee to a position title or class consistent with the work performed;
- (2) changing the employee's title or salary rate to conform to the plan and salary range; or
- (3) obtaining a new class description of work and salary range. (V.A.C.S. Art. 6252-11, Sec. 6(e).)

Sec. 654.039. REPORT OF INACTION. The classification officer shall make a written report of the facts to the governor and the Legislative Budget Board if the chief executive of an agency does not comply with Section 654.038(b) before the 21st day after the date of the classification officer's written notification. (V.A.C.S. Art. 6252-11, Sec. 6(f) (part).)

Sec. 654.040. ACTION BY GOVERNOR. In response to a report under Section 654.039, the governor:

- (1) may determine, with the advice of the Legislative Audit Committee, the action to be taken to resolve a nonconformity; and
- (2) may direct the comptroller to not issue a payroll warrant for the appropriate employee or position until the nonconformity is corrected. (V.A.C.S. Art. 6252-11, Sec. 6(f) (part).)

Sec. 654.041. EXAMINATION FOR COMPLIANCE BY STATE AUDITOR; REPORTS. The state auditor shall:

- (1) examine or cause to be examined, in periodic postaudits of their expenditures and by methods the auditor considers appropriate and adequate, whether departments and agencies are in compliance with this chapter; and
- (2) report the findings to the governor, the comptroller, and the Legislative Audit Committee. (V.A.C.S. Art. 6252-11, Sec. 4 (part).)

Sec. 654.042. ASSISTANCE FROM STATE AUDITOR. The state auditor may provide assistance to the classification officer using money appropriated for that purpose. (V.A.C.S. Art. 6252-11, Sec. 6(a) (part).)

Sec. 654.043. FREE USE OF COMPTROLLER'S DATA PROCESSING CENTER. The classification officer may use, without charge, the comptroller's data processing center to process position classification information when the center is available. (V.A.C.S. Art. 6252-11, Sec. 6(c).)

[Sections 654.044 to 654.060 reserved for expansion]

#### SUBCHAPTER D. OTHER LAWS

Sec. 654.061. CONSTRUCTION WITH OTHER LAWS. (a) This chapter does not affect the authority of a governing body or a chief executive of an agency under another law to employ persons or promote or dismiss employees.

(b) This chapter does not authorize an increase in the number of positions in an agency or the amount of appropriations to an agency set by the General Appropriations Act. (V.A.C.S. Art. 6252-11, Sec. 5 (part).)

Sec. 654.062. CONFLICT WITH LAWS RELATING TO EMPLOYEE MERIT SYSTEMS IN CERTAIN AGENCIES. Sections 654.015 and 654.061 do not abrogate statutory authorization for a state agency to operate under an employee merit system as a condition for qualifying for federal grants-in-aid. A merit system agreed to by a state agency and an agency of the federal government shall continue in effect, subject to applicable state law. (V.A.C.S. Art. 6252-11, Sec. 5 (part).)

#### CHAPTER 655. MERIT SELECTION

Sec. 655.001. APPLICABILITY

- Sec. 655.002. MERIT SELECTION PRINCIPLES
- Sec. 655.003. ADDITIONAL MERIT SELECTION PRINCIPLES
- Sec. 655.004. ADMINISTRATION OF MERIT SELECTION

CHAPTER 655. MERIT SELECTION

Sec. 655.001. APPLICABILITY. This chapter applies only to a state agency that is required by federal law or regulation to use a merit system of personnel administration for the agency or for a program administered under the agency. (V.A.C.S. Art. 6252-11g, Sec. 1(a) (part).)

Sec. 655.002. MERIT SELECTION PRINCIPLES. (a) A state agency by rule shall establish intraagency policies and procedures to ensure:

- (1) compliance with the federal requirements; and
- (2) the recruitment, selection, and advancement of highly competent agency personnel.

(b) A rule adopted under this section must ensure that the state agency:

- (1) recruits, selects, and promotes its employees according to the relative abilities, knowledge, and skills of the applicants or employees;
- (2) provides equitable and adequate compensation to an employee;
- (3) provides any employee training necessary to ensure performance of a high quality;
- (4) uses the adequacy of an employee's job performance to determine whether the employee will be retained;
- (5) treats a job applicant or employee fairly in all aspects of personnel administration;
- (6) complies fully with state and federal equal opportunity and nondiscrimination laws; and

(7) protects an employee against coercion for partisan political purposes and prohibits the employee from using employment status to interfere with or affect the result of an election or nomination for office. (V.A.C.S. Art. 6252-11g, Secs. 1(a) (part), 2(a).)

Sec. 655.003. ADDITIONAL MERIT SELECTION PRINCIPLES. A state agency shall implement any additional merit principles required by federal law or regulation. (V.A.C.S. Art. 6252-11g, Sec. 2(b).)

Sec. 655.004. ADMINISTRATION OF MERIT SELECTION. A state agency may create a separate division within the agency to administer merit selection policies and procedures if the chief executive of the agency considers the creation necessary. (V.A.C.S. Art. 6252-11g, Sec. 1(b).)

CHAPTER 656. JOB NOTICES AND TRAINING

SUBCHAPTER A. EMPLOYMENT OPENINGS

Sec. 656.001. STATE AGENCY EMPLOYMENT OPENINGS

[Sections 656.002 to 656.020 reserved for expansion]

SUBCHAPTER B. JOB NOTICES

- Sec. 656.021. DEFINITIONS
- Sec. 656.022. SUBMISSION OF JOB INFORMATION FORMS
- Sec. 656.023. JOB INFORMATION FORMS
- Sec. 656.024. PUBLIC NOTICE OF JOB VACANCIES
- Sec. 656.025. OTHER EFFORTS TO INFORM SOURCES OF VACANCIES

[Sections 656.026 to 656.040 reserved for expansion]

SUBCHAPTER C. TRAINING

- Sec. 656.041. SHORT TITLE
- Sec. 656.042. FINDINGS AND PURPOSE
- Sec. 656.043. DEFINITION
- Sec. 656.044. PUBLIC FUNDS FOR TRAINING AND EDUCATION
- Sec. 656.045. REQUIRED ATTENDANCE AT PROGRAM
- Sec. 656.046. PURPOSES OF PROGRAM
- Sec. 656.047. PAYMENT OF PROGRAM EXPENSES
- Sec. 656.048. RULES RELATING TO TRAINING AND EDUCATION
- Sec. 656.049. AUTHORITY TO CONTRACT

CHAPTER 656. JOB NOTICES AND TRAINING

SUBCHAPTER A. EMPLOYMENT OPENINGS

Sec. 656.001. STATE AGENCY EMPLOYMENT OPENINGS. Any agency, board, bureau, commission, committee, council, court, department, institution, or office in the executive or judicial branch of state government that has an employment opening for which persons from outside the agency will be considered shall list the opening with the Texas Employment Commission. (V.A.C.S. Art. 5221g-2.)

[Sections 656.002 to 656.020 reserved for expansion]

SUBCHAPTER B. JOB NOTICES

Sec. 656.021. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Texas Employment Commission.
- (2) "State agency" means:

(A) a department, commission, board, office, or other agency that:

- (i) is in the executive branch of state government;
- (ii) has authority that is not limited to a geographical portion of this state; and
- (iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined by Section 61.003, Education Code, other than a public junior college. (V.A.C.S. Art. 6252-11b, Sec. 1 (part).)

Sec. 656.022. SUBMISSION OF JOB INFORMATION FORMS. As soon as possible after a job vacancy occurs or is filled in Travis County in a state agency, the agency shall complete and deliver to the commission and to the Equal Employment Opportunity Office in the governor's office the appropriate information form prescribed by the commission and pertaining to the job vacancy or placement. (V.A.C.S. Art. 6252-11b, Secs. 1 (part); 2(a).)

Sec. 656.023. JOB INFORMATION FORMS. The commission shall prescribe the forms for information from state agencies necessary for the commission to serve as a central processing agency for state agency job opportunities in Travis County. (V.A.C.S. Art. 6252-11b, Sec. 3.)

Sec. 656.024. PUBLIC NOTICE OF JOB VACANCIES. The commission shall publicly list, in accordance with the commission's procedures, for at least 10 working days, each notice of a job vacancy delivered under Section 656.022 unless the commission is sooner notified by the state agency having the vacancy that the vacancy has been filled. (V.A.C.S. Art. 6252-11b, Sec. 4(a).)

Sec. 656.025. OTHER EFFORTS TO INFORM SOURCES OF VACANCIES. A state agency is encouraged to continue other efforts used to inform outside applicant recruitment sources of job vacancies. (V.A.C.S. Art. 6252-11b, Sec. 5.)



[Sections 656.026 to 656.040 reserved for expansion]

### SUBCHAPTER C. TRAINING

Sec. 656.041. **SHORT TITLE.** This subchapter may be cited as the State Employees Training Act. (V.A.C.S. Art. 6252-11a, Sec. 1.)

Sec. 656.042. **FINDINGS AND PURPOSE.** Programs for the training and education of state administrators and employees materially aid effective state administration, and public money spent on those programs serves an important public purpose. (V.A.C.S. Art. 6252-11a, Sec. 2.)

Sec. 656.043. **DEFINITION.** In this subchapter, "state agency" means a department, agency, or institution of this state, including an institution of higher education as defined by Section 61.003, Education Code. (V.A.C.S. Art. 6252-11a, Sec. 3(b); New.)

Sec. 656.044. **PUBLIC FUNDS FOR TRAINING AND EDUCATION.** A state agency may use public funds to provide training and education for its administrators and employees. The training or education must be related to the duties or prospective duties of the administrator or employee. (V.A.C.S. Art. 6252-11a, Secs. 3(a) (part), 4 (part).)

Sec. 656.045. **REQUIRED ATTENDANCE AT PROGRAM.** A state agency may require an administrator or employee of the agency to attend, as all or part of the administrator's or employee's duties, a training or education program if the training or education is related to the administrator's or employee's duties or prospective duties. (V.A.C.S. Art. 6252-11a, Sec. 4 (part).)

Sec. 656.046. **PURPOSES OF PROGRAM.** A state agency's training and educational program may include:

- (1) preparing for technological and legal developments;
- (2) increasing work capabilities;
- (3) increasing the number of qualified employees in areas designated by institutions of higher education as having an acute faculty shortage; and
- (4) increasing the competence of state employees. (V.A.C.S. Art. 6252-11a, Sec. 3(a) (part).)

Sec. 656.047. **PAYMENT OF PROGRAM EXPENSES.** A state agency may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program. (V.A.C.S. Art. 6252-11a, Sec. 3(a) (part).)

Sec. 656.048. **RULES RELATING TO TRAINING AND EDUCATION.** (a) A state agency shall adopt rules relating to:

- (1) the eligibility of the agency's administrators and employees for training and education supported by the agency; and
- (2) the obligations assumed by the administrators and employees on receiving the training and education.

(b) A rule adopted under this section is not effective, and public funds may not be spent under the rule, until the governor approves the rule in writing. (V.A.C.S. Art. 6252-11a, Sec. 5.)

Sec. 656.049. **AUTHORITY TO CONTRACT.** A state agency may contract with another state, local, or federal department, agency, or institution, including a state-supported college or university, to train or educate its administrators and employees or may join in presenting a training or educational program. (V.A.C.S. Art. 6252-11a, Sec. 3(a) (part).)

### CHAPTER 657. VETERAN'S EMPLOYMENT PREFERENCES

Sec. 657.001. **DEFINITIONS**

Sec. 657.002. **INDIVIDUALS ENTITLED TO VETERAN'S EMPLOYMENT PREFERENCE**

- Sec. 657.003. VETERAN'S EMPLOYMENT PREFERENCE
- Sec. 657.004. QUOTAS FOR PUBLIC ENTITIES AND PUBLIC WORKS
- Sec. 657.005. EMPLOYMENT INVESTIGATION
- Sec. 657.006. FEDERAL LAW AND GRANTS

CHAPTER 657. VETERAN'S EMPLOYMENT PREFERENCES

Sec. 657.001. DEFINITIONS. In this chapter:

(1) "Established service-connected disability" means a disability that has been or may be established by official records.

(2) "Public entity" means a public department, commission, board, or agency. (V.A.C.S. Art. 4413(31), Sec. 3 (part); New.)

Sec. 657.002. INDIVIDUALS ENTITLED TO VETERAN'S EMPLOYMENT PREFERENCE. (a) A veteran or the widow or orphan of a veteran qualifies for a veteran's employment preference if the veteran:

(1) served in the military during:

- (A) the Spanish-American War;
- (B) the Philippine Insurrection;
- (C) the China Relief Expedition;
- (D) World War I;
- (E) World War II;

(F) any other military conflict in which the United States was a participant before June 18, 1945;

(G) the Korean War after June 24, 1950; or

(H) the Vietnam conflict after July, 1953;

(2) was honorably discharged from military service; and

(3) is competent.

(b) This chapter does not apply to a veteran who:

(1) was a conscientious objector at the time of the veteran's discharge from military service; or

(2) is receiving or entitled to receive military retirement pay, other than disability retirement pay, from the United States.

(c) In this section, "veteran" means an individual who served in the army, navy, air force, marine corps, or coast guard of the United States or in an auxiliary service of one of those branches of the armed forces. (V.A.C.S. Art. 4413(31), Secs. 1 (part), 3(a); New.)

Sec. 657.003. VETERAN'S EMPLOYMENT PREFERENCE. (a) An individual who qualifies for a veteran's employment preference is entitled to a preference in employment with or appointment to a public entity or for a public work of this state over other applicants for the same position who do not have a greater qualification.

(b) An individual who has an established service-connected disability and is entitled to a veteran's employment preference is entitled to preference for employment or appointment in a position for which a competitive examination is not held over all other applicants for the same position without a service-connected disability and who do not have a greater qualification.

(c) If a public entity or public work of this state requires a competitive examination under a merit system or civil service plan for selecting or promoting employees, an individual entitled to a veteran's employment preference who otherwise is qualified for that position and who has received at least the minimum required score for the test is entitled to have a service credit of 10 points added to the test score. An individual who has an established service-connected disability is entitled to have a service credit of five additional points added to the individual's test score.

(d) An individual entitled to a veteran's employment preference is not disqualified from holding a position with a public entity or public work of this state because of age or an established service-connected disability if the age or disability does not make the individual incompetent to perform the duties of the position.

(e) This chapter does not apply to:

(1) the position of private secretary or deputy of an official or department; or

(2) a person holding a strictly confidential relation to the appointing or employing officer. (V.A.C.S. Art. 4413(31), Secs. 1 (part), 3 (part), 6.)

Sec. 657.004. QUOTAS FOR PUBLIC ENTITIES AND PUBLIC WORKS. (a) An individual whose duty is to appoint or employ individuals for a public entity or public work of this state shall give preference in hiring to individuals entitled to a veteran's employment preference so that at least 40 percent of the employees of the public entity or public work are selected from individuals given that preference. A public entity or public work that does not have 40 percent of its employees who are entitled to the preference shall, in filling vacancies, give preferences to individuals entitled to a veteran's employment preference until it has reached the 40 percent quota.

(b) In reaching the 40 percent quota, a public entity or public work shall, when possible, give 10 percent of the preferences granted under this chapter to qualified veterans discharged from the armed services of the United States within the preceding 18 months.

(c) A public entity or public work that meets the percentage quota in this section is exempt from the requirements of Section 657.005. (V.A.C.S. Art. 4413(31), Secs. 2, 4 (part).)

Sec. 657.005. EMPLOYMENT INVESTIGATION. (a) The individual whose duty is to appoint or employ an applicant for a position with a public entity or public work of this state or an officer or the chief administrator of the entity or work who receives an application for appointment or employment by an individual entitled to a veteran's employment preference, before appointing or employing any individual, shall investigate the qualifications of the applicant for the position. If the applicant is of good moral character and can perform the duties of the position, the officer, chief executive, or individual whose duty is to appoint or employ shall appoint or employ the applicant for the position.

(b) An applicant with an established service-connected disability shall furnish the official records to the individual whose duty is to fill the position. (V.A.C.S. Art. 4413(31), Secs. 3 (part), 4 (part).)

Sec. 657.006. FEDERAL LAW AND GRANTS. To the extent that this chapter conflicts with federal law or a limitation provided by a federal grant to a public entity, this chapter shall be construed to operate in harmony with the federal law or limitation of the federal grant. (V.A.C.S. Art. 4413(31), Sec. 5.)

CHAPTER 658. HOURS OF LABOR

Sec. 658.001. DEFINITIONS

Sec. 658.002. WORK HOURS REQUIRED FOR SALARIED EMPLOYEES

Sec. 658.003. VOLUNTARY WORK REDUCTION PROGRAM

Sec. 658.004. NOTICE OF WORK REDUCTION PROGRAM

Sec. 658.005. REGULAR OFFICE HOURS FOR STATE EMPLOYEES

Sec. 658.006. STAGGERED WORKING HOURS; CAPITOL AREA IN AUSTIN

Sec. 658.007. WORKING HOURS FOR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION

CHAPTER 658. HOURS OF LABOR

Sec. 658.001. DEFINITIONS. In this chapter:

(1) "Full-time state employee" means a person employed by a state agency who, if not participating in a voluntary work reduction program under Section 658.003, is required to work for the agency not less than 40 hours a week.

(2) "State agency" means:

(A) a board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state; or

(B) the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or other agency in the judicial branch. (V.A.C.S. Art. 5165a, Sec. 1.)

Sec. 658.002. **WORK HOURS REQUIRED FOR SALARIED EMPLOYEES.** (a) A state employee paid a full-time salary shall work not less than 40 hours a week.

(b) The chief administrator of a state agency that must maintain certain services 24 hours a day may require essential employees who perform those services to be on duty for a workweek that exceeds 40 hours in necessary or emergency situations.

(c) This section does not apply to a houseparent who is employed by and lives at a Texas Youth Commission facility. (V.A.C.S. Art. 5165a, Sec. 2.)

Sec. 658.003. **VOLUNTARY WORK REDUCTION PROGRAM.** (a) To increase state efficiency while reducing the cost of state government, a state agency may create a work reduction program in which a full-time state employee of the agency agrees to accept reduced wages and benefits for a proportionate reduction in work hours.

(b) Employee participation in a work reduction program created under this section is voluntary.

(c) An employee who elects to participate in a work reduction program must agree to participate in the program for at least six calendar months. The agreement must be in writing and signed by the employee.

(d) A temporary or exempt employee is not eligible to participate in the program. (V.A.C.S. Art. 5165a, Sec. 2A.)

Sec. 658.004. **NOTICE OF WORK REDUCTION PROGRAM.** (a) The chief administrator of a state agency that has created a work reduction program under Section 658.003 shall place notice of the program's availability in common areas of the agency.

(b) The chief administrator of a state agency may not discuss, initiate discussion of, or orally inform an employee of the work reduction program unless the employee first approaches the chief administrator about the availability of the program. (V.A.C.S. Art. 5165a, Sec. 2B.)

Sec. 658.005. **REGULAR OFFICE HOURS FOR STATE EMPLOYEES.** (a) Normal office hours of a state agency are from 8 a.m. to 5 p.m., Monday through Friday. These hours are the regular working hours for a full-time state employee.

(b) If a chief administrator of a state agency considers it necessary or advisable, offices also may be kept open during other hours and on other days, and the time worked counts toward the 40 hours a week that are required under Section 658.002.

(c) The chief administrator of a state agency may make exceptions to the minimum length of the workweek established by this chapter to take care of any emergency or public necessity that the chief administrator finds to exist.

(d) This section does not apply to an employee paid by the hour. (V.A.C.S. Art. 5165a, Sec. 2C (part).)

Sec. 658.006. **STAGGERED WORKING HOURS; CAPITOL AREA IN AUSTIN.** Normal working hours for employees of a state agency in the Capitol area in Austin may be staggered as authorized by the General Appropriations Act for traffic regulation or public safety. (V.A.C.S. Art. 5165a, Sec. 2C (part).)

Sec. 658.007. **WORKING HOURS FOR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION.** (a) The governing board of an institution of higher education or a university system, as those terms are defined in Section 61.003, Education Code, may make exceptions to the minimum length of the workweek and the maximum length of a workday established by this chapter to achieve and maintain operational efficiency at the institution of higher education, university system, or an office, department, or division of either.

(b) A full-time salaried employee may not be authorized under this section to work less than 40 hours in a calendar week. (V.A.C.S. Art. 5165a, Sec. 2D.)

CHAPTER 659. COMPENSATION

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 659.001. EQUAL WORK, EQUAL PAY
- Sec. 659.002. DEDUCTIONS

[Sections 659.003 to 659.010 reserved for expansion]

SUBCHAPTER B. SALARY AMOUNTS

- Sec. 659.011. SALARIES SET IN APPROPRIATIONS ACT
- Sec. 659.012. JUDICIAL SALARIES
- Sec. 659.013. STATUTORY SALARIES SUSPENDED
- Sec. 659.014. SUSPENDED LAWS CONTINUED IN EFFECT

[Sections 659.015 to 659.030 reserved for expansion]

SUBCHAPTER C. COMPENSATORY PER DIEM

- Sec. 659.031. DEFINITION
- Sec. 659.032. PER DIEM ENTITLEMENT
- Sec. 659.033. STATUTORY PER DIEM SUSPENDED

[Sections 659.034 to 659.040 reserved for expansion]

SUBCHAPTER D. LONGEVITY PAY

- Sec. 659.041. DEFINITIONS
- Sec. 659.042. EXCLUSIONS
- Sec. 659.043. ENTITLEMENT
- Sec. 659.044. AMOUNT
- Sec. 659.045. CHANGE IN STATUS
- Sec. 659.046. ACCRUAL OF LIFETIME SERVICE CREDIT
- Sec. 659.047. COMPTROLLER RULES

[Sections 659.048 to 659.060 reserved for expansion]

SUBCHAPTER E. ADDITIONAL COMPENSATION AND EXPENSES

- Sec. 659.061. EXPENSES OF EMPLOYEES INJURED OR KILLED WHILE ON DUTY
- Sec. 659.062. HAZARDOUS DUTY PAY

[Sections 659.063 to 659.080 reserved for expansion]

SUBCHAPTER F. METHOD AND FREQUENCY OF PAYMENT

- Sec. 659.081. PAYMENT ONCE A MONTH
- Sec. 659.082. PAYMENT TWICE A MONTH
- Sec. 659.083. PAYDAY
- Sec. 659.084. ELECTRONIC FUNDS TRANSFER

CHAPTER 659. COMPENSATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 659.001. EQUAL WORK, EQUAL PAY. A woman who performs public service for this state is entitled to be paid the same compensation for her service as is paid to a man who performs the same kind, grade, and quantity of service, and a distinction in compensation may not be made because of sex. (V.A.C.S. Art. 6825.)

Sec. 659.002. DEDUCTIONS. (a) A state agency may not make a deduction from the compensation paid to an officer or employee whose compensation is paid in full or in part from state funds unless the deduction is authorized by law.

(b) In this section, "state agency" means:

(1) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of this state, including an institution of higher education as defined by Section 61.003, Education Code;

(2) the legislature or a legislative agency; or

(3) the supreme court, the court of criminal appeals, a court of appeals, the state bar, or another state judicial agency. (V.A.C.S. Art. 6813e.)

[Sections 659.003 to 659.010 reserved for expansion]

SUBCHAPTER B. SALARY AMOUNTS

Sec. 659.011. SALARIES SET IN APPROPRIATIONS ACT. The salaries of all state officers, and employees are in the amounts provided by the biennial appropriations act. (V.A.C.S. Arts. 6813b, Sec. 1 (part), 6822 (part).)

Sec. 659.012. JUDICIAL SALARIES. (a) A justice of a court of appeals other than the chief justice is entitled to an annual salary from the state that is five percent less than the salary provided by the General Appropriations Act for a justice of the supreme court. The combined salary of a justice of the court of appeals other than the chief justice from all state and county sources may not exceed the amount that is \$1,000 less than the salary provided for a justice of the supreme court.

(b) The chief justice of a court of appeals is entitled to an annual salary from the state that is \$500 more than the salary provided for the other justices of the court of appeals. The combined salary of the chief justice of a court of appeals may not exceed the amount that is \$500 less than the salary provided for a justice of the supreme court.

(c) A judge of a district court is entitled to an annual salary from the state that is 10 percent less than the salary provided in the General Appropriations Act for a justice of the supreme court. Unless otherwise provided by law, the combined salary of a district judge from state and county sources may not exceed the amount that is \$2,000 less than the salary provided for a justice of the supreme court. To the extent of any conflict, the salary differential provided by this section for the combined salary of a district judge prevails over any differential set by Chapter 32.

(d) For the purpose of salary payments by the state, the comptroller shall determine from sworn statements filed by the justices of the courts of appeals and district judges that the required salary differentials provided by this section are maintained. If a salary combined with a county supplement would be in excess of the differential provided by this section, the comptroller shall reduce the state salary by the amount of the excess. (V.A.C.S. Art. 6813b, Sec. 3.)

Sec. 659.013. STATUTORY SALARIES SUSPENDED. (a) Except as provided by this section, a law setting the salary of a state officer or employee is suspended to the extent that the law conflicts with this subchapter.

(b) The suspension does not apply to:

(1) a law specifying or regulating the salary or compensation of an officer or employee for whom the biennial appropriations act does not specify or regulate the salary or compensation; and

(2) Chapter 654. (V.A.C.S. Arts. 6813b, Secs. 1 (part), 2 (part); 6822 (part).)

Sec. 659.014. SUSPENDED LAWS CONTINUED IN EFFECT. Those laws suspended by the operation of Section 659.013 are continued in effect, although suspended, as those laws existed September 1, 1993, including:

(1) Article 6813, Revised Statutes (setting annual salaries for named officers and employees);

(2) Chapter 277, Acts of the 40th Legislature, Regular Session, 1927 (Article 6813a, Vernon's Texas Civil Statutes) (setting and regulating the salary of members of the Railroad Commission of Texas); and

(3) Article 6824, Revised Statutes (prohibiting an increase or decrease of salary during an officer's term of office). (New.)

[Sections 659.015 to 659.030 reserved for expansion]

#### SUBCHAPTER C. COMPENSATORY PER DIEM

Sec. 659.031. DEFINITION. In this subchapter, "state board" means a board, commission, committee, council, or similar agency in the executive or judicial branch of state government that is composed of two or more members. (V.A.C.S. Art. 6813f, Sec. 1.)

Sec. 659.032. PER DIEM ENTITLEMENT. (a) A member of a state board is entitled to a per diem in an amount set by the General Appropriations Act for the member's service on the board.

(b) This section does not apply to a member of the legislature who serves on a board by virtue of the member's office as a legislator. (V.A.C.S. Art. 6813f, Sec. 2.)

Sec. 659.033. STATUTORY PER DIEM SUSPENDED. (a) A law setting the amount of per diem for members of a state board is suspended to the extent of conflict with this subchapter.

(b) The law setting the amount of per diem for a member of a state board is not suspended if the General Appropriations Act does not set the amount of per diem to which the member is entitled.

(c) A law setting a limit on the number of days for which a state board member is entitled to a per diem is not suspended by this subchapter. (V.A.C.S. Art. 6813f, Sec. 3.)

[Sections 659.034 to 659.040 reserved for expansion]

#### SUBCHAPTER D. LONGEVITY PAY

Sec. 659.041. DEFINITIONS. In this subchapter:

(1) "Full-time state employee" means:

(A) a state employee who works in the executive or judicial branch of state government and who is normally scheduled to work at least 40 hours a week in one position; or

(B) a state employee who works in the legislative branch of state government and who is normally scheduled to work a total of 40 or more hours a week in all positions held in the legislative branch.

(2) "Part-time state employee" means a state employee who is not a full-time state employee.

(3) "State employee" means an individual who:

(A) is covered by Chapter 654;

(B) holds a line item or exempt position;

(C) works in a nonacademic position at a state institution of higher education at least 20 hours a week for at least 4.5 consecutive months; or

(D) is an hourly employee of the state. (V.A.C.S. Art. 6813d-1, Secs. 1(1), (2), (3), (4).)

Sec. 659.042. EXCLUSIONS. The following are not entitled to longevity pay under this subchapter:

- (1) a member of the legislature;
- (2) an individual who holds a statewide office that is normally filled by vote of the people;
- (3) an independent contractor or an employee of an independent contractor;
- (4) a temporary employee;
- (5) an officer or employee of a public junior college; or
- (6) an academic employee of a state institution of higher education. (V.A.C.S. Art. 6813d-1, Sec. 1(5).)

Sec. 659.043. ENTITLEMENT. A state employee is entitled to longevity pay to be included in the employee's monthly compensation if the employee:

- (1) is a full-time state employee on the first workday of the month;
- (2) is not on leave without pay on the first workday of the month; and
- (3) has accrued at least five years of lifetime service credit not later than the last day of the preceding month. (V.A.C.S. Art. 6813d-1, Sec. 2.)

Sec. 659.044. AMOUNT. (a) The monthly amount of longevity pay is \$4 for each year of lifetime service credit.

(b) The amount increases when the 10th, 15th, 20th, and 25th years of lifetime service credit are accrued.

(c) An increase is effective beginning with the month following the month in which the 10th, 15th, 20th, and 25th years of lifetime service credit are accrued.

(d) An employee may not receive from the state as longevity pay more than \$4 for each year of lifetime service credit, regardless of the number of positions the employee holds or the number of hours the employee works each week. (V.A.C.S. Art. 6813d-1, Sec. 3.)

Sec. 659.045. CHANGE IN STATUS. If a state employee ceases being a full-time state employee after the first workday of a month but otherwise qualifies for longevity pay, the employee's compensation for the month includes full longevity pay. (V.A.C.S. Art. 6813d-1, Sec. 4.)

Sec. 659.046. ACCRUAL OF LIFETIME SERVICE CREDIT. (a) An employee accrues lifetime service credit for the period in which the employee:

- (1) serves as a full-time, part-time, or temporary state employee or otherwise serves as an employee of the state;
- (2) serves as a member of the legislature;
- (3) holds a statewide office that is normally filled by vote of the people; or
- (4) serves as an academic employee of a state institution of higher education.

(b) An employee who is on leave without pay for an entire calendar month does not accrue lifetime service credit for the month. An employee who is on leave without pay for less than an entire calendar month accrues lifetime service credit for the month if the employee otherwise qualifies to accrue credit under Subsection (a).

(c) An employee who simultaneously holds two or more positions that each accrue lifetime service credit accrues credit for only one of the positions.

(d) An employee who begins working on the first workday of a month in a position that accrues lifetime service credit is considered to have begun working on the first day of the month.

(e) An employee does not accrue lifetime service credit for a period in which the employee serves as an officer or employee of a public junior college. (V.A.C.S. Art. 6813d-1, Sec. 5.)

Sec. 659.047. COMPTROLLER RULES. The comptroller shall adopt rules to administer this subchapter. (V.A.C.S. Art. 6813d-1, Sec. 6.)



[Sections 659.048 to 659.060 reserved for expansion]

## SUBCHAPTER E. ADDITIONAL COMPENSATION AND EXPENSES

Sec. 659.061. **EXPENSES OF EMPLOYEES INJURED OR KILLED WHILE ON DUTY.** In addition to other benefits of employment provided by law, a state agency may, to the extent authorized by an appropriation for the purpose, spend appropriated funds to pay for drugs and medical, hospital, laboratory, and funeral expenses of an employee under the jurisdiction and control of the agency:

(1) who is injured or killed while engaged in the performance of a necessary governmental function assigned to the employee; or

(2) whose duties require the employee to be exposed to unavoidable dangers peculiar to the performance of a necessary governmental function. (V.A.C.S. Art. 6822a.)

Sec. 659.062. **HAZARDOUS DUTY PAY.** (a) An eligible employee is entitled to hazardous duty pay of \$7 a month for each year of service as an employee of this state in a position that requires the performance of hazardous duty, not to exceed 30 years of such service. Except as provided by Subsection (c), this hazardous duty pay is instead of other hazardous duty or longevity pay.

(b) The following employees are eligible for hazardous duty pay under this section:

(1) commissioned law enforcement personnel of the Department of Public Safety;

(2) commissioned law enforcement personnel of the General Services Commission;

(3) a commissioned security officer of the state treasury;

(4) commissioned law enforcement personnel of the Texas Alcoholic Beverage Commission;

(5) a law enforcement officer commissioned by the Parks and Wildlife Commission;

(6) a commissioned peace officer of a state institution of higher education;

(7) commissioned law enforcement personnel of the institutional division of the Texas Department of Criminal Justice;

(8) an employee or official of the Board of Pardons and Paroles or the pardons and paroles division of the Texas Department of Criminal Justice who has routine direct contact with inmates of any penal or correctional institution or with administratively released prisoners subject to the board's jurisdiction; and

(9) an employee certified to the Employees Retirement System of Texas under Section 815.505 as having performed as a law enforcement officer or custodial officer during a fiscal year.

(c) A state employee who has received longevity pay under Subchapter D for service in a position that does not require the performance of hazardous duty and who transfers to a position for which the employee is eligible to receive hazardous duty pay is entitled to continue to receive longevity pay for the years of service to the state performed in the prior position. The employee is not entitled to additional longevity pay for the period in which the employee receives hazardous duty pay, but that period is included in computing the employee's total years of service as an employee of the state.

(d) A state employee who, after performance in a position that requires the performance of hazardous duty, transfers to a position that does not require the performance of hazardous duty is not entitled to a continuation of the hazardous duty pay earned in the prior position but is entitled to longevity pay for each year of service as an employee of the state, including the years of service in a position for which the employee was entitled to hazardous duty pay. (V.A.C.S. Art. 6252-20b.)

[Sections 659.063 to 659.080 reserved for expansion]

## SUBCHAPTER F. METHOD AND FREQUENCY OF PAYMENT

Sec. 659.081. **PAYMENT ONCE A MONTH.** Except as provided by this subchapter, annual salaries for state officers and employees shall be paid once a month. (V.A.C.S. Art. 6826, Sec. 1 (part).)

**Sec. 659.082. PAYMENT TWICE A MONTH.** An employee is entitled to be paid employment compensation twice a month if:

- (1) the employee is employed by:
  - (A) the Texas Department of Mental Health and Mental Retardation;
  - (B) the Texas Department of Transportation;
  - (C) the Texas Department of Human Services;
  - (D) the Texas Employment Commission; or
  - (E) any other state agency designated by the comptroller;
- (2) the employee holds a classified position under the state's position classification plan;
- (3) the employee's position is classified below salary group 12 under the classification salary schedule in the General Appropriations Act;
- (4) the employing state agency satisfies the comptroller's requirements relating to the payment of compensation twice a month; and
- (5) at least 30 percent of the eligible employees of the agency choose to be paid twice a month. (V.A.C.S. Art. 6826, Sec. 2.)

**Sec. 659.083. PAYDAY.** (a) Except as provided by Subsection (b), the treasurer may not pay the salary of a state officer or employee before the first working day of the month following the payroll period.

(b) The treasurer shall pay an employee who is paid twice a month under Section 659.082 on:

- (1) the first working day of the month following the payroll period that covers the last half of the preceding month; and
- (2) the 15th day of the month or the first working day after the 15th for the payroll period that covers the first half of the month.

(c) In this section, "working day" means a day other than Saturday, Sunday, a national holiday, or a state holiday as listed in the General Appropriations Act or Chapter 662. A day does not cease to be a holiday because a state agency maintains or is required to maintain a minimum working staff on the holiday. (V.A.C.S. Art. 6826, Sec. 3.)

**Sec. 659.084. ELECTRONIC FUNDS TRANSFER.** Salaries for state officers and employees paid once a month shall be paid through electronic funds transfer under Section 403.016 unless paid on warrant as permitted under that section. (V.A.C.S. Art. 6826, Sec. 1 (part).)

## **CHAPTER 660. TRAVEL EXPENSES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 660.001. SHORT TITLE**
- Sec. 660.002. DEFINITIONS**
- Sec. 660.003. APPLICABILITY**
- Sec. 660.004. EXPENSES INCURRED BY OFFICIALS OR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION**
- Sec. 660.005. TRAVEL BY PUBLIC CONVEYANCE**

[Sections 660.006 to 660.020 reserved for expansion]

### **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

- Sec. 660.021. RULES**
- Sec. 660.022. APPROVAL OF RULES BY ATTORNEY GENERAL**
- Sec. 660.023. FILING OF RULES**
- Sec. 660.024. ADVANCE APPROVAL FOR CERTAIN INTERNATIONAL TRAVEL**
- Sec. 660.025. ADVANCE PAYMENT PROCEDURE**
- Sec. 660.026. REVOLVING PETTY CASH FUND**

[Sections 660.027 to 660.040 reserved for expansion]

## SUBCHAPTER C. TRAVEL EXPENSES

- Sec. 660.041. TRAVEL EXPENSE FORM  
 Sec. 660.042. USE OF TRAVEL EXPENSE FORM  
 Sec. 660.043. AMOUNT OF REIMBURSEMENT OR ADVANCE  
 Sec. 660.044. RATE OF AND METHOD OF COMPUTING PER DIEM AND TRANSPORTATION ALLOWANCE  
 Sec. 660.045. PROHIBITION APPLICABLE TO PER DIEM ALLOWANCE  
 Sec. 660.046. APPROVAL AND PAYMENT OF CLAIM  
 Sec. 660.047. PROHIBITION APPLICABLE TO ACCEPTANCE OF MONEY FROM CERTAIN PERSONS  
 Sec. 660.048. OVERPAYMENT  
 Sec. 660.049. PROHIBITION APPLICABLE TO TRAVEL COMPENSATION BY OTHER PERSONS  
 Sec. 660.050. LOCAL TRANSPORTATION ALLOWANCE  
 Sec. 660.051. COURTESY CARD  
 Sec. 660.052. DETERMINATION OF MILEAGE FOR TRAVEL BY PRIVATELY OWNED CONVEYANCE  
 Sec. 660.053. DETERMINATION OF MILEAGE FOR TRAVEL BY PERSONAL CAR  
 Sec. 660.054. MULTIPLE USE OF SINGLE PRIVATELY OWNED CONVEYANCE BY STATE EMPLOYEES  
 Sec. 660.055. MULTIPLE USE OF SINGLE PRIVATELY OWNED CAR

## CHAPTER 660. TRAVEL EXPENSES

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 660.001. SHORT TITLE. This chapter may be cited as the Travel Regulations Act. (V.A.C.S. Art. 6823a, Sec. 1.)

Sec. 660.002. DEFINITIONS. In this chapter:

(1) "Chief administrator of a state agency" means:

- (A) an elected state official, excluding a member of the legislature;
- (B) an appointed state official, including an official whose appointment is subject to senate confirmation;
- (C) the director of a legislative interim committee or board;
- (D) the chief administrator of a state hospital or special school; and
- (E) the chief administrator of a state institution of higher education.

(2) "Per diem allowance" means a flat daily rate that is paid instead of actual expenses for meals and lodging and is compensation for official travel purposes only. (V.A.C.S. Art. 6823a, Secs. 2 (part), 3.a (part).)

Sec. 660.003. APPLICABILITY. This chapter applies to:

- (1) a state officer;
- (2) a chief administrator of a state agency;
- (3) a state employee; and
- (4) a prospective state employee who incurs expenses when requested to visit a state agency, department, or institution of higher education for an employment interview and evaluation. (V.A.C.S. Art. 6823a, Sec. 2 (part).)

Sec. 660.004. EXPENSES INCURRED BY OFFICIALS OR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION. (a) This chapter does not apply to reimbursement for travel expenses:

- (1) incurred by an official or employee of the athletic department of an institution of higher education;

(2) to an official or employee of an institution of higher education from a gift or bequest;  
or

(3) of an official or employee of an institution of higher education if the expenses are paid or reimbursed to the institution under a contract between the institution and the federal government or another contracting agency.

(b) The governing board of each institution of higher education shall adopt necessary rules for the administration and control of travel by an official or employee exempted by this section. (V.A.C.S. Art. 6823a, Sec. 11.)

Sec. 660.005. TRAVEL BY PUBLIC CONVEYANCE. This chapter does not prohibit the reimbursement of a claim or a request for an advance payment by a state officer or employee for using a public conveyance. (V.A.C.S. Art. 6823a, Sec. 10 (part).)

[Sections 660.006 to 660.020 reserved for expansion]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 660.021. RULES. The comptroller shall adopt rules to administer the travel regulations of this chapter and of the General Appropriations Act. (V.A.C.S. Art. 6823a, Sec. 6(a) (part).)

Sec. 660.022. APPROVAL OF RULES BY ATTORNEY GENERAL. A rule prescribed by the comptroller under this chapter is subject to final approval of the attorney general. (V.A.C.S. Art. 6823a, Sec. 6(a) (part).)

Sec. 660.023. FILING OF RULES. Official copies of rules, including administrative policies or interpretations of the rules, shall be filed with the secretary of state after approval of the rules by the attorney general. (V.A.C.S. Art. 6823a, Sec. 6(a) (part).)

Sec. 660.024. ADVANCE APPROVAL FOR CERTAIN INTERNATIONAL TRAVEL. (a) Travel related to official state business for which a reimbursement for travel expenses is claimed or for which an advance for travel expenses to be incurred is sought must have the advance written approval of the governor.

(b) Subsection (a) does not apply to travel:

(1) in this state; or

(2) to, in, and from another state, Mexico, or Canada.

(c) The governor may give blanket authority for travel by:

(1) personnel of the International Trade Development Division of the Texas Department of Commerce; and

(2) law enforcement personnel of the Department of Public Safety. (V.A.C.S. Art. 6823a, Sec. 5.)

Sec. 660.025. ADVANCE PAYMENT PROCEDURE. (a) The comptroller by rule shall establish a procedure by which a state officer or employee may receive an advance payment for projected travel expenses for a particular exercise of official duty.

(b) The comptroller shall require a final accounting after actual travel expense has been determined to provide for any necessary reimbursement or adjustment to reconcile an advance and the actual expense incurred. (V.A.C.S. Art. 6823a, Sec. 6.g.)

Sec. 660.026. REVOLVING PETTY CASH FUND. (a) A state agency, board, commission, department, or institution may establish from money in the state treasury or from local funds a revolving petty cash fund to be used only to advance projected travel expenses in accordance with Section 660.025.

(b) The revolving petty cash fund shall be reimbursed by:

(1) warrants drawn and approved by the comptroller from money in the state treasury;  
or

(2) checks drawn against money held outside the state treasury. (V.A.C.S. Art. 6823a, Sec. 3.c.)

[Sections 660.027 to 660.040 reserved for expansion]

## SUBCHAPTER C. TRAVEL EXPENSES

Sec. 660.041. TRAVEL EXPENSE FORM. The comptroller shall prescribe the form on which a travel expense is to be submitted. (V.A.C.S. Art. 6823a, Sec. 6(a) (part).)

Sec. 660.042. USE OF TRAVEL EXPENSE FORM. (a) A state agency shall use the standard travel expense form prescribed by the comptroller in preparing an expense account for a traveling state employee.

(b) The travel expense form must state:

(1) the point of origin and the point of destination for each trip;

(2) the reimbursable mileage, including intracity mileage, that is traveled or projected between each point;

(3) the time that the employee is away or plans to be away from designated headquarters for which the employee is or will be entitled to travel expenses; and

(4) briefly and clearly the purpose of the trip and the character of official business performed or to be performed. (V.A.C.S. Art. 6823a, Sec. 6.b.)

Sec. 660.043. AMOUNT OF REIMBURSEMENT OR ADVANCE. A reimbursement or advance from money appropriated by the legislature for travel and other necessary expenses incurred by a state officer, chief administrator of a state agency, or a state employee in the active discharge of the person's duties is in the amount provided by the General Appropriations Act as a per diem or actual expenses as provided by the General Appropriations Act. (V.A.C.S. Arts. 6813c; 6823a, Sec. 3.a (part).)

Sec. 660.044. RATE OF AND METHOD OF COMPUTING PER DIEM AND TRANSPORTATION ALLOWANCE. The rate of and method of computing a per diem or transportation allowance are those provided by the General Appropriations Act. (V.A.C.S. Art. 6823a, Sec. 3.b.)

Sec. 660.045. PROHIBITION APPLICABLE TO PER DIEM ALLOWANCE. (a) A state employee may not receive a per diem allowance or a partial per diem allowance provided by the General Appropriations Act for time during which the employee is:

(1) at the employee's official designated headquarters;

(2) absent from the employee's place of employment for a reason not connected with the duties of the employee's agency, including absence for a personal reason; or

(3) away from the employee's designated headquarters for less than six consecutive hours.

(b) A state employee who leaves the employee's place of employment for a reason not related to the duties of the employee's agency shall clearly indicate on the required travel expense form the absence and the hour and date of departure from and return to the employee's place of employment. (V.A.C.S. Art. 6823a, Sec. 9.)

Sec. 660.046. APPROVAL AND PAYMENT OF CLAIM. (a) The comptroller shall approve a claim for travel expense.

(b) The comptroller shall issue a warrant for payment of an approved claim for travel expense. (V.A.C.S. Art. 6823a, Sec. 6(a) (part).)

Sec. 660.047. PROHIBITION APPLICABLE TO ACCEPTANCE OF MONEY FROM CERTAIN PERSONS. (a) A state officer or employee who is traveling to perform an official duty may not accept money for wages or expenses from a person who is or who may be audited, examined, inspected, or investigated by the state.

(b) A state officer or employee who is traveling to perform an official duty may receive travel expenses only from amounts appropriated by the General Appropriations Act.

(c) The comptroller may not pay the salary of a state employee who violates this section. (V.A.C.S. Art. 6823a, Sec. 4.)

Sec. 660.048. **OVERPAYMENT.** A state officer or employee who receives an overpayment for a travel expense from money appropriated by the General Appropriations Act shall reimburse the state for the overpayment. (V.A.C.S. Art. 6823a, Sec. 6.f.)

Sec. 660.049. **PROHIBITION APPLICABLE TO TRAVEL COMPENSATION BY OTHER PERSONS.** (a) A state officer or employee may not receive a double travel expense payment.

(b) A state employee who is to be compensated for travel expenses from a person other than a state agency may not seek an advance payment or receive a reimbursement for the travel from money authorized by the General Appropriations Act. (V.A.C.S. Art. 6823a, Sec. 7.)

Sec. 660.050. **LOCAL TRANSPORTATION ALLOWANCE.** (a) A state employee whose duties customarily require travel within the employee's designated headquarters may be paid a local transportation allowance for the travel.

(b) The allowance may not exceed the transportation allowance for use of a privately owned automobile under the General Appropriations Act.

(c) Notwithstanding the General Appropriations Act, a state employee with a physical disability that precludes the personal operation of a privately owned automobile may receive a reasonable local transportation allowance not to exceed the amount to which the employee would be entitled for similar travel outside the employee's designated headquarters. (V.A.C.S. Art. 6823a, Sec. 8.)

Sec. 660.051. **COURTESY CARD.** A state officer or employee may use a courtesy card for travel by air, rail, or bus. (V.A.C.S. Art. 6823a, Sec. 10 (part).)

Sec. 660.052. **DETERMINATION OF MILEAGE FOR TRAVEL BY PRIVATELY OWNED CONVEYANCE.** The comptroller shall determine mileage for the purpose of a reimbursement or advance payment for travel by a privately owned conveyance by:

(1) computing the shortest highway distance between the point of origin and the destination using intermediate points at which official state business is conducted; and

(2) adding other necessary mileage at points at which official state business is conducted. (V.A.C.S. Art. 6823a, Sec. 6.c (part).)

Sec. 660.053. **DETERMINATION OF MILEAGE FOR TRAVEL BY PERSONAL CAR.** In determining the amount of a reimbursement or advance payment for travel by privately owned car in the state, the comptroller shall:

(1) compute all distances according to the shortest route between points;

(2) adopt a mileage guide that includes a chart of distances showing the shortest route between points in the state, including any farm-to-market road; and

(3) annually reissue the mileage guide. (V.A.C.S. Art. 6823a, Sec. 6.c (part).)

Sec. 660.054. **MULTIPLE USE OF SINGLE PRIVATELY OWNED CONVEYANCE BY STATE EMPLOYEES.** (a) If two or more state employees travel in a single privately owned conveyance, only one employee may receive a transportation allowance.

(b) This section does not prohibit each state employee traveling in a privately owned conveyance from receiving a per diem allowance. (V.A.C.S. Art. 6823a, Sec. 6.d.)

Sec. 660.055. **MULTIPLE USE OF SINGLE PRIVATELY OWNED CAR.** (a) If two, three, or four state officers or employees travel in a privately owned car, only one reimbursement or advance payment for the car's mileage may be claimed and allowed.

(b) The comptroller shall consider the travel claims of the officers and employees as multiple claims and may pay only one claim to the extent of mileage claimed.

(c) If more than four employees travel in more than one car, full mileage is allowed for one car for each four employees and for any fraction in excess of a multiple of four employees.

(d) A state officer or employee must obtain the advance approval of the chief administrator of the officer's or employee's state agency if it is not feasible for the officer or employee to travel in the same car. Approval under this subsection authorizes reimbursement or advance payment for travel by the officer or employee using the officer's or employee's privately owned car.

- (e) This section applies only to state officers or employees who:
- (1) are employed by the same state agency;
  - (2) are required to travel on the same official state business;
  - (3) have the same itinerary; and
  - (4) travel on the same dates. (V.A.C.S. Art. 6823a, Sec. 6.e.)

CHAPTER 661. LEAVE

SUBCHAPTER A. STATE EMPLOYEE SICK LEAVE POOL

- Sec. 661.001. DEFINITIONS
- Sec. 661.002. SICK LEAVE POOL
- Sec. 661.003. CONTRIBUTION TO POOL
- Sec. 661.004. USE OF TIME IN POOL
- Sec. 661.005. WITHDRAWAL OF TIME FROM POOL
- Sec. 661.006. LIMITATION ON WITHDRAWALS
- Sec. 661.007. EQUAL TREATMENT
- Sec. 661.008. NO ENTITLEMENT TO ESTATE

[Sections 661.009 to 661.030 reserved for expansion]

SUBCHAPTER B. PAYMENT FOR VACATION AND SICK LEAVE  
TO ESTATES OF DECEASED STATE EMPLOYEES

- Sec. 661.031. DEFINITIONS
- Sec. 661.032. APPLICABILITY OF SUBCHAPTER
- Sec. 661.033. PAYMENT FOR VACATION AND SICK LEAVE
- Sec. 661.034. COMPUTATION OF PAYMENT
- Sec. 661.035. COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME
- Sec. 661.036. PAYMENT CHARGED TO CERTAIN FISCAL YEAR
- Sec. 661.037. PAYMENT WITH FUNDS APPROPRIATED FOR SALARIES

[Sections 661.038 to 661.060 reserved for expansion]

SUBCHAPTER C. PAYMENT FOR VACATION TIME TO STATE EMPLOYEES  
WHO SEPARATE FROM STATE EMPLOYMENT

- Sec. 661.061. DEFINITIONS
- Sec. 661.062. ENTITLEMENT TO PAYMENT FOR VACATION TIME
- Sec. 661.063. COMPUTATION OF PAYMENT
- Sec. 661.064. COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME
- Sec. 661.065. LUMP-SUM PAYMENT
- Sec. 661.066. PAYMENT CHARGED TO CERTAIN FISCAL YEAR
- Sec. 661.067. AGREEMENT FOR STATE EMPLOYEE TO REMAIN ON AGENCY PAYROLL

[Sections 661.068 to 661.090 reserved for expansion]

SUBCHAPTER D. PAYMENTS FOR VACATION TIME TO CONTRIBUTING  
MEMBERS OF EMPLOYEES RETIREMENT SYSTEM WHO RETIRE

- Sec. 661.091. PAYMENT FOR VACATION TIME ON RETIREMENT
- Sec. 661.092. COMPUTATION OF PAYMENT
- Sec. 661.093. CONFLICT WITH OTHER SUBCHAPTER

[Sections 661.094 to 661.120 reserved for expansion]

SUBCHAPTER E. VACATION FOR HOURLY OR DAILY STATE EMPLOYEE

Sec. 661.121. VACATION FOR HOURLY OR DAILY EMPLOYEE

CHAPTER 661. LEAVE

SUBCHAPTER A. STATE EMPLOYEE SICK LEAVE POOL

Sec. 661.001. DEFINITIONS. In this subchapter:

(1) "Employee" means an individual, other than a state officer, employed by a state agency.

(2) "Executive director" means the individual appointed by the governing body of a state agency as chief administrative officer of the agency and includes the chancellor or highest executive officer of a university system and the president of a public senior college or university as defined by Section 61.003, Education Code.

(3) "Pool administrator" means the individual appointed by the governing body of a state agency to administer the agency's sick leave pool.

(4) "State agency" means:

(A) a board, commission, department, or other agency in the executive branch of state government created by the constitution or a statute of the state;

(B) an institution of higher education as defined by Section 61.003, Education Code;

(C) a river authority;

(D) a legislative agency, but not either house or a member of the legislature; or

(E) the supreme court, the court of criminal appeals, a court of appeals, or a state judicial agency.

(5) "State officer" means an elected or appointed officer of a state agency or an executive director. (V.A.C.S. Art. 6252-8e, Sec. 1.)

Sec. 661.002. SICK LEAVE POOL. (a) The governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer to a sick leave pool sick leave earned by the employee.

(b) The executive director of the agency or another individual appointed by the governing body shall administer the sick leave pool.

(c) The governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. (V.A.C.S. Art. 6252-8e, Secs. 3(a), (b).)

Sec. 661.003. CONTRIBUTION TO POOL. (a) To contribute to the sick leave pool, an employee must apply to the pool administrator in the manner prescribed by the governing body of the state agency.

(b) On approval by the pool administrator, an employee may contribute in a fiscal year at least one but not more than three days of the employee's accrued sick leave.

(c) The pool administrator shall credit the sick leave pool with the amount of time contributed by an employee and deduct a corresponding amount of time from the employee's earned sick leave as if the employee had used the time for personal purposes. (V.A.C.S. Art. 6252-8e, Sec. 5.)

Sec. 661.004. USE OF TIME IN POOL. (a) An employee is eligible to use time contributed to the sick leave pool of the agency if the employee has exhausted the employee's sick leave because of:

(1) a catastrophic illness or injury; or

(2) a previous donation of time to the pool.



(b) The trustee of the state employee uniform group insurance benefits program established under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), shall:

(1) classify, for the purposes of this subchapter, those injuries and illnesses that are catastrophic; and

(2) provide a written statement of the classification to the governing body of each state agency. (V.A.C.S. Art. 6252-8e, Secs. 2(b), 3(c), 4.)

Sec. 661.005. WITHDRAWAL OF TIME FROM POOL. (a) An employee may apply to the pool administrator for permission to withdraw time from the sick leave pool.

(b) If the pool administrator determines that the employee is eligible, the administrator shall:

(1) approve the transfer of time from the pool to the employee; and

(2) credit the time to the employee. (V.A.C.S. Art. 6252-8e, Sec. 6(a) (part).)

Sec. 661.006. LIMITATION ON WITHDRAWALS. (a) An employee may not withdraw time from the sick leave pool in an amount that exceeds the lesser of:

(1) one-third of the total time in the pool; or

(2) 90 days.

(b) The pool administrator shall determine the amount of time that an employee may withdraw from the pool. (V.A.C.S. Art. 6252-8e, Sec. 6(b).)

Sec. 661.007. EQUAL TREATMENT. An employee absent on time withdrawn from the sick leave pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave. (V.A.C.S. Art. 6252-8e, Secs. 6(a) (part), 7.)

Sec. 661.008. NO ENTITLEMENT TO ESTATE. The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from the sick leave pool. (V.A.C.S. Art. 6252-8e, Sec. 8.)

[Sections 661.009 to 661.030 reserved for expansion]

## SUBCHAPTER B. PAYMENT FOR VACATION AND SICK LEAVE TO ESTATES OF DECEASED STATE EMPLOYEES

Sec. 661.031. DEFINITIONS. In this subchapter:

(1) "National holiday" includes only those days listed under Section 662.003(a).

(2) "State employee" means an individual who is an appointed officer or employee of a state agency and who normally works 900 hours or more a year. The term includes:

(A) an hourly employee;

(B) a temporary employee;

(C) a person employed by:

(i) the Teacher Retirement System;

(ii) the Central Education Agency;

(iii) the Texas Higher Education Coordinating Board;

(iv) the Texas National Research Laboratory Commission;

(v) the Texas School for the Blind and Visually Impaired;

(vi) the Texas School for the Deaf;

(vii) the Texas Youth Commission;

(viii) the Windham School District of the Texas Department of Criminal Justice; or

(ix) the Texas Rehabilitation Commission; and

(D) a classified, administrative, faculty, or professional employee of a state institution or agency of higher education who has accumulated vacation leave, sick leave, or both, during the employment.

(3) "State holiday" includes only those days listed under Section 662.003(b).

(4) "Workday" includes a state or national holiday. (V.A.C.S. Art. 6252-8a, Secs. 1(a), (c); 2(e).)

Sec. 661.032. **APPLICABILITY OF SUBCHAPTER.** (a) This subchapter applies only to a state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment. State employment is continuous while the employee is entitled to be paid a regular salary, except that the continuity of state employment is not interrupted while the employee is on a leave of absence without pay for less than one calendar month.

(b) The estates of the following are not entitled to payments under this subchapter:

(1) an individual employed on a piecework basis;

(2) an individual who holds an office that is normally filled by vote of the people;

(3) an independent contractor or an employee of an independent contractor;

(4) an operator of equipment or a driver of a team whose wages are included in the rental paid by a state agency to the owner of the equipment or team; or

(5) an individual covered by:

(A) the Judicial Retirement System of Texas Plan One;

(B) the Judicial Retirement System of Texas Plan Two; or

(C) the Teacher Retirement System of Texas, other than an individual described by Section 661.031(2)(C). (V.A.C.S. Art. 6252-8a, Secs. 1(b) (part); 3A(a), (b), (c).)

Sec. 661.033. **PAYMENT FOR VACATION AND SICK LEAVE.** (a) When a state employee dies, the state shall pay the employee's estate for the balances of the employee's:

(1) vacation leave; and

(2) sick leave.

(b) Payment under this section shall comply with any limits in the General Appropriations Act, except as provided by Subsection (c).

(c) Payment under this section may not be for more than:

(1) all of the state employee's accumulated vacation leave; and

(2) one-half of the state employee's accumulated sick leave. (V.A.C.S. Art. 6252-8a, Sec. 2(a).)

Sec. 661.034. **COMPUTATION OF PAYMENT.** (a) The payment to the estate of the deceased state employee shall be computed by multiplying the employee's hourly rate of compensation at the time of death by the total number of leave hours determined under Section 661.035.

(b) Under this section, rate of compensation:

(1) includes an emolument in lieu of base pay for which the state employee was eligible on the last day of employment; and

(2) does not include longevity or hazardous duty pay. (V.A.C.S. Art. 6252-8a, Sec. 2(b).)

Sec. 661.035. **COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME.** (a) For a state employee who at the time of death is normally scheduled to work at least 40 hours a week, eight hours is to be added to the employee's sick and vacation leave under Section 661.034 for each state or national holiday that is scheduled to fall within the period after the date of death and during which the employee could have used leave. To determine the period during which leave could have been used and the number of state or national holidays, the employee's leave is allocated over the workdays after the employee's death and eight hours is added as a state or national holiday occurs during the period.

(b) For a state employee who at the time of death is normally scheduled to work fewer than 40 hours a week, the number of hours that is to be added to the employee's accumulated

sick and vacation leave for each state or national holiday is computed as provided by Subsection (a), but is to be proportionally reduced according to the lesser number of the employee's normally scheduled weekly work hours. (V.A.C.S. Art. 6252-8a, Sec. 2(c).)

Sec. 661.036. PAYMENT CHARGED TO CERTAIN FISCAL YEAR. A state agency shall charge a payment required by Section 661.033 to the fiscal year in which the state employee dies. (V.A.C.S. Art. 6252-8a, Sec. 3 (part).)

Sec. 661.037. PAYMENT WITH FUNDS APPROPRIATED FOR SALARIES. A state agency shall use funds appropriated to the agency for salaries to make a payment required by Section 661.033. (V.A.C.S. Art. 6252-8a, Sec. 3 (part).)

[Sections 661.038 to 661.060 reserved for expansion]

### SUBCHAPTER C. PAYMENT FOR VACATION TIME TO STATE EMPLOYEES WHO SEPARATE FROM STATE EMPLOYMENT

Sec. 661.061. DEFINITIONS. In this subchapter:

(1) "National holiday" includes only those days listed under Section 662.003(a).  
 (2) "State employee" means an employee or appointed officer of a state agency. The term includes:

- (A) a full-time employee or officer;
- (B) a part-time employee or officer;
- (C) an hourly employee;
- (D) a temporary employee;
- (E) a person employed by:
  - (i) the Teacher Retirement System;
  - (ii) the Central Education Agency;
  - (iii) the Texas Higher Education Coordinating Board;
  - (iv) the Texas National Research Laboratory Commission;
  - (v) the Texas School for the Blind and Visually Impaired;
  - (vi) the Texas School for the Deaf;
  - (vii) the Texas Youth Commission;
  - (viii) the Windham School District of the Texas Department of Criminal Justice; or
  - (ix) the Texas Rehabilitation Commission; or

(F) a classified, administrative, faculty, or professional employee of a state institution or agency of higher education who has accumulated vacation leave during the employment.

(3) "State holiday" includes only those days listed under Section 662.003(b).

(4) "Workday" includes a state or national holiday. (V.A.C.S. Art. 6252-8b, Secs. 1(b) (part), (d) (part).)

Sec. 661.062. ENTITLEMENT TO PAYMENT FOR VACATION TIME. (a) A state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment and who for any reason separates from state employment is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation.

(b) A separation from state employment includes a separation in which the employee:

(1) leaves one state agency to begin working for another state agency, if one or more workdays occur between the two employments;

(2) moves from a position in a state agency that accrues vacation time to a position in that agency that does not accrue vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time;

(3) moves from a position in a state agency that accrues vacation time to a position in another state agency that does not accrue vacation time, if the other state agency refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; or

(4) holds two or more positions, and separates from one that accrues vacation time.

(c) A separation under Subsection (b)(4) applies only with respect to the position from which the separation occurs.

(d) State employment is continuous for purposes of Subsection (a) while the employee is entitled to be paid a regular state salary, except that continuity of state employment is not interrupted while the employee is on a leave of absence without pay for less than one calendar month.

(e) The following are not entitled to payments under this subchapter:

- (1) an individual who holds an office that is normally filled by vote of the people;
- (2) an independent contractor or an employee of an independent contractor;
- (3) an operator of equipment or a driver of a team whose wages are included in the rental paid by a state agency to the owner of the equipment or team;
- (4) an individual employed on a piecework basis; or
- (5) an individual covered by:
  - (A) the Judicial Retirement System of Texas Plan One;
  - (B) the Judicial Retirement System of Texas Plan Two; or

(C) the Teacher Retirement System of Texas, other than an individual described by Section 661.061(2)(E). (V.A.C.S. Art. 6252-8b, Secs. 1(a), (b) (part), (c), (f), (g) (part).)

Sec. 661.063. COMPUTATION OF PAYMENT. (a) The payment to a state employee under this subchapter shall be computed by multiplying the employee's rate of compensation on the date of separation from state employment by the total number of hours of vacation time determined under Section 661.064.

(b) Under this section, rate of compensation:

- (1) includes an emolument in lieu of base pay for which the state employee was eligible on the last day of employment; and
- (2) does not include longevity or hazardous duty pay. (V.A.C.S. Art. 6252-8b, Sec. 1(d)(2).)

Sec. 661.064. COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME. (a) For a state employee who on the date of separation is normally scheduled to work at least 40 hours a week, eight hours are to be added to the employee's accrued vacation time for each state or national holiday that is scheduled to fall within the period after the date of separation and during which the employee could have used the time. To determine the period during which vacation time could have been used and the number of state or national holidays, the employee's vacation time is allocated over the workdays after the employee's separation and eight hours are added as a state or national holiday occurs during the period.

(b) For a state employee who on the date of separation is normally scheduled to work less than 40 hours a week, the number of hours that is to be added to the employee's accrued vacation time for each state or national holiday is computed as provided by Subsection (a), but is to be proportionally reduced according to the lesser number of the employee's normally scheduled weekly work hours. (V.A.C.S. Art. 6252-8b, Sec. 1(d)(3).)

Sec. 661.065. LUMP-SUM PAYMENT. A state agency shall make a payment required by this subchapter in a lump sum, except as provided by Section 661.067. (V.A.C.S. Art. 6252-8b, Sec. 1(d)(1).)

Sec. 661.066. PAYMENT CHARGED TO CERTAIN FISCAL YEAR. A state agency shall charge a lump-sum payment required by this subchapter to the fiscal year in which the state employee's separation from state employment becomes effective. (V.A.C.S. Art. 6252-8b, Sec. 1(h).)

Sec. 661.067. AGREEMENT FOR STATE EMPLOYEE TO REMAIN ON AGENCY PAYROLL. (a) A state agency may agree to permit an employee entitled to payment under

this subchapter to remain on the agency's payroll to exhaust the employee's accrued vacation time.

(b) A state employee who remains on the payroll of a state agency under this section:

(1) is entitled to continue to receive all compensation and benefits that the state employee was receiving on the employee's last day of duty, including paid holidays, longevity pay, and hazardous duty pay;

(2) is entitled to a general salary increase for state employees that takes effect before the employee's accrued vacation time is exhausted; and

(3) may not use sick leave or accrue sick leave or vacation time. (V.A.C.S. Art. 6252-8b, Sec. 1(e).)

[Sections 661.068 to 661.090 reserved for expansion]

**SUBCHAPTER D. PAYMENTS FOR VACATION TIME TO CONTRIBUTING MEMBERS OF EMPLOYEES RETIREMENT SYSTEM WHO RETIRE**

Sec. 661.091. **PAYMENT FOR VACATION TIME ON RETIREMENT.** (a) A contributing member of the Employees Retirement System of Texas who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for the member's accrued vacation time as of the date of retirement.

(b) A payment required by this section is payable on the date of retirement. (V.A.C.S. Art. 6252-8b, Sec. 1A (part).)

Sec. 661.092. **COMPUTATION OF PAYMENT.** A payment required by this subchapter shall be computed as if the member had taken vacation time, using the member's rate of compensation as of the date of retirement. (V.A.C.S. Art. 6252-8b, Sec. 1A (part).)

Sec. 661.093. **CONFLICT WITH OTHER SUBCHAPTER.** Subchapter C of this chapter controls if there is a conflict between Subchapter C and this subchapter. (V.A.C.S. Art. 6252-8b, Sec. 1A (part).)

[Sections 661.094 to 661.120 reserved for expansion]

**SUBCHAPTER E. VACATION FOR HOURLY OR DAILY STATE EMPLOYEE**

Sec. 661.121. **VACATION FOR HOURLY OR DAILY EMPLOYEE.** (a) A state department, institution, or agency may grant a vacation with full pay to an employee:

(1) whose pay is computed by the hour or by the day; and

(2) who has been continuously employed by the state for six months.

(b) The vacation authorized by this section is for the same time as that granted to employees whose pay is computed monthly. (V.A.C.S. Art. 6252-8.)

**CHAPTER 662. HOLIDAYS AND RECOGNITION DAYS**

**SUBCHAPTER A. HOLIDAYS FOR STATE EMPLOYEES**

Sec. 662.001. **DEFINITIONS**

Sec. 662.002. **APPLICABILITY TO EMPLOYEE OF THE HOUSE OR SENATE**

Sec. 662.003. **DATES AND DESCRIPTIONS OF HOLIDAYS**

Sec. 662.004. **MINIMUM NUMBER OF EMPLOYEES NEEDED TO CONDUCT BUSINESS**

Sec. 662.005. **ENTITLEMENT TO PAID DAY OFF**

Sec. 662.006. **OPTIONAL HOLIDAY**

Sec. 662.007. **COMPENSATORY TIME**

Sec. 662.008. **PART-TIME STATE EMPLOYEES**

Sec. 662.009. **EMPLOYEE WORKING OTHER THAN MONDAY THROUGH FRIDAY**

- Sec. 662.010. HOLIDAY BEFORE WORK BEGINS OR AFTER WORK ENDS  
Sec. 662.011. HOLIDAYS FOR INSTITUTIONS OF HIGHER EDUCATION

[Sections 662.012 to 662.020 reserved for expansion]

#### SUBCHAPTER B. LEGAL HOLIDAYS

- Sec. 662.021. DATES OF HOLIDAYS  
Sec. 662.022. CLOSURE OF PUBLIC OFFICES  
Sec. 662.023. PRESENTMENT, NOTICE OF DISHONOR, AND PROTEST OF CERTAIN COMMERCIAL PAPER

[Sections 662.024 to 662.040 reserved for expansion]

#### SUBCHAPTER C. RECOGNITION DAYS

- Sec. 662.041. SAM RAYBURN DAY  
Sec. 662.042. FORMER PRISONERS OF WAR RECOGNITION DAY  
Sec. 662.043. INTERNATIONAL TRADE AWARENESS WEEK  
Sec. 662.044. COLUMBUS DAY  
Sec. 662.045. FATHER OF TEXAS DAY

### CHAPTER 662. HOLIDAYS AND RECOGNITION DAYS

#### SUBCHAPTER A. HOLIDAYS FOR STATE EMPLOYEES

Sec. 662.001. DEFINITIONS. In this subchapter:

(1) "Part-time state employee" means a state employee who normally works less than 40 hours each week.

(2) "State agency" means a unit of state government, including a state board, commission, council, department, committee, agency, or office that was created by the constitution or a statute of this state and is in any branch of state government. The term does not include a local government, a river authority, a special district, any other political subdivision, or an institution of higher education as defined by Section 61.003, Education Code.

(3) "State employee" means an employee of a state agency or an appointed officer whose office is not created by the state constitution. The term includes a part-time, hourly, or temporary state employee. (V.A.C.S. Art. 4591.2, Secs. 1 (part), 7 (part).)

Sec. 662.002. APPLICABILITY TO EMPLOYEE OF THE HOUSE OR SENATE. This subchapter applies to a state employee of the house of representatives or the senate only at the discretion of the presiding officer or the administration committee of each respective house. (V.A.C.S. Art. 4591.2, Sec. 9.)

Sec. 662.003. DATES AND DESCRIPTIONS OF HOLIDAYS. (a) A national holiday includes only the following days:

- (1) the first day of January, "New Year's Day";
- (2) the third Monday in January, "Martin Luther King, Jr., Day" in observance of the birthday of Dr. Martin Luther King, Jr.;
- (3) the third Monday in February, "Presidents' Day";
- (4) the last Monday in May, "Memorial Day";
- (5) the fourth day of July, "Independence Day";
- (6) the first Monday in September, "Labor Day";
- (7) the 11th day of November, "Veterans Day," dedicated to the cause of world peace and to honoring the veterans of all wars in which Texans and other Americans have fought;
- (8) the fourth Thursday in November, "Thanksgiving Day"; and

(9) the 25th day of December, "Christmas Day."

(b) A state holiday includes only the following days:

(1) the 19th day of January, "Confederate Heroes Day," in honor of Jefferson Davis, Robert E. Lee, and other Confederate heroes;

(2) the second day of March, "Texas Independence Day";

(3) the 21st day of April, "San Jacinto Day";

(4) the 19th day of June, "Emancipation Day in Texas," in honor of the emancipation of the slaves in Texas in 1865;

(5) the 27th day of August, "Lyndon Baines Johnson Day," in observance of the birthday of Lyndon Baines Johnson;

(6) every day on which an election is held throughout the state;

(7) the Friday after Thanksgiving Day;

(8) the 24th day of December; and

(9) the 26th day of December.

(c) An "optional holiday" includes only the days on which Rosh Hashanah, Yom Kippur, or Good Friday falls. (V.A.C.S. Arts. 4591 (part); 4591.2, Sec. 1 (part); 4591e.)

**Sec. 662.004. MINIMUM NUMBER OF EMPLOYEES NEEDED TO CONDUCT BUSINESS.** (a) A state agency shall have enough employees on duty during a state holiday to conduct the public business of the agency.

(b) This section does not apply to a state holiday that falls on a Saturday or Sunday, the Friday after Thanksgiving Day, or the 24th or 26th day of December. (V.A.C.S. Art. 4591.2, Sec. 3.)

**Sec. 662.005. ENTITLEMENT TO PAID DAY OFF.** (a) A state employee is entitled to a paid day off from work on each national or state holiday that does not fall on a Saturday or Sunday.

(b) This section does not apply to a holiday that the General Appropriations Act prohibits state agencies from observing. (V.A.C.S. Art. 4591.2, Sec. 2.)

**Sec. 662.006. OPTIONAL HOLIDAY.** (a) A state employee is entitled to a paid day off on each day of an optional holiday that does not fall on a Saturday or Sunday if the employee agrees to give up, during the same fiscal year, a state holiday that does not fall on a Saturday or Sunday.

(b) A state employee is entitled to a paid day off on each day of an optional holiday that extends for more than one day if the employee agrees to give up an equivalent number of state holidays.

(c) A state employee may not agree to give up the Friday after Thanksgiving Day or the 24th or 26th day of December. (V.A.C.S. Art. 4591.2, Sec. 6.)

**Sec. 662.007. COMPENSATORY TIME.** (a) A state employee who is required to work on a national or state holiday that does not fall on a Saturday or Sunday is entitled to compensatory time off during the 12 months after the holiday.

(b) A state employee must give reasonable notice of the employee's intention to use the compensatory time but is not required to say how the compensatory time will be used. (V.A.C.S. Art. 4591.2, Sec. 4.)

**Sec. 662.008. PART-TIME STATE EMPLOYEES.** The pay of a part-time state employee for a paid day off to which the employee is entitled under this subchapter must be proportionally reduced to account for the fewer hours the employee normally works. (V.A.C.S. Art. 4591.2, Sec. 7 (part).)

**Sec. 662.009. EMPLOYEE WORKING OTHER THAN MONDAY THROUGH FRIDAY.** (a) A state employee who normally works 40 hours a week on a schedule other than Monday through Friday is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays in the fiscal year as determined under Section 662.005.

(b) A state employee to whom Subsection (a) applies who works less than the entire fiscal year is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays that occur during the period worked by the employee under Section 662.005.

(c) The paid holiday time off of a part-time state employee who works on a schedule other than Monday through Friday must be proportionally reduced to account for the fewer hours the employee normally works. (V.A.C.S. Art. 4591.2, Secs. 5, 7 (part).)

Sec. 662.010. HOLIDAY BEFORE WORK BEGINS OR AFTER WORK ENDS. (a) A state employee who begins working for a state agency on the first workday of a month is entitled to be paid for a state or national holiday that occurs before the first workday if the holiday:

- (1) occurs during the month; and
- (2) does not fall on a Saturday or Sunday.

(b) A state employee who stops working for a state agency on the last workday of a month is entitled to be paid for a state or national holiday that occurs after the last workday if the holiday:

- (1) occurs during the month; and
- (2) does not fall on a Saturday or Sunday.

(c) In this section, "workday" means a day on which a state employee is normally scheduled to work. (V.A.C.S. Art. 4591.2, Sec. 8.)

Sec. 662.011. HOLIDAYS FOR INSTITUTIONS OF HIGHER EDUCATION. (a) The governing body of an institution of higher education, as defined by Section 61.003, Education Code, other than a public junior college as defined by that section, may establish the holiday schedule for the institution.

(b) The number of holidays to be observed by the institution may not exceed the number of holidays on which an employee of a state agency is entitled to a day off. (V.A.C.S. Art. 4591.3.)

[Sections 662.012 to 662.020 reserved for expansion]

## SUBCHAPTER B. LEGAL HOLIDAYS

Sec. 662.021. DATES OF HOLIDAYS. A legal holiday includes only the following days:

- (1) a national holiday under Section 662.003(a); and
- (2) a state holiday under Sections 662.003(b)(1) through (6). (V.A.C.S. Art. 4591 (part).)

Sec. 662.022. CLOSURE OF PUBLIC OFFICES. A public office of this state may be closed on a legal holiday, except as provided by Section 662.004. (V.A.C.S. Art. 4591 (part).)

Sec. 662.023. PRESENTMENT, NOTICE OF DISHONOR, AND PROTEST OF CERTAIN COMMERCIAL PAPER. A legal holiday is treated as a Sunday for presenting for payment or acceptance, protesting, and giving notice of the dishonor of a draft or promissory note. (V.A.C.S. Art. 4591 (part).)

[Sections 662.024 to 662.040 reserved for expansion]

## SUBCHAPTER C. RECOGNITION DAYS

Sec. 662.041. SAM RAYBURN DAY. (a) January 6 is Sam Rayburn Day in memory of that great Texas and American statesman, Sam Rayburn.

(b) Sam Rayburn Day shall be regularly observed by appropriate programs in the public schools and other places to commemorate the birthday of Sam Rayburn. (V.A.C.S. Art. 4591b-1.)

Sec. 662.042. FORMER PRISONERS OF WAR RECOGNITION DAY. (a) April 9 is Former Prisoners of War Recognition Day in honor of the courage of those Americans who



suffered sacrifices and tribulations as prisoners of war in the course of their military service on behalf of this nation.

(b) Former Prisoners of War Recognition Day shall be regularly observed by appropriate ceremonies. (V.A.C.S. Art. 4591b-2.)

Sec. 662.043. INTERNATIONAL TRADE AWARENESS WEEK. (a) May 22 through May 26 is International Trade Awareness Week to encourage Texas businesses to engage effectively in the promotion and development of international trade.

(b) International Trade Awareness Week shall be observed by appropriate ceremonies and activities. (V.A.C.S. Art. 4591.5.)

Sec. 662.044. COLUMBUS DAY. (a) The second Monday of October is Columbus Day in honor of Christopher Columbus.

(b) Columbus Day shall be regularly observed by appropriate ceremonies.

(c) Public offices of this state shall remain open on Columbus Day. (V.A.C.S. Art. 4591.6.)

Sec. 662.045. FATHER OF TEXAS DAY. (a) November 3 is Father of Texas Day in memory of Stephen F. Austin, the great pioneer patriot and the real and true Father of Texas.

(b) Father of Texas Day shall be regularly observed by appropriate and patriotic programs in the public schools and other places to properly commemorate the birthday of Stephen F. Austin and to inspire a greater love for this beloved state. (V.A.C.S. Art. 4591b.)

CHAPTER 663. CHILD CARE SERVICES FOR STATE EMPLOYEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 663.001. DEFINITIONS

Sec. 663.002. DUTIES AND RESPONSIBILITIES NOT AFFECTED

Sec. 663.003. GOOD FAITH STANDARD

[Sections 663.004 to 663.050 reserved for expansion]

SUBCHAPTER B. CHILD CARE DEVELOPMENT BOARD

Sec. 663.051. CHILD CARE DEVELOPMENT BOARD

Sec. 663.052. COMPOSITION OF BOARD

Sec. 663.053. STAFF, EQUIPMENT, AND SUPPLIES

Sec. 663.054. ADVISORY COMMITTEE

Sec. 663.055. REPORT OF BOARD

[Sections 663.056 to 663.100 reserved for expansion]

SUBCHAPTER C. CHILD CARE PROGRAM AND FACILITIES

Sec. 663.101. ADMINISTRATION OF CHILD CARE PROGRAM

Sec. 663.102. STANDARDS OF CHILD CARE PROGRAM

Sec. 663.103. SPECIFICATIONS FOR CHILD CARE FACILITY SITES

Sec. 663.104. ESTABLISHMENT OF CHILD CARE FACILITIES

Sec. 663.105. CONTRACTS

Sec. 663.106. LEASE TO CHILD CARE PROVIDER

Sec. 663.107. NUMBER OF CHILDREN SERVED BY CHILD CARE FACILITY

Sec. 663.108. DUTIES OF CHILD CARE PROVIDER

Sec. 663.109. MONITORING OF CHILD CARE FACILITIES

Sec. 663.110. ENROLLMENT IN CHILD CARE FACILITY

Sec. 663.111. ADDITIONAL CHILD CARE FACILITIES

Sec. 663.112. CHILD CARE FACILITY ACCOUNT

Sec. 663.113. PRIVATE DONATIONS

CHAPTER 663. CHILD CARE SERVICES FOR STATE EMPLOYEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 663.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Child Care Development Board.
- (2) "Child care facility" includes only a child care facility established under this chapter.
- (3) "Child care program" means the program developed by the board to provide child care services for state employees.
- (4) "Commission" means the General Services Commission.
- (5) "Committee" means the Child Care Advisory Committee. (V.A.C.S. Art. 6252-3e, Sec. 1; New.)

Sec. 663.002. DUTIES AND RESPONSIBILITIES NOT AFFECTED. Sections 663.003, 663.103, 663.104, and 663.105 do not affect the duties or responsibilities of the board or commission under Section 5.01 (b), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 6252-3e, Sec. 5(e).)

Sec. 663.003. GOOD FAITH STANDARD. The commission and the executive director of the commission shall carry out their responsibilities under this chapter in good faith. (V.A.C.S. Art. 6252-3e, Sec. 5(d) (part).)

[Sections 663.004 to 663.050 reserved for expansion]

SUBCHAPTER B. CHILD CARE DEVELOPMENT BOARD

Sec. 663.051. CHILD CARE DEVELOPMENT BOARD. The Child Care Development Board is an agency of the state. (V.A.C.S. Art. 6252-3e, Sec. 2(a).)

Sec. 663.052. COMPOSITION OF BOARD. (a) The board is composed of:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the attorney general;
- (4) the state treasurer;
- (5) the comptroller; and
- (6) the commissioner of the General Land Office.

(b) An officer listed in Subsection (a) may designate a representative to serve for the officer. (V.A.C.S. Art. 6252-3e, Sec. 2(b).)

Sec. 663.053. STAFF, EQUIPMENT, AND SUPPLIES. The board may use the staff, equipment, and supplies of an agency represented on the board to assist the board as necessary in performing its duties under this chapter. (V.A.C.S. Art. 6252-3e, Sec. 2(c).)

Sec. 663.054. ADVISORY COMMITTEE. (a) The board shall appoint a child care advisory committee composed of individuals who are interested in child care services for state employees.

(b) The board may appoint to the committee:

- (1) the executive directors of:
  - (A) the commission; and
  - (B) the Texas Department of Housing and Community Affairs;
- (2) a representative of the child care working group of the United Way of Texas;
- (3) a representative of the Texas Association for the Education of Young Children;
- (4) a representative of the corporate child development fund;
- (5) a representative of child care providers;
- (6) one or more state employees subject to the state classification plan:

(A) each of whom has at least one child in a child care facility; and

(B) if more than one is appointed, each of whom resides in a different geographic area of the state; and

(7) one or more individuals knowledgeable in child care services or the need of working individuals for child care services.

(c) The committee shall advise the board on the:

(1) location, size, and design of the child care facilities; and

(2) curriculum a child care facility must provide to ensure the provision of developmentally appropriate services of a high quality. (V.A.C.S. Art. 6252-3e, Sec. 4, as amended by Chapters 505 and 762, Acts of the 72nd Legislature, Regular Session, 1991.)

Sec. 663.055. REPORT OF BOARD. (a) The board or the board's designated representative shall report to the legislature each legislative session.

(b) The report must:

(1) summarize the development and progress of the child care program; and

(2) describe additional child care services needed by state employees. (V.A.C.S. Art. 6252-3e, Sec. 3 (part).)

[Sections 663.056 to 663.100 reserved for expansion]

SUBCHAPTER C. CHILD CARE PROGRAM AND FACILITIES

Sec. 663.101. ADMINISTRATION OF CHILD CARE PROGRAM. (a) The board shall provide child care services for state employees by the development and administration of the child care program.

(b) The board by rule may establish methods to administer and supervise the child care program. (V.A.C.S. Art. 6252-3e, Sec. 3 (part).)

Sec. 663.102. STANDARDS OF CHILD CARE PROGRAM. The board shall set specific performance standards for child care services under the child care program that conform to the standards of quality child care set by the National Association for the Education of Young Children. (V.A.C.S. Art. 6252-3e, Sec. 6 (part).)

Sec. 663.103. SPECIFICATIONS FOR CHILD CARE FACILITY SITES. The board shall give the commission the specifications for each child care facility site, including the location, size, and design for the facility. (V.A.C.S. Art. 6252-3e, Sec. 5(a).)

Sec. 663.104. ESTABLISHMENT OF CHILD CARE FACILITIES. (a) To establish a child care facility, the commission, at the direction of the board, shall:

(1) acquire necessary real and personal property, including mobile and prefabricated buildings; or

(2) build, renovate, repair, or equip a building, including constructing or placing a new building on real property the state owns.

(b) The board, in establishing a child care facility, must specify the terms or conditions under which the commission is required to act and may adopt a schedule for implementation of the activity. The board may request, add to, or delete a term or condition and may request a progress report from the commission.

(c) If activity is delayed or cannot be implemented under the board's terms and conditions, the commission immediately shall advise the board and may postpone further action until the commission receives an instruction from the board. (V.A.C.S. Art. 6252-3e, Secs. 5(b), (d) (part).)

Sec. 663.105. CONTRACTS. (a) The commission shall make any contract necessary to establish a child care facility.

(b) The contract must comply with the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 6252-3e, Sec. 5(c).)

Sec. 663.106. LEASE TO CHILD CARE PROVIDER. (a) The commission shall lease to a child care provider selected by the board a site for a child care facility at a reasonable rate set by the board.

(b) The board by rule may require, or prohibit the inclusion of, specified provisions in a lease. (V.A.C.S. Art. 6252-3e, Sec. 7(a).)

Sec. 663.107. NUMBER OF CHILDREN SERVED BY CHILD CARE FACILITY. The board shall set the number of children a child care facility may serve. (V.A.C.S. Art. 6252-3e, Sec. 6 (part).)

Sec. 663.108. DUTIES OF CHILD CARE PROVIDER. A provider for a child care facility shall:

(1) obtain for the facility a license under Chapter 42, Human Resources Code;

(2) maintain liability insurance coverage by an insurance company approved by the State Board of Insurance in an amount approved by the board;

(3) indemnify the state, members of the board, and the commission from:

(A) a claim, demand, or cause of action asserted by a person as a result of the facility's operation; and

(B) an act or omission of the provider or the facility's personnel;

(4) provide furniture, equipment, toys, or other materials necessary for the facility;

(5) keep a list of child care applicants who are waiting for enrollment in the facility; and

(6) pay salaries and provide insurance for the employees of the facility. (V.A.C.S. Art. 6252-3e, Secs. 7(b), 8(b) (part).)

Sec. 663.109. MONITORING OF CHILD CARE FACILITIES. The board shall monitor the activities and operations of a child care facility by conducting regular visits to the facility during operating hours to investigate, inspect, and evaluate the services provided. (V.A.C.S. Art. 6252-3e, Sec. 6 (part).)

Sec. 663.110. ENROLLMENT IN CHILD CARE FACILITY. (a) The board shall establish procedures for application for enrollment in a child care facility established under this chapter.

(b) A provider for a child care facility shall give preference in enrollment to the individual whose application date is the earliest, except that the board may permit enrollment because of a special circumstance as defined by the board, including financial need or other hardship. (V.A.C.S. Art. 6252-3e, Secs. 8(a), (b) (part), (c).)

Sec. 663.111. ADDITIONAL CHILD CARE FACILITIES. (a) The board may begin procedures to establish another child care facility when the number of applicants on a waiting list to enroll in a facility is 50 or more.

(b) The commission shall provide the board with a list of sites available for a new or expanded child care facility not later than the 120th day after the date on which the commission receives from the board the specifications for a child care facility under Section 663.103.

(c) If the commission cannot provide the board with a suitable site, the board shall select a site that the board considers suitable.

(d) After a site has been selected, the commission shall give priority to implementing the plan to prepare the child care facility over other building construction, repairs, or renovations. (V.A.C.S. Art. 6252-3e, Sec. 10.)

Sec. 663.112. CHILD CARE FACILITY ACCOUNT. (a) The legislature may appropriate money from the Texas capital trust fund established under Chapter 2201 to establish and operate a child care facility under this chapter.

(b) On the first day of each biennium or from the first amounts deposited to the credit of the Texas capital trust fund during each biennium, the comptroller shall set aside in a special account within the fund the amount of an appropriation for this chapter.

(c) An unexpended and unobligated portion of an appropriation made from the fund for this chapter remains in the special account at the end of the period for which it is appropriated. (V.A.C.S. Art. 6252-3e, Sec. 9(a).)

Sec. 663.113. PRIVATE DONATIONS. (a) The board may solicit a private donation of property or money for renovations, equipment, or other items necessary to provide child care services.

(b) The commission shall accept and use the donations only for the child care program. (V.A.C.S. Art. 6252-3e, Sec. 9(b).)

CHAPTER 664. STATE EMPLOYEES HEALTH FITNESS AND EDUCATION

- Sec. 664.001. SHORT TITLE
- Sec. 664.002. FINDINGS AND PURPOSE
- Sec. 664.003. DEFINITION
- Sec. 664.004. FUNDS AND FACILITIES FOR HEALTH FITNESS PROGRAMS
- Sec. 664.005. AGREEMENTS WITH OTHER STATE, LOCAL, OR FEDERAL AGENCIES
- Sec. 664.006. PLANS; APPROVAL

CHAPTER 664. STATE EMPLOYEES HEALTH FITNESS AND EDUCATION

Sec. 664.001. SHORT TITLE. This chapter may be cited as the State Employees Health Fitness and Education Act of 1983. (V.A.C.S. Art. 6252-27, Sec. 1.)

Sec. 664.002. FINDINGS AND PURPOSE. Effective state administration is materially enhanced by programs designed to encourage and create a condition of health fitness in state administrators and employees and public money spent for these programs serves important public purposes, including:

- (1) an understanding and diminution of the risk factors associated with society's most debilitating diseases;
- (2) the development of greater work productivity and capacity;
- (3) a reduction in absenteeism;
- (4) a reduction of health insurance costs; and
- (5) an increase in the general level of fitness. (V.A.C.S. Art. 6252-27, Sec. 2.)

Sec. 664.003. DEFINITION. In this chapter, "state agency" means a department, institution, commission, or other agency of the state. (New.)

Sec. 664.004. FUNDS AND FACILITIES FOR HEALTH FITNESS PROGRAMS. (a) A state agency may use available public funds for:

- (1) health fitness education and activities; or
- (2) other costs related to health fitness.

(b) A state agency may use available facilities for health fitness programs. (V.A.C.S. Art. 6252-27, Sec. 3.)

Sec. 664.005. AGREEMENTS WITH OTHER STATE, LOCAL, OR FEDERAL AGENCIES. A state agency may, and is encouraged to, enter into an agreement with another state agency, including a state-supported college or university, or with a local or federal department, institution, commission, or agency, to present, join in presenting, or participate jointly in health fitness education or activity programs for the state agency's administrators and employees. (V.A.C.S. Art. 6252-27, Sec. 4.)

Sec. 664.006. PLANS; APPROVAL. Before implementing a health fitness program, a state agency must:

- (1) develop a plan that addresses the purpose, nature, duration, costs, participants in, and expected results of the program; and
- (2) obtain written approval of the plan from:
  - (A) the Texas Department of Health; and
  - (B) if implementing the program requires the expenditure of public money, the governor or the governor's designated representative. (V.A.C.S. Art. 6252-27, Sec. 5.)

CHAPTER 665. IMPEACHMENT AND REMOVAL

SUBCHAPTER A. IMPEACHMENT BY HOUSE

- Sec. 665.001. IMPEACHMENT PROCEEDING
- Sec. 665.002. INDIVIDUALS WHO MAY BE IMPEACHED
- Sec. 665.003. IMPEACHMENT WHEN HOUSE IS IN SESSION
- Sec. 665.004. CONVENING HOUSE FOR IMPEACHMENT PURPOSES WHEN HOUSE IS NOT IN SESSION
- Sec. 665.005. POWERS OF HOUSE DURING IMPEACHMENT PROCEEDING
- Sec. 665.006. PER DIEM AND MILEAGE DURING IMPEACHMENT PROCEEDING
- Sec. 665.007. CUMULATIVE REMEDY

[Sections 665.008 to 665.020 reserved for expansion]

SUBCHAPTER B. REMOVAL AFTER IMPEACHMENT

- Sec. 665.021. SENATE MEETS AS COURT OF IMPEACHMENT
- Sec. 665.022. PROCEDURE WHEN SENATE IS IN SESSION
- Sec. 665.023. PROCEDURE WHEN SENATE IS NOT IN SESSION
- Sec. 665.024. ADOPTION OF RULES
- Sec. 665.025. CONVENING AND ADJOURNING SENATE
- Sec. 665.026. ATTENDANCE OF SENATORS
- Sec. 665.027. POWERS OF SENATE MEETING AS A COURT OF IMPEACHMENT
- Sec. 665.028. PER DIEM WHILE SENATE IS MEETING AS A COURT OF IMPEACHMENT

[Sections 665.029 to 665.050 reserved for expansion]

SUBCHAPTER C. REMOVAL BY ADDRESS

- Sec. 665.051. INDIVIDUALS SUBJECT TO REMOVAL
- Sec. 665.052. CAUSES FOR REMOVAL
- Sec. 665.053. NOTICE AND HEARING
- Sec. 665.054. REMOVAL VOTE

[Sections 665.055 to 665.080 reserved for expansion]

SUBCHAPTER D. OTHER REMOVAL PROVISIONS

- Sec. 665.081. NO REMOVAL FOR ACTS COMMITTED BEFORE ELECTION TO OFFICE

CHAPTER 665. IMPEACHMENT AND REMOVAL

SUBCHAPTER A. IMPEACHMENT BY HOUSE

Sec. 665.001. IMPEACHMENT PROCEEDING. In this subchapter, "impeachment proceeding" includes:

- (1) presenting an article of impeachment;
- (2) investigating a matter relating to a contemplated impeachment; and
- (3) acting on an article of impeachment. (New.)

Sec. 665.002. INDIVIDUALS WHO MAY BE IMPEACHED. An individual may be removed from an office or a position by impeachment in the manner provided by the constitution and this chapter if the individual is:

- (1) a state officer;
- (2) a head of a state department or state institution; or
- (3) a member, regent, trustee, or commissioner having control or management of a state institution or enterprise. (V.A.C.S. Art. 5961 (part).)

Sec. 665.003. **IMPEACHMENT WHEN HOUSE IS IN SESSION.** (a) The house of representatives may conduct an impeachment proceeding at a regular or called session at its pleasure without further call or action.

(b) If the house is conducting an impeachment proceeding at the time a session expires or ends by house or senate adjournment on legislative matters, the house may:

- (1) continue in session to conduct the impeachment proceeding; or
- (2) adjourn to a later time to conclude the impeachment proceeding.

(c) If the house adjourns under Subsection (b)(2), it may continue the impeachment proceeding through committees or agents. (V.A.C.S. Art. 5962 (part).)

Sec. 665.004. **CONVENING HOUSE FOR IMPEACHMENT PURPOSES WHEN HOUSE IS NOT IN SESSION.** (a) When the house is not in session it may be convened to conduct an impeachment proceeding:

- (1) by proclamation of the governor;
- (2) by proclamation of the speaker of the house if the speaker is petitioned in writing by 50 or more members of the house; or
- (3) by proclamation in writing signed by a majority of the members of the house.

(b) Each member of the house who is in the state and accessible must be given a copy of the proclamation in person or by registered mail:

- (1) by the speaker of the house or under the direction of the speaker; or
- (2) by the members signing the proclamation or one or more individuals who signed the proclamation designated by the members that signed the proclamation if the proclamation was issued under Subsection (a)(3).

(c) The proclamation must:

- (1) state in general terms the reason for convening the house;
- (2) state a time for the house to convene; and
- (3) be published in at least three daily newspapers of general circulation. (V.A.C.S. Art. 5962 (part).)

Sec. 665.005. **POWERS OF HOUSE DURING IMPEACHMENT PROCEEDING.** When conducting an impeachment proceeding, the house or a house committee may:

- (1) send for persons or papers;
- (2) compel the giving of testimony; and
- (3) punish for contempt to the same extent as a district court of this state. (V.A.C.S. Art. 5962 (part).)

Sec. 665.006. **PER DIEM AND MILEAGE DURING IMPEACHMENT PROCEEDING.** (a) A member of the house is entitled to a per diem when the house is in session for an impeachment proceeding but not for legislative purposes.

(b) A member of a house committee is entitled to a per diem when the committee is meeting for an impeachment proceeding and the house is not in session.

(c) A member of the house is entitled to mileage when the house is convened by proclamation under Section 665.004.

(d) The amount of a per diem and the mileage authorized by this section is the same as the amounts for those items fixed for members of the legislature when in legislative session.

(e) The house may pay agents to assist in conducting an impeachment proceeding. (V.A.C.S. Art. 5962 (part).)

Sec. 665.007. **CUMULATIVE REMEDY.** The remedy of impeachment as provided in this chapter is cumulative of all other remedies regarding the impeachment or removal of public officers. (V.A.C.S. Art. 5961 (part).)

[Sections 665.008 to 665.020 reserved for expansion]

SUBCHAPTER B. REMOVAL AFTER IMPEACHMENT

Sec. 665.021. SENATE MEETS AS COURT OF IMPEACHMENT. If the house prefers articles of impeachment against an individual, the senate shall meet as a court of impeachment in a trial of the individual in the manner provided by Article XV of the Texas Constitution. (V.A.C.S. Art. 5963(a).)

Sec. 665.022. PROCEDURE WHEN SENATE IS IN SESSION. (a) If the senate is in a regular or called session when articles of impeachment are preferred by the house, the senate shall receive the articles when they are presented. The senate shall set a day and time to resolve into a court of impeachment to consider the articles.

(b) The senate may continue in session as a court of impeachment beyond the end of the session for legislative purposes or may adjourn as a court of impeachment to a day and time set by the senate. (V.A.C.S. Art. 5963(b).)

Sec. 665.023. PROCEDURE WHEN SENATE IS NOT IN SESSION. (a) If the senate is not in a regular or called session when articles of impeachment are preferred by the house, the house shall deliver by personal messenger or certified or registered mail a certified copy of the articles of impeachment to the governor, lieutenant governor, and each member of the senate. A record of the deliveries and a copy of the record shall be delivered to the lieutenant governor and the president pro tempore of the senate.

(b) After the deliveries are made as required by Subsection (a), the senate shall be convened to consider the articles of impeachment:

(1) by proclamation of the governor; or

(2) if the governor fails to issue the proclamation within 10 days from the date the articles of impeachment are preferred by the house, by proclamation of the lieutenant governor; or

(3) if the lieutenant governor fails to issue the proclamation within 15 days from the date the articles of impeachment are preferred by the house, by proclamation of the president pro tempore of the senate; or

(4) if the president pro tempore of the senate fails to issue the proclamation within 20 days from the date the articles of impeachment are preferred by the house, by proclamation signed by a majority of the members of the senate.

(c) A proclamation issued under Subsection (b) must:

(1) be in writing;

(2) state the purposes for which the senate is to be convened;

(3) fix a date not later than the 20th day after the date of the issuance of the proclamation for convening the senate; and

(4) be published in at least three daily newspapers of general circulation.

(d) A copy of the proclamation shall be sent by registered or certified mail to each member of the senate and the lieutenant governor.

(e) The senate shall convene on the day set in the proclamation and receive the articles of impeachment. The senate shall then act as a court of impeachment to consider the articles of impeachment. (V.A.C.S. Art. 5963, Secs. (c), (d).)

Sec. 665.024. ADOPTION OF RULES. The senate shall adopt rules of procedure when it resolves into a court of impeachment. After the senate has adopted the rules it shall consider the articles of impeachment. (V.A.C.S. Art. 5963(e) (part).)

Sec. 665.025. CONVENING AND ADJOURNING SENATE. The senate may recess or adjourn during the impeachment trial to a time to be set by the senate. The senate may condition reconvening on the occurrence of an event specified in the motion. (V.A.C.S. Art. 5963(e) (part).)



Sec. 665.026. ATTENDANCE OF SENATORS. Each member of the senate shall be in attendance when the senate is meeting as a court of impeachment. (V.A.C.S. Art. 5963(e) (part).)

Sec. 665.027. POWERS OF SENATE MEETING AS A COURT OF IMPEACHMENT.

(a) The senate may:

- (1) send for persons, papers, books, and other documents;
- (2) compel the giving of testimony;
- (3) punish for contempt to the same extent as a district court;
- (4) meet in closed session for purposes of deliberation; and
- (5) exercise any other power necessary to carry out its duties under Article XV of the Texas Constitution.

(b) The senate may employ assistance to enforce and execute the lawful orders, mandates, writs, process, and precepts of the senate meeting as a court of impeachment. (V.A.C.S. Art. 5963(f).)

Sec. 665.028. PER DIEM WHILE SENATE IS MEETING AS A COURT OF IMPEACHMENT. (a) When meeting as a court of impeachment the members of the senate and the lieutenant governor receive the same mileage and per diem as is provided for members of the legislature when it is in legislative session.

(b) If the senate is not in session as a court of impeachment for more than four consecutive days because of recess or adjournment, the members of the senate and the lieutenant governor are not entitled to the per diem for those days. (V.A.C.S. Art. 5963(g) (part).)

[Sections 665.029 to 665.050 reserved for expansion]

#### SUBCHAPTER C. REMOVAL BY ADDRESS

Sec. 665.051. INDIVIDUALS SUBJECT TO REMOVAL. Only the following individuals are subject to removal from office by address under this subchapter:

- (1) a justice of the supreme court;
- (2) a judge of the court of criminal appeals;
- (3) a justice of a court of appeals;
- (4) a judge of a district court;
- (5) a judge of a criminal district court;
- (6) the commissioner of agriculture;
- (7) the commissioner of insurance; and
- (8) the banking commissioner. (V.A.C.S. Art. 5964 (part).)

Sec. 665.052. CAUSES FOR REMOVAL. (a) An individual may be removed from office by address for:

- (1) wilful neglect of duty;
- (2) incompetency;
- (3) habitual drunkenness;
- (4) oppression in office;
- (5) breach of trust; or
- (6) any other reasonable cause that is not a sufficient ground for impeachment.

(b) In this section, "incompetency" means:

- (1) gross ignorance of official duties;
- (2) gross carelessness in the discharge of official duties; or
- (3) inability or unfitness to discharge promptly and properly official duties because of a serious physical or mental defect that did not exist at the time of the officer's election. (V.A.C.S. Arts. 5964 (part), 5972.)

Sec. 665.053. NOTICE AND HEARING. (a) Notice of the reason for removal by address must be given to the officer who is to be removed.

(b) The officer must be allowed to appear at a hearing in the officer's defense before the vote for removal by address is taken.

(c) The cause for removal shall be stated at length in the address and entered in the journal of each house. (V.A.C.S. Art. 5964 (part).)

Sec. 665.054. REMOVAL VOTE. (a) The governor shall remove from office a person on the address of two-thirds of each house of the legislature.

(b) The vote of each member shall be recorded in the journal of each house. (V.A.C.S. Art. 5964 (part).)

[Sections 665.055 to 665.080 reserved for expansion]

#### SUBCHAPTER D. OTHER REMOVAL PROVISIONS

Sec. 665.081. NO REMOVAL FOR ACTS COMMITTED BEFORE ELECTION TO OFFICE. (a) An officer in this state may not be removed from office for an act the officer may have committed before the officer's election to office.

(b) The prohibition against the removal from office for an act the officer commits before the officer's election is covered by:

(1) Section 21.002, Local Government Code, for a mayor or alderman of a general law municipality; or

(2) Chapter 87, Local Government Code, for a county or precinct officer. (V.A.C.S. Art. 5986.)

### TITLE 10. GENERAL GOVERNMENT

#### SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE

##### Chapter 2001. ADMINISTRATIVE PROCEDURE

##### Chapter 2002. TEXAS REGISTER AND ADMINISTRATIVE CODE

##### Chapter 2003. STATE OFFICE OF ADMINISTRATIVE HEARINGS

##### Chapter 2004. REPRESENTATION BEFORE STATE AGENCIES

##### Chapter 2005. PERMIT PROCESSING

##### Chapter 2006. AGENCY ACTIONS AFFECTING SMALL BUSINESSES

[Chapters 2007 to 2050 reserved for expansion]

#### SUBTITLE B. INFORMATION AND PLANNING

##### Chapter 2051. GOVERNMENT DOCUMENTS, PUBLICATIONS, AND NOTICES

##### Chapter 2052. STATE AGENCY REPORTS AND PUBLICATIONS

##### Chapter 2053. REPORT BY GOVERNOR ON ORGANIZATION AND EFFICIENCY OF STATE AGENCIES

##### Chapter 2054. INFORMATION RESOURCES

##### Chapter 2055. FACULTY INFORMATION AND RESEARCH SERVICE FOR TEXAS COMMITTEE

##### Chapter 2056. STRATEGIC PLANS OF OPERATION

##### Chapter 2057. CAPITAL IMPROVEMENT PLAN

Chapter 2058. RECOGNITION OF FEDERAL CENSUS

[Chapters 2059 to 2100 reserved for expansion]

SUBTITLE C. STATE ACCOUNTING, FISCAL  
MANAGEMENT, AND PRODUCTIVITY

Chapter 2101. ACCOUNTING PROCEDURES

Chapter 2102. INTERNAL AUDITING

Chapter 2103. EXPENDITURES BY STATE AGENCIES

Chapter 2104. CONSERVATORSHIP AS A RESULT  
OF FISCAL MISMANAGEMENT

Chapter 2105. ADMINISTRATION OF BLOCK GRANTS

Chapter 2106. INDIRECT COST RECOVERY PROGRAM

Chapter 2107. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

Chapter 2108. EMPLOYEE INCENTIVE AND AGENCY PRODUCTIVITY

Chapter 2109. VOLUNTEERS

[Chapters 2110 to 2150 reserved for expansion]

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

[Chapters 2151 to 2200 reserved for expansion]

SUBTITLE E. GOVERNMENT PROPERTY

Chapter 2201. TEXAS CAPITAL TRUST FUND

Chapter 2202. SURPLUS PROPERTY AGENCY

Chapter 2203. USE OF STATE PROPERTY

Chapter 2204. ACQUISITION OF LAND FOR STATE AND FEDERAL PURPOSES

Chapter 2205. AIRCRAFT POOLING

[Chapters 2206 to 2250 reserved for expansion]

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

Chapter 2251. PAYMENT FOR GOODS AND SERVICES

Chapter 2252. CONTRACTS WITH GOVERNMENTAL ENTITY

Chapter 2253. PUBLIC WORK PERFORMANCE AND PAYMENT BONDS

Chapter 2254. PROFESSIONAL AND CONSULTING SERVICES

Chapter 2255. PRIVATE DONORS OR ORGANIZATIONS

Chapter 2256. PUBLIC FUNDS INVESTMENT

Chapter 2257. COLLATERAL FOR PUBLIC FUNDS

[Chapters 2258 to 2300 reserved for expansion]

SUBTITLE G. ECONOMIC DEVELOPMENT PROGRAMS INVOLVING BOTH STATE AND LOCAL GOVERNMENTS

Chapter 2301. SUPERCONDUCTING SUPER COLLIDER FACILITY RESEARCH AUTHORITY

Chapter 2302. COGENERATION

Chapter 2303. ENTERPRISE ZONES

Chapter 2304. HOUSING REHABILITATION

Chapter 2305. RESTITUTION FOR OIL OVERCHARGES

Chapter 2306. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2001. ADMINISTRATIVE PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2001.001. PURPOSE
- Sec. 2001.002. SHORT TITLE
- Sec. 2001.003. DEFINITIONS
- Sec. 2001.004. REQUIREMENT TO ADOPT RULES OF PRACTICE AND INDEX RULES, ORDERS, AND DECISIONS
- Sec. 2001.005. RULE, ORDER, OR DECISION NOT EFFECTIVE UNTIL INDEXED

[Sections 2001.006 to 2001.020 reserved for expansion]

SUBCHAPTER B. RULEMAKING

- Sec. 2001.021. PETITION FOR ADOPTION OF RULES
- Sec. 2001.022. LOCAL EMPLOYMENT IMPACT STATEMENTS
- Sec. 2001.023. NOTICE OF PROPOSED RULE
- Sec. 2001.024. CONTENT OF NOTICE
- Sec. 2001.025. EFFECTIVE DATE OF NOTICE
- Sec. 2001.026. NOTICE TO PERSONS REQUESTING ADVANCE NOTICE OF PROPOSED RULES
- Sec. 2001.027. WITHDRAWAL OF PROPOSED RULE
- Sec. 2001.028. NOTICE OF PROPOSED LAW ENFORCEMENT RULES
- Sec. 2001.029. PUBLIC COMMENT
- Sec. 2001.030. STATEMENT OF REASONS FOR OR AGAINST ADOPTION
- Sec. 2001.031. INFORMAL CONFERENCES AND ADVISORY COMMITTEES
- Sec. 2001.032. LEGISLATIVE REVIEW
- Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE
- Sec. 2001.034. EMERGENCY RULEMAKING
- Sec. 2001.035. SUBSTANTIAL COMPLIANCE REQUIREMENT; TIME LIMIT ON PROCEDURAL CHALLENGE
- Sec. 2001.036. EFFECTIVE DATE OF RULES; EFFECT OF FILING WITH SECRETARY OF STATE
- Sec. 2001.037. OFFICIAL TEXT OF RULE
- Sec. 2001.038. DECLARATORY JUDGMENT

[Sections 2001.039 to 2001.050 reserved for expansion]

SUBCHAPTER C. CONTESTED CASES: GENERAL RIGHTS AND PROCEDURES

- Sec. 2001.051. OPPORTUNITY FOR HEARING AND PARTICIPATION; NOTICE OF HEARING
- Sec. 2001.052. CONTENTS OF NOTICE

- Sec. 2001.053. RIGHT TO COUNSEL
- Sec. 2001.054. LICENSES
- Sec. 2001.055. INTERPRETERS FOR DEAF OR HEARING IMPAIRED PARTIES AND WITNESSES
- Sec. 2001.056. INFORMAL DISPOSITION OF CONTESTED CASE
- Sec. 2001.057. CONTINUANCES
- Sec. 2001.058. HEARING CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS
- Sec. 2001.059. TRANSCRIPT
- Sec. 2001.060. RECORD
- Sec. 2001.061. EX PARTE CONSULTATIONS
- Sec. 2001.062. EXAMINATION OF RECORD BY STATE AGENCY; PROPOSAL FOR DECISION

[Sections 2001.063 to 2001.080 reserved for expansion]

SUBCHAPTER D. CONTESTED CASES: EVIDENCE, WITNESSES, AND DISCOVERY

- Sec. 2001.081. RULES OF EVIDENCE
- Sec. 2001.082. EXCLUSION OF EVIDENCE
- Sec. 2001.083. PRIVILEGE
- Sec. 2001.084. OBJECTIONS TO EVIDENCE
- Sec. 2001.085. WRITTEN EVIDENCE
- Sec. 2001.086. DOCUMENTARY EVIDENCE
- Sec. 2001.087. CROSS-EXAMINATION
- Sec. 2001.088. WITNESSES
- Sec. 2001.089. ISSUANCE OF SUBPOENA
- Sec. 2001.090. OFFICIAL NOTICE; STATE AGENCY EVALUATION OF EVIDENCE
- Sec. 2001.091. DISCOVERY FROM PARTIES: ORDERS FOR PRODUCTION OR INSPECTION
- Sec. 2001.092. DISCOVERY FROM PARTIES: IDENTITY OF WITNESS OR POTENTIAL PARTY; EXPERT REPORTS
- Sec. 2001.093. DISCOVERY FROM PARTIES: COPY OF PREVIOUS STATEMENT
- Sec. 2001.094. ISSUANCE OF COMMISSION REQUIRING DEPOSITION
- Sec. 2001.095. DEPOSITION OF STATE AGENCY BOARD MEMBER
- Sec. 2001.096. PLACE OF DEPOSITION
- Sec. 2001.097. OBJECTIONS TO DEPOSITION TESTIMONY
- Sec. 2001.098. PREPARATION OF DEPOSITION
- Sec. 2001.099. SUBMISSION OF DEPOSITION TO WITNESS; SIGNATURE
- Sec. 2001.100. RETURN OF DEPOSITION TO STATE AGENCY
- Sec. 2001.101. OPENING OF DEPOSITION BY STATE AGENCY EMPLOYEE
- Sec. 2001.102. USE OF DEPOSITION
- Sec. 2001.103. MILEAGE AND PER DIEM OF WITNESS OR DEPONENT

[Sections 2001.104 to 2001.120 reserved for expansion]

SUBCHAPTER E. CONTESTED CASES: TESTIMONY OF CHILD

- Sec. 2001.121. STATEMENT OR TESTIMONY BY CERTAIN CHILD ABUSE VICTIMS
- Sec. 2001.122. HEARSAY STATEMENT OF CHILD ABUSE VICTIM

[Sections 2001.123 to 2001.140 reserved for expansion]

SUBCHAPTER F. CONTESTED CASES: FINAL DECISIONS AND ORDERS; MOTIONS FOR REHEARING

- Sec. 2001.141. FORM OF DECISION; FINDINGS OF FACT AND CONCLUSIONS OF LAW

- Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS
- Sec. 2001.143. TIME OF RENDERING DECISION
- Sec. 2001.144. DECISIONS; WHEN FINAL
- Sec. 2001.145. MOTIONS FOR REHEARING: PREREQUISITES TO APPEAL
- Sec. 2001.146. MOTIONS FOR REHEARING: PROCEDURES
- Sec. 2001.147. AGREEMENT TO MODIFY TIME LIMITS

[Sections 2001.148 to 2001.170 reserved for expansion]

#### SUBCHAPTER G. CONTESTED CASES: JUDICIAL REVIEW

- Sec. 2001.171. JUDICIAL REVIEW
- Sec. 2001.172. SCOPE OF JUDICIAL REVIEW
- Sec. 2001.173. TRIAL DE NOVO REVIEW
- Sec. 2001.174. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE OR UNDEFINED SCOPE OF REVIEW
- Sec. 2001.175. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL EVIDENCE RULE OR UNDEFINED SCOPE OF REVIEW
- Sec. 2001.176. PETITION INITIATING JUDICIAL REVIEW
- Sec. 2001.177. COST OF PREPARING AGENCY RECORD
- Sec. 2001.178. CUMULATIVE EFFECT

[Sections 2001.179 to 2001.200 reserved for expansion]

#### SUBCHAPTER H. COURT ENFORCEMENT

- Sec. 2001.201. COURT ENFORCEMENT OF SUBPOENA OR COMMISSION
- Sec. 2001.202. COURT ENFORCEMENT OF FINAL ORDERS, DECISIONS, AND RULES

[Sections 2001.203 to 2001.220 reserved for expansion]

#### SUBCHAPTER I. EXCEPTIONS

- Sec. 2001.221. DRIVER'S LICENSES
- Sec. 2001.222. STATE AGENCY PERSONNEL RULES AND PRACTICES
- Sec. 2001.223. EXCEPTIONS FROM DECLARATORY JUDGMENT, COURT ENFORCEMENT, AND CONTESTED CASE PROVISIONS
- Sec. 2001.224. TEXAS EMPLOYMENT COMMISSION
- Sec. 2001.225. CERTAIN ALCOHOLIC BEVERAGE CODE APPEALS

[Sections 2001.226 to 2001.900 reserved for expansion]

#### SUBCHAPTER Z. MISCELLANEOUS

- Sec. 2001.901. APPEAL FROM DISTRICT COURT
- Sec. 2001.902. SAVING CLAUSE

### TITLE 10. GENERAL GOVERNMENT

#### SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE

#### CHAPTER 2001. ADMINISTRATIVE PROCEDURE

#### SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2001.001. PURPOSE. It is the public policy of the state through this chapter to:

- (1) provide minimum standards of uniform practice and procedure for state agencies;
- (2) provide for public participation in the rulemaking process; and
- (3) restate the law of judicial review of state agency action. (V.A.C.S. Art. 6252-13a, Sec. 1.)

Sec. 2001.002. **SHORT TITLE.** This chapter may be cited as the Administrative Procedure Act. (V.A.C.S. Art. 6252-13a, Sec. 2.)

Sec. 2001.003. **DEFINITIONS.** In this chapter:

(1) "Contested case" means a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(2) "License" includes the whole or a part of a state agency permit, certificate, approval, registration, or similar form of permission required by law.

(3) "Licensing" includes a state agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(4) "Party" means a person or state agency named or admitted as a party.

(5) "Person" means an individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency.

(6) "Rule":

(A) means a state agency statement of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of a state agency;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.

(7) "State agency" means a state officer, board, commission, or department with state-wide jurisdiction that makes rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases. The term does not include:

(A) a state agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Workers' Compensation Commission; or

(E) an institution of higher education. (V.A.C.S. Art. 6252-13a, Sec. 3 (part).)

Sec. 2001.004. **REQUIREMENT TO ADOPT RULES OF PRACTICE AND INDEX RULES, ORDERS, AND DECISIONS.** In addition to other requirements under law, a state agency shall:

(1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures;

(2) index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; and

(3) index, cross-index to statute, and make available for public inspection all final orders, decisions, and opinions. (V.A.C.S. Art. 6252-13a, Sec. 4(a).)

Sec. 2001.005. **RULE, ORDER, OR DECISION NOT EFFECTIVE UNTIL INDEXED.**

(a) A state agency rule, order, or decision made or issued on or after January 1, 1976, is not valid or effective against a person or party, and may not be invoked by an agency, until the agency has indexed the rule, order, or decision and made it available for public inspection as required by this chapter.

(b) This section does not apply in favor of a person or party that has actual knowledge of the rule, order, or decision. (V.A.C.S. Art. 6252-13a, Sec. 4(b).)

[Sections 2001.006 to 2001.020 reserved for expansion]

SUBCHAPTER B. RULEMAKING

Sec. 2001.021. PETITION FOR ADOPTION OF RULES. (a) An interested person by petition to a state agency may request the adoption of a rule.

(b) A state agency by rule shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition.

(c) Not later than the 60th day after the date of submission of a petition under this section, a state agency shall:

(1) deny the petition in writing, stating its reasons for the denial; or

(2) initiate a rulemaking proceeding under this subchapter. (V.A.C.S. Art. 6252-13a, Sec. 11.)

Sec. 2001.022. LOCAL EMPLOYMENT IMPACT STATEMENTS. (a) At the request of a state agency, the Texas Employment Commission shall prepare a local employment impact statement for a proposed rule. The impact statement must describe in detail the probable effect of the rule on employment in each geographic area affected by the rule for each year of the first five years that the rule will be in effect and may include other factors at the commission's discretion.

(b) A state agency shall determine whether a rule may affect a local economy before proposing the rule for adoption. If a state agency determines that a proposed rule may affect a local economy, the agency shall submit to the commission a copy of the proposed rule and other initial information that the commission requires on a form prescribed by the commission.

(c) A state agency shall submit a proposed rule to the commission under this section not later than the 30th day before the date on which the agency files notice of the proposed rule with the secretary of state.

(d) A state agency shall designate a liaison to furnish information requested by the commission during preparation of a local employment impact statement.

(e) The commission shall deliver the local employment impact statement to a state agency not later than the 25th day after the date on which the commission receives the proposed rule. If the commission does not deliver the statement within this period, the proposed rule is presumed not to affect local employment.

(f) A local employment impact statement must show:

(1) the name and title of the commission employee or officer responsible for preparing or approving it; and

(2) the name and title of the state agency liaison.

(g) This section does not apply to the adoption of an emergency rule.

(h) Failure to comply with this section does not impair the legal effect of a rule adopted under this chapter. (V.A.C.S. Art. 6252-13a, Sec. 4A.)

Sec. 2001.023. NOTICE OF PROPOSED RULE. (a) A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule.

(b) A state agency shall file notice of the proposed rule with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002. (V.A.C.S. Art. 6252-13a, Sec. 5(a) (part).)

Sec. 2001.024. CONTENT OF NOTICE. The notice of a proposed rule must include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule, except any portion omitted under Section 2002.014, prepared in a manner to indicate any words to be added or deleted from the current text;

(3) a statement of the statutory or other authority under which the rule is proposed to be adopted, including:



- (A) a concise explanation of the particular statutory or other provisions under which the rule is proposed;
- (B) the section or article of the code affected; and
- (C) a certification that the proposed rule has been reviewed by legal counsel and found to be within the state agency's authority to adopt;
- (4) a fiscal note showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

- (A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;
- (B) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;
- (C) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and
- (D) if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments;
- (5) a note about public benefits and costs showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

- (A) the public benefits expected as a result of adoption of the proposed rule; and
- (B) the probable economic cost to persons required to comply with the rule;
- (6) the local employment impact statement prepared under Section 2001.022, if required;
- (7) a request for comments on the proposed rule from any interested person; and
- (8) any other statement required by law. (V.A.C.S. Art. 6252-13a, Sec. 5(a) (part).)

Sec. 2001.025. **EFFECTIVE DATE OF NOTICE.** Notice of a proposed rule becomes effective as notice when published in the Texas Register, except as provided by Section 2001.028. (V.A.C.S. Art. 6252-13a, Sec. 5(b) (part).)

Sec. 2001.026. **NOTICE TO PERSONS REQUESTING ADVANCE NOTICE OF PROPOSED RULES.** A state agency shall mail notice of a proposed rule to each person who has made a timely written request of the agency for advance notice of its rulemaking proceedings. Failure to mail the notice does not invalidate an action taken or rule adopted. (V.A.C.S. Art. 6252-13a, Sec. 5(b) (part).)

Sec. 2001.027. **WITHDRAWAL OF PROPOSED RULE.** A proposed rule is withdrawn six months after the date of publication of notice of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. (V.A.C.S. Art. 6252-13a, Sec. 5(b) (part).)

Sec. 2001.028. **NOTICE OF PROPOSED LAW ENFORCEMENT RULES.** Notice of the adoption of a proposed rule by the Commission on Jail Standards or the Commission on Law Enforcement Officer Standards and Education that affects a law enforcement agency of the state or of a political subdivision of the state is not effective until the notice is:

- (1) published as required by Section 2001.023; and
- (2) mailed to each law enforcement agency that may be affected by the proposed rule. (V.A.C.S. Art. 6252-13a, Sec. 5(h).)

Sec. 2001.029. **PUBLIC COMMENT.** (a) Before adopting a rule, a state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing.

(b) A state agency shall grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested by:

- (1) at least 25 persons;
- (2) a governmental subdivision or agency; or
- (3) an association having at least 25 members.

(c) A state agency shall consider fully all written and oral submissions about a proposed rule. (V.A.C.S. Art. 6252-13a, Sec. 5(c) (part).)

Sec. 2001.030. **STATEMENT OF REASONS FOR OR AGAINST ADOPTION.** On adoption of a rule, a state agency, if requested to do so by an interested person either before adoption or not later than the 30th day after the date of adoption, shall issue a concise statement of the principal reasons for and against its adoption. The agency shall include in the statement its reasons for overruling the considerations urged against adoption. (V.A.C.S. Art. 6252-13a, Sec. 5(c) (part).)

Sec. 2001.031. **INFORMAL CONFERENCES AND ADVISORY COMMITTEES.** (a) A state agency may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rulemaking.

(b) A state agency may appoint committees of experts or interested persons or representatives of the public to advise the agency about contemplated rulemaking.

(c) The power of a committee appointed under this section is advisory only. (V.A.C.S. Art. 6252-13a, Sec. 5(f).)

Sec. 2001.032. **LEGISLATIVE REVIEW.** (a) Each house of the legislature by rule shall establish a process under which the presiding officer of each house refers each proposed state agency rule to the appropriate standing committee for review before the rule is adopted.

(b) A state agency shall deliver to the lieutenant governor and the speaker of the house of representatives a copy of the notice of a proposed rule when the agency files notice with the secretary of state under Section 2001.023.

(c) On the vote of a majority of its members, a standing committee may send to a state agency a statement supporting or opposing adoption of a proposed rule. (V.A.C.S. Art. 6252-13a, Sec. 5(g).)

Sec. 2001.033. **STATE AGENCY ORDER ADOPTING RULE.** A state agency order finally adopting a rule must include:

(1) a reasoned justification of the rule, including:

(A) a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption;

(B) a restatement of the rule's factual basis; and

(C) the reasons why the agency disagrees with party submissions and proposals;

(2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule; and

(3) a certification that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. (V.A.C.S. Art. 6252-13a, Sec. 5(c-1).)

Sec. 2001.034. **EMERGENCY RULEMAKING.** (a) A state agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency:

(1) finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice; and

(2) states in writing the reasons for its finding under Subdivision (1).

(b) A state agency shall set forth in an emergency rule's preamble the finding required by Subsection (a).

(c) A rule adopted under this section may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. An identical rule may be adopted under Sections 2001.023 and 2001.029.

(d) A state agency shall file an emergency rule adopted under this section and the agency's written reasons for the adoption in the office of the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002. (V.A.C.S. Art. 6252-13a, Sec. 5(d).)

Sec. 2001.035. **SUBSTANTIAL COMPLIANCE REQUIREMENT; TIME LIMIT ON PROCEDURAL CHALLENGE.** (a) A rule adopted after January 1, 1976, is not valid unless a state agency adopts it in substantial compliance with Sections 2001.023 through 2001.034.

(b) A person must initiate a proceeding to contest a rule on the ground of noncompliance with the procedural requirements of Sections 2001.023 through 2001.034 not later than the second anniversary of the effective date of the rule. (V.A.C.S. Art. 6252-13a, Sec. 5(e).)

Sec. 2001.036. **EFFECTIVE DATE OF RULES; EFFECT OF FILING WITH SECRETARY OF STATE.** (a) A rule takes effect 20 days after the date on which it is filed in the office of the secretary of state, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date;

(2) if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date; and

(3) if a federal statute or regulation requires that a state agency implement a rule by a certain date, the rule is effective on the prescribed date.

(b) A state agency shall file with its rule the finding described by Subsection (a)(2), if applicable, and a brief statement of the reasons for the finding. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided by Subsection (a)(3) shall be filed in the office of the secretary of state and published in the Texas Register. (V.A.C.S. Art. 6252-13a, Sec. 10.)

Sec. 2001.037. **OFFICIAL TEXT OF RULE.** If a conflict exists, the official text of a rule is the text on file with the secretary of state and not the text published in the Texas Register or on file with the issuing state agency. (V.A.C.S. Art. 6252-13a, Sec. 8(b).)

Sec. 2001.038. **DECLARATORY JUDGMENT.** (a) The validity or applicability of a rule, including an emergency rule adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.

(b) The action may be brought only in a Travis County district court.

(c) The state agency must be made a party to the action.

(d) A court may render a declaratory judgment without regard to whether the plaintiff requested the state agency to rule on the validity or applicability of the rule in question.

(e) An action brought under this section may not be used to delay or stay a hearing in which a suspension, revocation, or cancellation of a license by a state agency is at issue before the agency after notice of the hearing has been given. (V.A.C.S. Art. 6252-13a, Sec. 12.)

[Sections 2001.039 to 2001.050 reserved for expansion]

## SUBCHAPTER C. CONTESTED CASES: GENERAL RIGHTS AND PROCEDURES

Sec. 2001.051. **OPPORTUNITY FOR HEARING AND PARTICIPATION; NOTICE OF HEARING.** In a contested case, each party is entitled to an opportunity:

(1) for hearing after reasonable notice of not less than 10 days; and

(2) to respond and to present evidence and argument on each issue involved in the case. (V.A.C.S. Art. 6252-13a, Secs. 13(a), (d).)

Sec. 2001.052. **CONTENTS OF NOTICE.** (a) Notice of a hearing in a contested case must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the matters asserted.

(b) If a state agency or other party is unable to state matters in detail at the time notice under this section is served, an initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement shall be furnished not less than three days before the date set for the hearing. (V.A.C.S. Art. 6252-13a, Secs. 13(b), (c).)

Sec. 2001.053. **RIGHT TO COUNSEL.** (a) Each party to a contested case is entitled to the assistance of counsel before a state agency.

(b) A party may expressly waive the right to assistance of counsel. (V.A.C.S. Art. 6252-13a, Sec. 14(r).)

Sec. 2001.054. **LICENSES.** (a) The provisions of this chapter concerning contested cases apply to the grant, denial, or renewal of a license that is required to be preceded by notice and opportunity for hearing.

(b) If a license holder makes timely and sufficient application for the renewal of a license or for a new license for an activity of a continuing nature, the existing license does not expire until the application has been finally determined by the state agency. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of state agency proceedings:

(1) the agency gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and

(2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license. (V.A.C.S. Art. 6252-13a, Sec. 18.)

Sec. 2001.055. **INTERPRETERS FOR DEAF OR HEARING IMPAIRED PARTIES AND WITNESSES.** (a) In a contested case, a state agency shall provide an interpreter whose qualifications are approved by the Texas Commission for the Deaf and Hearing Impaired to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(b) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others. (V.A.C.S. Art. 6252-13a, Sec. 13A.)

Sec. 2001.056. **INFORMAL DISPOSITION OF CONTESTED CASE.** Unless precluded by law, an informal disposition may be made of a contested case by:

(1) stipulation;

(2) agreed settlement;

(3) consent order; or

(4) default. (V.A.C.S. Art. 6252-13a, Sec. 13(e).)

Sec. 2001.057. **CONTINUANCES.** (a) A state agency may continue a hearing in a contested case from time to time and from place to place.

(b) The notice of the hearing must indicate the times and places at which the hearing may be continued.

(c) If a hearing is not concluded on the day it begins, a state agency shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded. (V.A.C.S. Art. 6252-13a, Sec. 13(i).)

Sec. 2001.058. **HEARING CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.** (a) This section applies only to an administrative law judge employed by the State Office of Administrative Hearings.

(b) An administrative law judge who conducts a contested case hearing shall consider applicable agency rules or policies in conducting the hearing, but the state agency deciding the case may not supervise the administrative law judge.

(c) A state agency shall provide the administrative law judge with a written statement of applicable rules or policies.

(d) A state agency may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

(e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only for reasons of policy. The agency shall state in writing the reason and legal basis for a change made under this subsection. (V.A.C.S. Art. 6252-13a, Sec. 13(j).)

Sec. 2001.059. **TRANSCRIPT.** (a) On the written request of a party to a contested case, proceedings, or any part of the proceedings, shall be transcribed.

(b) A state agency may pay the cost of a transcript or may assess the cost to one or more parties.

(c) This chapter does not limit a state agency to a stenographic record of proceedings. (V.A.C.S. Art. 6252-13a, Sec. 13(g).)

Sec. 2001.060. **RECORD.** The record in a contested case includes:

- (1) each pleading, motion, and intermediate ruling;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) each decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision. (V.A.C.S. Art. 6252-13a, Sec. 13(f).)

Sec. 2001.061. **EX PARTE CONSULTATIONS.** (a) Unless required for the disposition of an ex parte matter authorized by law, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.

(b) A state agency member may communicate ex parte with another member of the agency unless prohibited by other law.

(c) Under Section 2001.090, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with an agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence. (V.A.C.S. Art. 6252-13a, Sec. 17.)

Sec. 2001.062. **EXAMINATION OF RECORD BY STATE AGENCY; PROPOSAL FOR DECISION.** (a) In a contested case, if a majority of the state agency officials who are to render a final decision have not heard the case or read the record, the decision, if adverse to a party other than the agency itself, may not be made until:

- (1) a proposal for decision is served on each party; and
- (2) an opportunity is given to each adversely affected party to file exceptions and present briefs to the officials who are to render the decision.

(b) If a party files exceptions or presents briefs, an opportunity shall be given to each other party to file replies to the exceptions or briefs.

(c) A proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision.

The statement must be prepared by the individual who conducted the hearing or by one who has read the record.

(d) A proposal for decision may be amended in response to exceptions, replies, or briefs submitted by the parties without again being served on the parties.

(e) The parties by written stipulation may waive compliance with this section. (V.A.C.S. Art. 6252-13a, Sec. 15.)

[Sections 2001.063 to 2001.080 reserved for expansion]

#### SUBCHAPTER D. CONTESTED CASES: EVIDENCE WITNESSES, AND DISCOVERY

Sec. 2001.081. **RULES OF EVIDENCE.** The rules of evidence as applied in a nonjury civil case in a district court of this state shall apply to a contested case except that evidence inadmissible under those rules may be admitted if the evidence is:

- (1) necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (2) not precluded by statute; and
- (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. (V.A.C.S. Art. 6252-13a, Sec. 14(a) (part).)

Sec. 2001.082. **EXCLUSION OF EVIDENCE.** In a contested case, evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded. (V.A.C.S. Art. 6252-13a, Sec. 14(a) (part).)

Sec. 2001.083. **PRIVILEGE.** In a contested case, a state agency shall give effect to the rules of privilege recognized by law. (V.A.C.S. Art. 6252-13a, Sec. 14(a) (part).)

Sec. 2001.084. **OBJECTIONS TO EVIDENCE.** An objection to an evidentiary offer in a contested case may be made and shall be noted in the record. (V.A.C.S. Art. 6252-13a, Sec. 14(a) (part).)

Sec. 2001.085. **WRITTEN EVIDENCE.** Subject to the requirements of Sections 2001.081 through 2001.084, any part of the evidence in a contested case may be received in writing if:

- (1) a hearing will be expedited; and
- (2) the interests of the parties will not be substantially prejudiced. (V.A.C.S. Art. 6252-13a, Sec. 14(a) (part).)

Sec. 2001.086. **DOCUMENTARY EVIDENCE.** A copy or excerpt of documentary evidence may be received in a contested case if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document. (V.A.C.S. Art. 6252-13a, Sec. 14(o).)

Sec. 2001.087. **CROSS-EXAMINATION.** In a contested case, a party may conduct cross-examination required for a full and true disclosure of the facts. (V.A.C.S. Art. 6252-13a, Sec. 14(p).)

Sec. 2001.088. **WITNESSES.** A state agency may swear witnesses and take their testimony under oath in connection with a contested case held under this chapter. (V.A.C.S. Art. 6252-13a, Sec. 14(b).)

Sec. 2001.089. **ISSUANCE OF SUBPOENA.** On its own motion or on the written request of a party to a contested case pending before it, a state agency shall issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding if:

- (1) good cause is shown; and
- (2) an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue under Section 2001.103. (V.A.C.S. Art. 6252-13a, Sec. 14(c).)

Sec. 2001.090. OFFICIAL NOTICE; STATE AGENCY EVALUATION OF EVIDENCE. (a) In connection with a hearing held under this chapter, official notice may be taken of:

(1) all facts that are judicially cognizable; and

(2) generally recognized facts within the area of the state agency's specialized knowledge.

(b) Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.

(c) Each party is entitled to be given an opportunity to contest material that is officially noticed.

(d) The special skills or knowledge of the state agency and its staff may be used in evaluating the evidence. (V.A.C.S. Art. 6252-13a, Sec. 14(q).)

Sec. 2001.091. DISCOVERY FROM PARTIES: ORDERS FOR PRODUCTION OR INSPECTION. (a) On the motion of a party, on notice to each other party, and subject to limitations of the kind provided for discovery under the Texas Rules of Civil Procedure, a state agency in which a contested case is pending may order a party:

(1) to produce and to permit the party making the motion or a person on behalf of that party to inspect and to copy or photograph a designated document, paper, book, account, letter, photograph, or tangible thing in the party's possession, custody, or control that:

(A) is not privileged; and

(B) constitutes or contains, or is reasonably calculated to lead to the discovery of, evidence that is material to a matter involved in the contested case; and

(2) to permit entry to designated land or other property in the party's possession or control to inspect, measure, survey, or photograph the property or a designated object or operation on the property that may be material to a matter involved in the contested case.

(b) An order under this section:

(1) must specify the time, place, and manner of making the inspection, measurement, or survey or of making copies or photographs; and

(2) may prescribe other terms and conditions that are just. (V.A.C.S. Art. 6252-13a, Secs. 14a(a), (b).)

Sec. 2001.092. DISCOVERY FROM PARTIES: IDENTITY OF WITNESS OR POTENTIAL PARTY; EXPERT REPORTS. (a) The identity and location of a potential party or witness in a contested case may be obtained from a communication or other paper in a party's possession, custody, or control.

(b) A party may be required to produce and permit the inspection and copying of a report, including factual observations and opinions, of an expert who will be called as a witness.

(c) This section does not extend to other communications:

(1) made after the occurrence or transaction on which the contested case is based;

(2) made in connection with the prosecution, investigation, or defense of the contested case or the circumstances from which the case arose; and

(3) that are:

(A) written statements of witnesses;

(B) in writing and between agents, representatives, or employees of a party; or

(C) between a party and the party's agent, representative, or employee. (V.A.C.S. Art. 6252-13a, Sec. 14a(c).)

Sec. 2001.093. DISCOVERY FROM PARTIES: COPY OF PREVIOUS STATEMENT. (a) On request, a person, including a person who is not a party, is entitled to obtain a copy of a statement in a party's possession, custody, or control that the person has previously made about the contested case or its subject matter.

(b) A person whose request under Subsection (a) is refused may move for a state agency order under Section 2001.091.

(c) In this section, a statement is considered to be previously made if it is:

(1) a written statement signed or otherwise adopted or approved by the person making it; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription of the recording, which is a substantially verbatim recital of an oral statement by the person making it and that was contemporaneously recorded. (V.A.C.S. Art. 6252-13a, Sec. 14a(d).)

Sec. 2001.094. **ISSUANCE OF COMMISSION REQUIRING DEPOSITION.** (a) On its own motion or on the written request of a party to a contested case pending before it, and on deposit of an amount that will reasonably ensure payment of the amount estimated to accrue under Section 2001.103, a state agency shall issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken.

(b) The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purpose of the proceeding.

(c) The commission shall require an officer to whom it is addressed to:

(1) examine the witness before the officer on the date and at the place named in the commission; and

(2) take answers under oath to questions asked the witness by a party to the proceeding, the state agency, or an attorney for a party or the agency.

(d) The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed. (V.A.C.S. Art. 6252-13a, Secs. 14(d) (part), (e) (part).)

Sec. 2001.095. **DEPOSITION OF STATE AGENCY BOARD MEMBER.** The deposition of a member of a state agency board may not be taken after a date has been set for hearing in a contested case. (V.A.C.S. Art. 6252-13a, Sec. 14(d) (part).)

Sec. 2001.096. **PLACE OF DEPOSITION.** A deposition in a contested case shall be taken in the county where the witness:

(1) resides;

(2) is employed; or

(3) regularly transacts business in person. (V.A.C.S. Art. 6252-13a, Sec. 14(e) (part).)

Sec. 2001.097. **OBJECTIONS TO DEPOSITION TESTIMONY.** (a) The officer taking an oral deposition in a contested case may not:

(1) sustain an objection to the testimony taken; or

(2) exclude testimony.

(b) An objection to deposition testimony is reserved for the action of the state agency before which the matter is pending.

(c) The administrator or other officer conducting the contested case hearing may consider objections other than those made at the taking of the testimony. (V.A.C.S. Art. 6252-13a, Sec. 14(g).)

Sec. 2001.098. **PREPARATION OF DEPOSITION.** (a) A deposition witness in a contested case shall be carefully examined.

(b) The testimony shall be reduced to writing or typewriting by the officer taking the deposition, a person under the officer's personal supervision, or the deposition witness in the officer's presence. (V.A.C.S. Art. 6252-13a, Sec. 14(f).)

Sec. 2001.099. **SUBMISSION OF DEPOSITION TO WITNESS; SIGNATURE.** (a) A deposition in a contested case shall be submitted to the witness for examination after the testimony is fully transcribed and shall be read to or by the witness.

(b) The witness and the parties may waive in writing the examination and reading of a deposition under Subsection (a).

(c) If the witness is a party to the contested case pending before the agency with an attorney of record, the deposition officer shall notify the attorney of record in writing by registered or certified mail that the deposition is ready for examination and reading at the office of the deposition officer and that if the witness does not appear and examine, read, and



sign the deposition before the 21st day after the date on which the notice is mailed, the deposition shall be returned as provided by this subchapter for unsigned depositions.

(d) A witness must sign a deposition at least three days before the date of the hearing or the deposition shall be returned as an unsigned deposition as provided by this subchapter.

(e) The officer taking a deposition shall enter on the deposition:

- (1) a change in form or substance that the witness desires to make; and
- (2) a statement of the reasons given by the witness for making the change.

(f) After the deposition officer has entered any change and a statement of reasons for the change on the deposition under Subsection (e), the witness shall sign the deposition unless:

- (1) the parties present at the taking of the deposition by stipulation waive the signing;
- (2) the witness is ill;
- (3) the witness cannot be found; or
- (4) the witness refuses to sign.

(g) If a deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness's waiver, illness, absence, or refusal to sign and the reason given, if any, for failure to sign. The deposition may then be used as though signed by the witness. (V.A.C.S. Art. 6252-13a, Sec. 14(h).)

Sec. 2001.100. RETURN OF DEPOSITION TO STATE AGENCY. (a) A deposition may be returned to the state agency before which the contested case is pending by mail or by a party interested in taking the deposition or another person.

(b) For a deposition returned by mail, the state agency shall:

- (1) endorse on the deposition the fact that it was received from the post office; and
- (2) have it signed by the agency employee receiving the deposition.

(c) For a deposition returned by means other than mail, the person delivering it to the state agency shall execute an affidavit before the agency stating that:

- (1) the person received it from the hands of the officer before whom it was taken;
- (2) it has not been out of the person's possession since the person received it; and
- (3) it has not been altered. (V.A.C.S. Art. 6252-13a, Sec. 14(i).)

Sec. 2001.101. OPENING OF DEPOSITION BY STATE AGENCY EMPLOYEE. (a) At the request of a party or the party's counsel, a deposition in a contested case that is filed with a state agency may be opened by an employee of the agency.

(b) A state agency employee who opens a deposition shall:

- (1) endorse on the deposition the day and at whose request it was opened; and
- (2) sign the deposition.

(c) The deposition shall remain on file with the state agency for the inspection of any party. (V.A.C.S. Art. 6252-13a, Sec. 14(j).)

Sec. 2001.102. USE OF DEPOSITION. A party is entitled to use a deposition taken under this subchapter in the contested case pending before the state agency without regard to whether a cross-interrogatory has been propounded. (V.A.C.S. Art. 6252-13a, Sec. 14(k).)

Sec. 2001.103. MILEAGE AND PER DIEM OF WITNESS OR DEPONENT. (a) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding under this chapter is entitled to receive:

- (1) 10 cents for each mile, or a greater amount prescribed by state agency rule, for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence; and
- (2) \$10, or a greater amount prescribed by state agency rule, for each day or part of a day that the person is necessarily present.

(b) On the presentation of proper vouchers sworn by the witness and approved by the state agency, the party or agency at whose request the witness appears or the deposition is taken

shall pay the amounts to which the witness is entitled under this section. (V.A.C.S. Art. 6252-13a, Secs. 14(l), (m).)

[Sections 2001.104 to 2001.120 reserved for expansion].

#### SUBCHAPTER E. CONTESTED CASES: TESTIMONY OF CHILD

Sec. 2001.121. STATEMENT OR TESTIMONY BY CERTAIN CHILD ABUSE VICTIMS. (a) This section applies:

(1) to a contested case and judicial review of a final decision under this chapter, whether by trial de novo or under the substantial evidence rule, in which an issue is the abuse of a child younger than 12 years of age; and

(2) only to the statement or testimony of a child younger than 12 years of age who is alleged to have been abused.

(b) The recording of an oral statement recorded before the proceeding is admissible into evidence if:

(1) an attorney for a party to the proceeding was not present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording;

(4) the operator was competent;

(5) the recording is accurate and has not been altered;

(6) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(7) each voice on the recording is identified;

(8) the individual conducting the interview of the child in the recording is present at the proceeding and available to testify or to be cross-examined by either party; and

(9) each party to the proceeding is given an opportunity to view the recording before it is offered into evidence.

(c) On the motion of a party to the proceeding, the individual conducting the hearing may order that the testimony of the child be taken in a room other than the hearing room and be televised by closed circuit equipment in the hearing room to be viewed by the finder of fact and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other individual whose presence would contribute to the welfare and well-being of the child, and individuals necessary to operate the equipment may be present in the room with the child during the child's testimony. Only the attorneys for the parties may question the child. The individuals operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony but does not permit the child to see or hear them.

(d) On the motion of a party to the proceeding, the individual conducting the hearing may order that the testimony of the child be taken outside the hearing room and be recorded for showing in the hearing room before the individual conducting the hearing, the finder of fact, and the parties to the proceeding. Only those individuals permitted to be present at the taking of testimony under Subsection (c) may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the individuals operating the equipment shall be confined from the child's sight and hearing as provided by Subsection (c). The individual conducting the hearing shall ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording;

(3) the operator was competent;

(4) the recording is accurate and is not altered;

(5) each voice on the recording is identified; and

(6) each party to the proceeding is given an opportunity to view the recording before it is shown in the hearing room.

(e) A child whose testimony is taken as provided by this section may not be compelled to testify in the presence of the individual conducting the hearing during the proceeding. (V.A.C.S. Art. 6252-13a, Secs. 13B, 19(g).)

Sec. 2001.122. HEARSAY STATEMENT OF CHILD ABUSE VICTIM. (a) This section applies:

(1) to a proceeding held under this chapter or a judicial review of a final decision under this chapter, whether by trial de novo or under the substantial evidence rule, in which an issue is the abuse of a child 12 years of age or younger; and

(2) only to a statement that describes an alleged incident of child abuse that:

(A) was made by the child who is the alleged victim of the incident; and

(B) was made to the first individual 18 years of age or older, other than the individual accused of abuse, to whom the child made a statement about the incident.

(b) A statement that meets the requirements of Subsection (a)(2) is not inadmissible as hearsay if:

(1) on or before the seventh day before the date on which the proceeding or hearing begins, the party intending to offer the statement:

(A) notifies each other party of the party's intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

(2) the presiding official conducting the proceeding finds that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child who is the alleged victim testifies or is available to testify at the hearing in court, at the proceeding, or in any other manner provided by law.

(c) The finding required by Subsection (b)(2) shall be made in a hearing conducted outside the presence of the jury, if the hearing is before a jury. (V.A.C.S. Art. 6252-13a, Secs. 13C, 19(g).)

[Sections 2001.123 to 2001.140 reserved for expansion]

#### SUBCHAPTER F. CONTESTED CASES: FINAL DECISIONS AND ORDERS; MOTIONS FOR REHEARING

Sec. 2001.141. FORM OF DECISION; FINDINGS OF FACT AND CONCLUSIONS OF LAW. (a) A decision or order that may become final under Section 2001.144 that is adverse to a party in a contested case must be in writing or stated in the record.

(b) A decision that may become final under Section 2001.144 must include findings of fact and conclusions of law, separately stated.

(c) Findings of fact may be based only on the evidence and on matters that are officially noticed.

(d) Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(e) If a party submits under a state agency rule proposed findings of fact, the decision shall include a ruling on each proposed finding. (V.A.C.S. Art. 6252-13a, Secs. 13(h); 16(a), (b) (part).)

Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS. (a) A party in a contested case shall be notified either personally or by first class mail of any decision or order.

(b) On issuance in a contested case of a decision that may become final under Section 2001.144 or an order ruling on a motion for rehearing, a state agency shall send a copy of the decision or order by first class mail to the attorneys of record and shall keep an appropriate record of the mailing. If a party is not represented by an attorney of record, the state agency shall send a copy of the decision or order by first class mail to the party and shall keep an appropriate record of the mailing.

(c) A party or attorney of record notified by mail under Subsection (b) is presumed to have been notified on the date on which the notice is mailed. (V.A.C.S. Art. 6252-13a, Sec. 16(b) (part).)

Sec. 2001.143. TIME OF RENDERING DECISION. (a) A decision or order that may become final under Section 2001.144 in a contested case must be rendered not later than the 60th day after the date on which the hearing is finally closed.

(b) In a contested case heard by other than a majority of the officials of a state agency, the agency may extend the period in which the decision or order may be issued.

(c) Any extension shall be announced at the conclusion of the hearing. (V.A.C.S. Art. 6252-13a, Sec. 16(d).)

Sec. 2001.144. DECISIONS; WHEN FINAL. (a) A decision in a contested case is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is rendered; or

(B) the motion is overruled by operation of law; or

(3) if a state agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision is rendered.

(b) If a decision or order is final under Subsection (a)(3), a state agency must recite in the decision or order the finding made under Subsection (a)(3) and the fact that the decision or order is final and effective on the date rendered. (V.A.C.S. Art. 6252-13a, Sec. 16(c) (part).)

Sec. 2001.145. MOTIONS FOR REHEARING; PREREQUISITES TO APPEAL. (a) A timely motion for rehearing is a prerequisite to an appeal in a contested case except that a motion for rehearing of a decision or order that is final under Section 2001.144(a)(3) is not a prerequisite for appeal.

(b) A decision that is final under Section 2001.144(a)(2) or (3) is appealable. (V.A.C.S. Art. 6252-13a, Secs. 16(c) (part), (e) (part).)

Sec. 2001.146. MOTIONS FOR REHEARING; PROCEDURES. (a) A motion for rehearing in a contested case must be filed by a party not later than the 20th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of a decision or order that may become final under Section 2001.144.

(b) A reply to a motion for rehearing must be filed with the state agency not later than the 30th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

(c) A state agency shall act on a motion for rehearing not later than the 45th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144 or the motion for rehearing is overruled by operation of law.

(d) If a state agency board includes a member who does not receive a salary for work as a board member and who resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by:

(1) mail;

(2) telephone;

(3) telegraph; or

(4) another suitable means of communication.

(e) A state agency may by written order extend the time for filing a motion or reply or taking agency action under this section, except that an extension may not extend the period for agency action beyond the 90th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

(f) In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144. (V.A.C.S. Art. 6252-13a, Secs. 16(c) (part), (e) (part).)

Sec. 2001.147. AGREEMENT TO MODIFY TIME LIMITS. The parties to a contested case, with state agency approval, may agree to modify the times prescribed by Sections 2001.143 and 2001.146. (V.A.C.S. Art. 6252-13a, Sec. 16(f).)

[Sections 2001.148 to 2001.170 reserved for expansion]

### SUBCHAPTER G. CONTESTED CASES: JUDICIAL REVIEW

Sec. 2001.171. JUDICIAL REVIEW. A person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. (V.A.C.S. Art. 6252-13a, Sec. 19(a) (part).)

Sec. 2001.172. SCOPE OF JUDICIAL REVIEW. The scope of judicial review of a state agency decision in a contested case is as provided by the law under which review is sought. (V.A.C.S. Art. 6252-13a, Sec. 19(e) (part).)

Sec. 2001.173. TRIAL DE NOVO REVIEW. (a) If the manner of review authorized by law for the decision in a contested case that is the subject of complaint is by trial de novo, the reviewing court shall try each issue of fact and law in the manner that applies to other civil suits in this state as though there had not been an intervening agency action or decision but may not admit in evidence the fact of prior state agency action or the nature of that action except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court.

(b) On demand, a party to a trial de novo review may have a jury determination of each issue of fact on which a jury determination could be obtained in other civil suits in this state. (V.A.C.S. Art. 6252-13a, Secs. 19(c), (e) (part).)

Sec. 2001.174. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE OR UNDEFINED SCOPE OF REVIEW. If the law authorizes review of a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion but:

(1) may affirm the agency decision in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(A) in violation of a constitutional or statutory provision;

(B) in excess of the agency's statutory authority;

(C) made through unlawful procedure;

(D) affected by other error of law;

(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. (V.A.C.S. Art. 6252-13a, Sec. 19(e) (part).)

Sec. 2001.175. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL EVIDENCE RULE OR UNDEFINED SCOPE OF REVIEW. (a) The procedures of this section apply

if the manner of review authorized by law for the decision in a contested case that is the subject of complaint is other than by trial de novo.

(b) After service of the petition on a state agency and within the time permitted for filing an answer or within additional time allowed by the court, the agency shall send to the reviewing court the original or a certified copy of the entire record of the proceeding under review. The record shall be filed with the clerk of the court. The record may be shortened by stipulation of all parties to the review proceedings. The court may assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party is subject to a rule adopted under Section 2001.177 requiring payment of all costs of record preparation. The court may require or permit later corrections or additions to the record.

(c) A party may apply to the court to present additional evidence. If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the state agency, the court may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may change its findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court.

(d) The party seeking judicial review shall offer, and the reviewing court shall admit, the state agency record into evidence as an exhibit.

(e) A court shall conduct the review sitting without a jury and is confined to the agency record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency that are not reflected in the record. (V.A.C.S. Art. 6252-13a, Sec. 19(d).)

Sec. 2001.176. PETITION INITIATING JUDICIAL REVIEW. (a) A person initiates judicial review in a contested case by filing a petition not later than the 30th day after the date on which the decision that is the subject of complaint is final and appealable.

(b) Unless otherwise provided by statute:

(1) the petition must be filed in a Travis County district court;

(2) a copy of the petition must be served on the state agency and each party of record in the proceedings before the agency; and

(3) the filing of the petition vacates a state agency decision for which trial de novo is the manner of review authorized by law but does not affect the enforcement of an agency decision for which another manner of review is authorized. (V.A.C.S. Art. 6252-13a, Sec. 19(b).)

Sec. 2001.177. COST OF PREPARING AGENCY RECORD. (a) A state agency by rule may require a party who appeals a final decision in a contested case to pay all or a part of the cost of preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(b) A charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure. (V.A.C.S. Art. 6252-13a, Sec. 19(f).)

Sec. 2001.178. CUMULATIVE EFFECT. This subchapter is cumulative of other means of redress provided by statute. (V.A.C.S. Art. 6252-13a, Sec. 19(a) (part).)

[Sections 2001.179 to 2001.200 reserved for expansion]

## SUBCHAPTER H. COURT ENFORCEMENT

Sec. 2001.201. COURT ENFORCEMENT OF SUBPOENA OR COMMISSION. (a) If a person fails to comply with a subpoena or commission issued under this chapter, the state agency issuing the subpoena or commission, acting through the attorney general, or the party requesting the subpoena or commission may bring suit to enforce the subpoena or commission in a district court in Travis County or in the county in which a hearing conducted by the agency may be held.

(b) A court that determines that good cause exists for the issuance of the subpoena or commission shall order compliance with the subpoena or commission. The court may hold in contempt a person who does not obey the order. (V.A.C.S. Art. 6252-13a, Sec. 14(n).)

Sec. 2001.202. COURT ENFORCEMENT OF FINAL ORDERS, DECISIONS, AND RULES. (a) The attorney general, on the request of a state agency to which it appears that a person is violating, about to violate, or failing or refusing to comply with a final order or decision or an agency rule, may bring an action in a district court authorized to exercise judicial review of the final order or decision or the rule to:

- (1) enjoin or restrain the continuation or commencement of the violation; or
- (2) compel compliance with the final order or decision or the rule.

(b) The action authorized by this section is in addition to any other remedy provided by law. (V.A.C.S. Art. 6252-13a, Sec. 19A.)

[Sections 2001.203 to 2001.220 reserved for expansion]

### SUBCHAPTER I. EXCEPTIONS

Sec. 2001.221. DRIVER'S LICENSES. This chapter does not apply to a suspension, revocation, cancellation, denial, or disqualification of a driver's license or commercial driver's license as authorized by:

- (1) Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes);
- (2) the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes);
- (3) the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes);
- (4) Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes); or
- (5) Section 13, Article 42.12, Code of Criminal Procedure. (V.A.C.S. Art. 6252-13a, Sec. 21(a).)

Sec. 2001.222. STATE AGENCY PERSONNEL RULES AND PRACTICES. This chapter does not apply to matters related solely to the internal personnel rules and practices of a state agency. (V.A.C.S. Art. 6252-13a, Sec. 21(d).)

Sec. 2001.223. EXCEPTIONS FROM DECLARATORY JUDGMENT, COURT ENFORCEMENT, AND CONTESTED CASE PROVISIONS. Section 2001.038 and Subchapters C through H do not apply to:

- (1) the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs of the Texas Department of Human Services;
- (2) action by the Banking Commissioner or the State Banking Board regarding the issuance of a state bank charter for a bank to assume the assets and liabilities of a state bank that the commissioner determines to be in an unsafe condition as defined by Section 1, Article 1a, Chapter VIII, The Texas Banking Code (Article 342-801a, Vernon's Texas Civil Statutes);
- (3) a hearing or interview conducted by the Board of Pardons and Paroles or the pardons and paroles division of the Texas Department of Criminal Justice relating to the grant, rescission, or revocation of parole or other form of administrative release; or
- (4) the suspension, revocation, or termination of the certification of a breath analysis operator or technical supervisor under the rules of the Department of Public Safety. (V.A.C.S. Art. 6252-13a, Secs. 21(b), (e), (f), (i).)

Sec. 2001.224. TEXAS EMPLOYMENT COMMISSION. Section 2001.038 and Subchapters C through H do not apply to a hearing by the Texas Employment Commission to determine whether or not a claimant is entitled to unemployment compensation, and the remainder of this chapter does not apply other than to matters of unemployment insurance maintained by the commission. Regarding unemployment insurance matters, the commission may not comply with Section 2001.004(3) or 2001.005 relating to orders and decisions. (V.A.C.S. Art. 6252-13a, Sec. 21(g).)

Sec. 2001.225. CERTAIN ALCOHOLIC BEVERAGE CODE APPEALS. Section 2001.176(b)(1) does not apply to an appeal under Section 32.18, Alcoholic Beverage Code. (V.A.C.S. Art. 6252-13a, Sec. 21(h).)

[Sections 2001.226 to 2001.900 reserved for expansion]

**SUBCHAPTER Z. MISCELLANEOUS**

Sec. 2001.901. APPEAL FROM DISTRICT COURT. (a) A party may appeal a final district court judgment under this chapter in the manner provided for civil actions generally.

(b) An appeal bond may not be required of a state agency. (V.A.C.S. Art. 6252-13a, Sec. 20.)

Sec. 2001.902. SAVING CLAUSE. This chapter does not repeal a statutory provision that confers investigatory authority on a state agency, including a provision that grants an agency the power, in connection with investigatory authority, to:

- (1) take depositions;
- (2) administer oaths or affirmations;
- (3) examine witnesses;
- (4) receive evidence;
- (5) conduct hearings; or
- (6) issue subpoenas or summons. (V.A.C.S. Art. 6252-13a, Sec. 22 (part).)

**CHAPTER 2002. TEXAS REGISTER AND ADMINISTRATIVE CODE**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 2002.001. DEFINITIONS
- Sec. 2002.002. PURPOSE

[Sections 2002.003 to 2002.010 reserved for expansion]

**SUBCHAPTER B. TEXAS REGISTER**

- Sec. 2002.011. TEXAS REGISTER
- Sec. 2002.012. SUMMARIES OF OPINIONS AND REQUESTS FOR OPINIONS
- Sec. 2002.013. FREQUENCY OF PUBLICATION
- Sec. 2002.014. OMISSION OF INFORMATION
- Sec. 2002.015. DISTRIBUTION
- Sec. 2002.016. FILING PROCEDURES
- Sec. 2002.017. RULES
- Sec. 2002.018. MICROFILM AND ELECTRONIC STORAGE
- Sec. 2002.019. TABLE OF CONTENTS; INDEX
- Sec. 2002.020. CERTIFICATION
- Sec. 2002.021. AGENCY LIAISON
- Sec. 2002.022. EVIDENTIARY VALUE OF TEXAS REGISTER; CITATION
- Sec. 2002.023. EXCEPTIONS

[Sections 2002.024 to 2002.050 reserved for expansion]

**SUBCHAPTER C. TEXAS ADMINISTRATIVE CODE**

- Sec. 2002.051. PUBLICATION OF TEXAS ADMINISTRATIVE CODE
- Sec. 2002.052. OMISSION OF INFORMATION
- Sec. 2002.053. PURCHASE AND RESALE OF ADMINISTRATIVE CODE
- Sec. 2002.054. EVIDENTIARY VALUE OF ADMINISTRATIVE CODE



Sec. 2002.055. RULES

Sec. 2002.056. CONFIDENTIALITY OF DATA BASE

## CHAPTER 2002. TEXAS REGISTER AND ADMINISTRATIVE CODE

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2002.001. DEFINITIONS. In this chapter:

- (1) "Administrative code" means the Texas Administrative Code.
- (2) "State agency" means a state officer, board, commission, or department with state-wide jurisdiction that makes rules or determines contested cases other than:
  - (A) an agency wholly financed by federal money;
  - (B) the legislature;
  - (C) the courts;
  - (D) the Texas Workers' Compensation Commission; or
  - (E) an institution of higher education.
- (3) The following terms have the meanings assigned by Section 2001.003
  - (A) "contested case";
  - (B) "license";
  - (C) "licensing";
  - (D) "party";
  - (E) "person"; and
  - (F) "rule." (V.A.C.S. Art. 6252-13a, Sec. 3 (part); Art. 6252-13b, Sec. 2.)

Sec. 2002.002. PURPOSE. It is the public policy of this state to provide adequate and proper public notice of proposed state agency rules and state agency actions through publication of a state register. (V.A.C.S. Art. 6252-13a, Sec. 1 (part).)

[Sections 2002.003 to 2002.010 reserved for expansion]

## SUBCHAPTER B. TEXAS REGISTER

Sec. 2002.011. TEXAS REGISTER. The secretary of state shall compile, index, cross-index to statute, and publish a publication to be known as the Texas Register. The register shall contain:

- (1) notices of proposed rules issued and filed in the office of the secretary of state as provided by Subchapter B of Chapter 2001;
- (2) the text of rules adopted and filed in the office of the secretary of state;
- (3) notices of open meetings issued and filed in the office of the secretary of state as provided by law;
- (4) executive orders issued by the governor;
- (5) summaries of requests for opinions of the attorney general and of the State Ethics Advisory Commission;
- (6) summaries of opinions of the attorney general and of the State Ethics Advisory Commission; and
- (7) other information of general interest to the public of this state, including:
  - (A) federal legislation or regulations affecting the state or a state agency; and
  - (B) state agency organizational and personnel changes. (V.A.C.S. Art. 6252-13a, Sec. 6(a) (part).)

Sec. 2002.012. SUMMARIES OF OPINIONS AND REQUESTS FOR OPINIONS. The attorney general or the State Ethics Advisory Commission, as appropriate, shall prepare and forward to the secretary of state for publication in the Texas Register:

- (1) summaries of requests for opinions under Section 2002.011(5); and
- (2) summaries of opinions under Section 2002.011(6). (V.A.C.S. Art. 6252-13a, Sec. 6(a) (part).)

Sec. 2002.013. **FREQUENCY OF PUBLICATION.** The secretary of state shall publish the Texas Register at regular intervals, but not less often than 100 times each calendar year. (V.A.C.S. Art. 6252-13a, Sec. 6(b).)

Sec. 2002.014. **OMISSION OF INFORMATION.** The secretary of state may omit information from the Texas Register if:

- (1) the secretary determines that publication of the information would be cumbersome, expensive, or otherwise inexpedient;
- (2) on application to the adopting state agency, the information is made available in printed or processed form by the agency; and
- (3) the register contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained. (V.A.C.S. Art. 6252-13a, Sec. 6(c).)

Sec. 2002.015. **DISTRIBUTION.** (a) On request, the secretary of state shall make one copy of each issue of the Texas Register available without charge to:

- (1) each board, commission, and department with statewide jurisdiction;
- (2) the governor;
- (3) the lieutenant governor;
- (4) the attorney general;
- (5) each member of the legislature;
- (6) each county clerk;
- (7) the Supreme Court of Texas;
- (8) the Texas Court of Criminal Appeals; and
- (9) each court of appeals.

(b) The secretary of state shall make copies of the Texas Register available to other persons for a reasonable fee to be fixed by the secretary. (V.A.C.S. Art. 6252-13a, Secs. 6(d), (e).)

Sec. 2002.016. **FILING PROCEDURES.** (a) To file a document for publication in the Texas Register, a state agency shall, during normal working hours:

- (1) deliver to the office of the secretary of state two certified copies of the document for filing; or
- (2) send to the secretary of state over dedicated cable or commercial lines between word or data processors one copy of the document to be filed and deliver to the office of the secretary a letter of certification that is signed by the agency's designated certifying agent and liaison and that contains a statement specifying the type of information electronically sent.

(b) On receipt of a document required to be filed in the office of the secretary of state and published in the Texas Register, the secretary shall note the day and hour of filing on the certified copies of the document or on the letter of certification.

(c) One copy of each filed document shall be maintained in original form or on microfilm in a permanent register in the office of the secretary of state. (V.A.C.S. Art. 6252-13a, Secs. 3(9), (10); 8(a) (part).)

Sec. 2002.017. **RULES.** (a) The secretary of state may adopt rules to ensure the effective administration of this subchapter, including rules prescribing paper size and the format of documents required to be filed for publication.

(b) The secretary of state may refuse to accept for filing and publication a document that does not substantially conform to the rules. (V.A.C.S. Art. 6252-13a, Sec. 8(c).)

Sec. 2002.018. **MICROFILM AND ELECTRONIC STORAGE.** The secretary of state may maintain on microfilm or on an electronic storage and retrieval system the files of state agency rules and other information required to be published in the Texas Register. After

microfilming or electronically storing the information, the secretary may destroy the original copies of the information submitted for publication. (V.A.C.S. Art. 6252-13a, Sec. 8(d).)

Sec. 2002.019. TABLE OF CONTENTS; INDEX. (a) Each issue of the Texas Register must contain a table of contents.

(b) A cumulative index to all information required to be published in the Texas Register during the previous year shall be published at least once each year. (V.A.C.S. Art. 6252-13a, Secs. 9(a), (b).)

Sec. 2002.020. CERTIFICATION. An official of a submitting state agency who is authorized to certify documents of the agency must certify each document that is filed with the secretary of state for publication. (V.A.C.S. Art. 6252-13a, Sec. 9(c).)

Sec. 2002.021. AGENCY LIAISON. A state agency shall designate at least one individual to act as a liaison through whom all required documents may be submitted to the secretary of state for filing and publication. (V.A.C.S. Art. 6252-13a, Sec. 9(d).)

Sec. 2002.022. EVIDENTIARY VALUE OF TEXAS REGISTER; CITATION. (a) The contents of the Texas Register are to be judicially noticed and are prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of the notation.

(b) Without prejudice to another mode of citation, the contents of the Texas Register may be cited by volume and page number. (V.A.C.S. Art. 6252-13a, Sec. 4(c).)

Sec. 2002.023. EXCEPTIONS. This subchapter does not apply to:

(1) a suspension, revocation, cancellation, denial, or disqualification of a driver's license or commercial driver's license as authorized by:

(A) Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes);

(B) the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes);

(C) the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes);

(D) Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701i-5, Vernon's Texas Civil Statutes); or

(E) Section 13, Article 42.12, Code of Criminal Procedure;

(2) matters related solely to the internal personnel rules and practices of a state agency; or

(3) the Texas Employment Commission, other than to matters of unemployment insurance maintained by the commission. (V.A.C.S. Art. 6252-13a, Secs. 21(a), (d), (g) (part).)

[Sections 2002.024 to 2002.050 reserved for expansion]

### SUBCHAPTER C. TEXAS ADMINISTRATIVE CODE

Sec. 2002.051. PUBLICATION OF TEXAS ADMINISTRATIVE CODE. (a) The secretary of state shall compile, index, and publish a Texas Administrative Code.

(b) The administrative code shall be periodically supplemented as necessary, but not less often than once each year.

(c) The administrative code shall contain each rule adopted by a state agency under Chapter 2001, but may not contain emergency rules adopted under Section 2001.034. (V.A.C.S. Art. 6252-13b, Sec. 3(a).)

Sec. 2002.052. OMISSION OF INFORMATION. (a) The secretary of state may omit from the administrative code a rule that is general in form if its inclusion in the code is impracticable, undesirable, or unnecessary because it is of local or limited application.

(b) The secretary of state may omit information from the administrative code if:

(1) the secretary determines that publication of the information would be cumbersome, expensive, or otherwise inexpedient;

(2) on application to the adopting state agency, the information is made available in printed or processed form by the agency; and

(3) the administrative code contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained.

(c) Omission from the administrative code under this section does not affect the validity or effectiveness of an omitted rule. (V.A.C.S. Art. 6252-13b, Sec. 3(b).)

Sec. 2002.053. PURCHASE AND RESALE OF ADMINISTRATIVE CODE. (a) To promote efficiency and economy in state government, the secretary of state may periodically purchase copies of the administrative code for resale and distribution to other branches of state government, state agencies, or institutions.

(b) The purchase does not require the secretary of state to engage in competitive bidding procedures to enter into the contract or license to publish the code. (V.A.C.S. Art. 6252-13b, Sec. 3(c).)

Sec. 2002.054. EVIDENTIARY VALUE OF ADMINISTRATIVE CODE. State agency rules published in the administrative code, as approved by the secretary of state and as amended by documents later filed with the office of the secretary:

(1) are to be judicially noticed; and

(2) are prima facie evidence of the text of the rules and of the fact that they are in effect on and after the date of the notation. (V.A.C.S. Art. 6252-13b, Sec. 4.)

Sec. 2002.055. RULES. (a) The secretary of state may adopt rules to ensure the effective administration of this subchapter.

(b) The rules may establish:

(1) titles of the administrative code; and

(2) a system of classification of the subject matter of the administrative code. (V.A.C.S. Art. 6252-13b, Sec. 5.)

Sec. 2002.056. CONFIDENTIALITY OF DATA BASE. (a) The data base for the administrative code is confidential and is exempt from disclosure under Chapter 552.

(b) In this section, "data base" means the machine-readable form of the material prepared for and used in the publication of the administrative code and includes:

(1) indexes;

(2) annotations;

(3) tables of contents;

(4) tables of authority;

(5) cross-references;

(6) compiled rules; and

(7) other unique material. (V.A.C.S. Art. 6252-13b, Sec. 5A.)

## CHAPTER 2003. STATE OFFICE OF ADMINISTRATIVE HEARINGS

### SUBCHAPTER A. GENERAL PROVISIONS

#### Sec. 2003.001. DEFINITIONS

[Sections 2003.002 to 2003.020 reserved for expansion]

### SUBCHAPTER B. STATE OFFICE OF ADMINISTRATIVE HEARINGS

#### Sec. 2003.021. OFFICE

#### Sec. 2003.022. CHIEF ADMINISTRATIVE LAW JUDGE

[Sections 2003.023 to 2003.040 reserved for expansion]

## SUBCHAPTER C. STAFF AND ADMINISTRATION

- Sec. 2003.041. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES  
 Sec. 2003.042. POWERS OF ADMINISTRATIVE LAW JUDGE  
 Sec. 2003.043. TEMPORARY ADMINISTRATIVE LAW JUDGE  
 Sec. 2003.044. STAFF  
 Sec. 2003.045. ADMINISTRATIVE DIVISION  
 Sec. 2003.046. CENTRAL HEARINGS PANEL

## CHAPTER 2003. STATE OFFICE OF ADMINISTRATIVE HEARINGS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2003.001. DEFINITIONS. In this chapter:

(1) "Administrative law judge" means an individual who presides at an administrative hearing held under Chapter 2001.

(2) "Office" means the State Office of Administrative Hearings.

(3) "State agency" means a state board, commission, department, or other agency that is subject to Chapter 2001. (V.A.C.S. Art. 6252-13f, Sec. 1.)

[Sections 2003.002 to 2003.020 reserved for expansion]

## SUBCHAPTER B. STATE OFFICE OF ADMINISTRATIVE HEARINGS

Sec. 2003.021. OFFICE. (a) The State Office of Administrative Hearings is a state agency.

(b) The office shall conduct all administrative hearings in contested cases under Chapter 2001 that are before a state agency that does not employ an individual whose only duty is to preside as a hearings officer over matters related to contested cases before the agency. (V.A.C.S. Art. 6252-13f, Secs. 2(a) (part), (b).)

Sec. 2003.022. CHIEF ADMINISTRATIVE LAW JUDGE. (a) The office is under the direction of a chief administrative law judge appointed by the governor for a two-year term.

(b) To be eligible for appointment as chief administrative law judge, an individual must:

(1) be licensed to practice law in this state;

(2) be board-certified in administrative law; and

(3) have at least five years' experience in conducting administrative hearings under Chapter 2001. (V.A.C.S. Art. 6252-13f, Sec. 2(a) (part).)

[Sections 2003.023 to 2003.040 reserved for expansion]

## SUBCHAPTER C. STAFF AND ADMINISTRATION

Sec. 2003.041. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES. (a) The chief administrative law judge shall employ administrative law judges to conduct hearings for state agencies subject to this chapter.

(b) To be eligible for employment with the office as an administrative law judge, an individual must be licensed to practice law in this state and meet other requirements prescribed by the chief administrative law judge. (V.A.C.S. Art. 6252-13f, Secs. 3(a), (b) (part).)

Sec. 2003.042. POWERS OF ADMINISTRATIVE LAW JUDGE. An administrative law judge may:

(1) administer an oath;

(2) take testimony;

(3) rule on a question of evidence;

(4) subject to review by the state agency before which the contested case is brought, issue an order relating to discovery or another hearing or prehearing matter, including an order imposing a sanction that the agency may impose; and

(5) issue a proposal for decision that includes findings of fact and conclusions of law. (V.A.C.S. Art. 6252-13f, Sec. 3(b) (part).)

Sec. 2003.043. **TEMPORARY ADMINISTRATIVE LAW JUDGE.** (a) The chief administrative law judge may contract with a qualified individual to serve as a temporary administrative law judge if an administrative law judge employed by the office is not available to hear a case within a reasonable time.

(b) The chief administrative law judge shall adopt rules relating to the qualifications of a temporary judge. (V.A.C.S. Art. 6252-13f, Sec. 3(c).)

Sec. 2003.044. **STAFF.** The chief administrative law judge may hire staff as required to perform the powers and duties of the office. (V.A.C.S. Art. 6252-13f, Sec. 3(d).)

Sec. 2003.045. **ADMINISTRATIVE DIVISION.** An administrative division in the office oversees the training, evaluation, discipline, and promotion of all administrative law judges employed by the office. (V.A.C.S. Art. 6252-13f, Sec. 4 (part).)

Sec. 2003.046. **CENTRAL HEARINGS PANEL.** (a) A central hearings panel in the office is composed of six senior administrative law judges appointed by the chief administrative law judge.

(b) Under the direction of the chief administrative law judge, the central panel shall coordinate and supervise the operation of administrative hearings conducted by the office. (V.A.C.S. Art. 6252-13f, Sec. 4 (part).)

#### CHAPTER 2004. REPRESENTATION BEFORE STATE AGENCIES

Sec. 2004.001. **DEFINITIONS**

Sec. 2004.002. **REGISTRATION**

Sec. 2004.003. **EXEMPTIONS FROM REGISTRATION**

Sec. 2004.004. **REPORTING AND FILING OF REGISTRATIONS**

Sec. 2004.005. **PENALTY**

#### CHAPTER 2004. REPRESENTATION BEFORE STATE AGENCIES

Sec. 2004.001. **DEFINITIONS.** In this chapter:

(1) "Individual" includes a member of the legislature, any other state officer, and a state employee.

(2) "State agency" means an office, department, commission, or board of the executive branch of state government. (V.A.C.S. Art. 6252-23, Sec. 1.)

Sec. 2004.002. **REGISTRATION.** (a) An individual who appears before a state agency or contacts in person an officer or employee of a state agency on behalf of an individual, firm, partnership, corporation, or association about a matter before that agency shall register with the state agency:

(1) the name and address of the registrant;

(2) the name and address of the person on whose behalf the appearance or contact is made; and

(3) a statement on whether the registrant has received or expects to receive any money, thing of value, or financial benefit for the appearance or contact.

(b) Each state agency shall provide for recording the registration in a record and shall maintain the record. (V.A.C.S. Art. 6252-23, Sec. 2 (part).)

Sec. 2004.003. **EXEMPTIONS FROM REGISTRATION.** An individual is not required to register under Section 2004.002 because of:

(1) the individual's appearance or contact on an interagency matter if the individual is an officer or employee of the state agency; or

(2) a contact by the individual with the state agency or an officer or employee of the agency if the contact:

(A) is solely for obtaining information and an attempt is not made to influence the action of an officer or employee of the agency;

(B) consists of making an appearance and participating at a public hearing;

(C) is made in a matter in which a pleading or other instrument that discloses the individual's representation is on file with the agency; or

(D) is one for which the individual does not receive compensation or any thing of value.

(V.A.C.S. Art. 6252-23, Secs. 2 (part), 3A.)

Sec. 2004.004. REPORTING AND FILING OF REGISTRATIONS. (a) A state agency shall prepare a report that includes the information from all registrations filed with the agency in a calendar quarter.

(b) The agency shall file the report with the secretary of state not later than the 10th day of the month after the end of the calendar quarter for which the report was prepared.

(c) The secretary of state shall index each report and keep the report on file for four years after the date the report is filed. (V.A.C.S. Art. 6252-23, Sec. 3.)

Sec. 2004.005. PENALTY. (a) An individual commits an offense if the individual does not register as required by this chapter.

(b) An offense under this chapter is a misdemeanor punishable by:

(1) a fine of not more than \$500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and imprisonment. (V.A.C.S. Art. 6252-23, Sec. 4.)

CHAPTER 2005. PERMIT PROCESSING

- Sec. 2005.001. DEFINITIONS
- Sec. 2005.002. EXCEPTIONS
- Sec. 2005.003. PERMIT PROCESSING PERIODS
- Sec. 2005.004. GOOD CAUSE
- Sec. 2005.005. DUTY OF HEAD OF AGENCY
- Sec. 2005.006. COMPLAINT PROCEDURE
- Sec. 2005.007. REPORTS

CHAPTER 2005. PERMIT PROCESSING

Sec. 2005.001. DEFINITIONS. In this chapter:

(1) "Permit" means an authorization by a license, certificate, registration, or other form that is required by law or state agency rules to engage in a particular business.

(2) "State agency" means a department, board, bureau, commission, division, office, council, or other agency of the state. (V.A.C.S. Art. 6252-13b.1, Sec. 2 (part).)

Sec. 2005.002. EXCEPTIONS. This chapter does not apply to a permit:

(1) for which an agency's median time during the preceding calendar year for processing a permit application from receipt of the initial application to the final permit decision did not exceed seven days;

(2) issued in connection with any form of gaming or gambling; or

(3) issued under the Alcoholic Beverage Code. (V.A.C.S. Art. 6252-13b.1, Sec. 4.)

Sec. 2005.003. PERMIT PROCESSING PERIODS. (a) A state agency that issues permits shall adopt procedural rules for processing permit applications and issuing permits.

(b) The rules must specify:

(1) the period, beginning on the date the agency receives an initial permit application, in which the agency must provide written notice to the applicant:

(A) stating that the permit application is complete and accepted for filing; or

(B) stating that the permit application is incomplete and specifying the additional information required for acceptance; and

(2) the period, beginning on the date the agency receives a complete permit application, in which the agency must deny or approve the permit application.

(c) A state agency may establish separate rules under this section for contested and uncontested cases.

(d) A state agency shall publish with rules proposed under this section:

(1) a statement of the agency's minimum, maximum, and median times for processing a permit application from the date the agency received an initial permit application to the date of the final permit decision using the agency's performance in the 12 months preceding the date the proposed rules are published; and

(2) a justification of the periods proposed by the rules. (V.A.C.S. Art. 6252-13b.1, Secs. 3(a), (b).)

Sec. 2005.004. GOOD CAUSE. A state agency has good cause to exceed the period it establishes for processing a permit application if:

(1) the number of permit applications to be processed exceeds by at least 15 percent the number of permit applications processed in the same quarter of the previous calendar year;

(2) the agency must rely on another public or private entity to process all or a part of the permit applications received by the agency, and the delay is caused by that entity; or

(3) other conditions exist that give the agency good cause for exceeding the established period. (V.A.C.S. Art. 6252-13b.1, Sec. 3(d).)

Sec. 2005.005. DUTY OF HEAD OF AGENCY. The head of each state agency shall ensure that the agency complies with this chapter. (V.A.C.S. Art. 6252-13b.1, Sec. 5(a) (part).)

Sec. 2005.006. COMPLAINT PROCEDURE. (a) A state agency subject to this chapter shall establish by rule a complaint procedure through which a permit applicant can:

(1) complain directly to the chief administrator of the agency if the agency exceeds the established period for processing permits; and

(2) request a timely resolution of any dispute arising from the delay.

(b) The rules must provide for the reimbursement of all filing fees paid by the applicant for a permit application if the chief administrator of the state agency determines that:

(1) the agency exceeded the established period for permit processing; and

(2) the agency did not establish good cause for exceeding the established period.

(c) The state agency shall include information about the complaint procedure in permit application forms issued by the agency. (V.A.C.S. Art. 6252-13b.1, Secs. 5(a) (part), (b).)

Sec. 2005.007. REPORTS. (a) A state agency that issues permits shall report biennially to the governor and the legislature on its permit application system.

(b) The report must include:

(1) a statement of the periods the agency has adopted under this chapter for processing each type of permit it issues, specifying any changes the agency made since the last report;

(2) a statement of the minimum, maximum, and median times for processing each type of permit during the period since the last report from the date the agency receives the initial permit application to the final permit decision;

(3) a description of the complaint procedure required by Section 2005.006;

(4) a summary of the number and disposition of complaints received by the agency under Section 2005.006 since the last report; and

(5) a description of specific actions taken by the agency since the last report to simplify and improve its permit application, processing, and paperwork requirements.



(c) A state agency shall include the information required by Subsection (b) in each performance report the agency submits to the Legislative Budget Board. (V.A.C.S. Art. 6252-13b.1, Secs. 5(c), (d).)

## CHAPTER 2006. AGENCY ACTIONS AFFECTING SMALL BUSINESSES

## SUBCHAPTER A. ADOPTION OF RULES

Sec. 2006.001. DEFINITIONS

Sec. 2006.002. ADOPTION OF RULES WITH ADVERSE ECONOMIC EFFECT

[Sections 2006.003 to 2006.010 reserved for expansion]

## SUBCHAPTER B. RECOVERY OF COURT COSTS AND ATTORNEY FEES

Sec. 2006.011. DEFINITIONS

Sec. 2006.012. EXCEPTIONS

Sec. 2006.013. REQUIREMENTS FOR RECOVERY

Sec. 2006.014. MOTION FOR RECOVERY

Sec. 2006.015. DETERMINATION OF CLAIM

Sec. 2006.016. EFFECT OF DETERMINATION OR ORDER

## CHAPTER 2006. AGENCY ACTIONS AFFECTING SMALL BUSINESSES

## SUBCHAPTER A. ADOPTION OF RULES

Sec. 2006.001. DEFINITIONS. In this subchapter:

(1) "Small business" means a legal entity, including a corporation, partnership, or sole proprietorship that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has fewer than 100 employees or less than \$1 million in annual gross receipts.

(2) "State agency" means a department, board, bureau, commission, division, office, council, or other agency of the state. (V.A.C.S. Art. 6252-13b.1, Sec. 2 (part).)

Sec. 2006.002. ADOPTION OF RULES WITH ADVERSE ECONOMIC EFFECT. (a) A state agency considering adoption of a rule that would have an adverse economic effect on small businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted.

(b) To reduce an adverse effect on small businesses, an agency may:

(1) establish separate compliance or reporting requirements for small businesses;

(2) use performance standards in place of design standards for small businesses; or

(3) exempt small businesses from all or part of the rule.

(c) Before adopting a rule that would have an adverse economic effect on small businesses, a state agency shall prepare a statement of the effect of the rule on small businesses. The statement must include:

(1) an analysis of the cost of compliance with the rule for small businesses; and

(2) a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the rule, using at least one of the following standards:

(A) cost for each employee;

(B) cost for each hour of labor; or

(C) cost for each \$100 of sales.

(d) The agency shall include the statement of effect as part of the notice of the proposed rule that the agency files with the secretary of state for publication in the Texas Register.

(e) This section does not apply to a rule adopted under Title 2, Tax Code. (V.A.C.S. Art. 6252-13b.1, Sec. 6.)

[Sections 2006.003 to 2006.010 reserved for expansion]

## SUBCHAPTER B. RECOVERY OF COURT COSTS AND ATTORNEY FEES

Sec. 2006.011. DEFINITIONS. In this subchapter:

- (1) "Groundless" means having no basis in law or fact.
- (2) "Small business" means a legal entity, including a corporation, partnership, or sole proprietorship that:
  - (A) is formed for the purpose of making a profit;
  - (B) is independently owned and operated;
  - (C) is not a publicly held corporation; and
  - (D) has fewer than 100 employees or less than \$1 million in annual gross receipts at the end of the fiscal year preceding the year of the filing of an administrative adjudicatory proceeding or civil action in which the entity is seeking recovery under this subchapter.
- (3) "State agency" means a board, commission, department, or office that:
  - (A) is in the executive branch of state government;
  - (B) was created by the constitution or a statute of this state; and
  - (C) has statewide jurisdiction. (V.A.C.S. Art. 6252-30, Sec. 1.)

Sec. 2006.012. EXCEPTIONS. This subchapter does not apply to a proceeding or action that is:

- (1) filed before September 1, 1987; or
- (2) brought under:
  - (A) Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act); or
  - (B) Chapter 21, Insurance Code. (V.A.C.S. Art. 6252-30, Sec. 4.)

Sec. 2006.013. REQUIREMENTS FOR RECOVERY. (a) In an administrative adjudicatory proceeding or a civil action resulting from a complaint issued by a state agency against a small business under the agency's administrative or regulatory functions, the small business may be awarded reasonable attorney fees and court costs if:

- (1) it is a small business at the time it becomes a party to the proceeding or action;
- (2) it prevails in the proceeding or action; and
- (3) the proceeding or action was groundless and brought:
  - (A) in bad faith; or
  - (B) for purposes of harassment.

(b) For purposes of this section, a small business prevails in a proceeding or action if there is not:

- (1) an adjudication, stipulation, or acceptance of liability; or
- (2) a determination of noncompliance, violation, infringement, deficiency, or breach on the part of the small business.

(c) A small business may not recover under this subchapter if the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the small business to take corrective action or pay a monetary sum. (V.A.C.S. Art. 6252-30, Sec. 2.)

Sec. 2006.014. MOTION FOR RECOVERY. (a) To recover under this subchapter, a small business, not later than the 30th day after the date of the filing of the administrative adjudicatory proceeding or civil action, must file a written motion that:

(1) alleges that the proceeding or action was groundless and brought:

- (A) in bad faith; or
- (B) for purposes of harassment;

(2) states the facts that justify the small business's claim; and

(3) states that if the claim is dismissed or judgment is awarded to the small business, the small business will seek recovery of attorney fees and court costs.

(b) A small business may not recover attorney fees and court costs under this subchapter if, not later than the 30th day after the date the small business gives notice that it has filed a motion under Subsection (a), the state agency:

(1) amends the pleadings so that the small business that has filed the motion is no longer a party to the proceeding or action; or

(2) dismisses the proceeding or action. (V.A.C.S. Art. 6252-30, Secs. 3(a), (b).)

Sec. 2006.015. DETERMINATION OF CLAIM. (a) The hearings officer in an administrative adjudicatory proceeding or the court in a civil action shall determine whether the proceeding or action is groundless and brought:

- (1) in bad faith; or
- (2) for purposes of harassment.

(b) In making the determination, the hearings officer or court shall consider:

- (1) the multiplicity of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the agency to investigate and conduct discovery; and
- (4) affidavits, depositions, and any other relevant matters.

(c) In making a determination, a hearings officer or a court may not consider the amount of damages, civil penalties, fines, taxes, or other monetary recovery sought by the state agency. (V.A.C.S. Art. 6252-30, Secs. 3(c), (e).)

Sec. 2006.016. EFFECT OF DETERMINATION OR ORDER. A determination made or order issued under this subchapter is not grounds for any liability, sanction, or grievance except as provided by this subchapter. (V.A.C.S. Art. 6252-30, Sec. 3(d).)

[Chapters 2007 to 2050 reserved for expansion]

SUBTITLE B. INFORMATION AND PLANNING

CHAPTER 2051. GOVERNMENT DOCUMENTS, PUBLICATIONS, AND NOTICES

SUBCHAPTER A. OFFICIAL SEALS

Sec. 2051.001. ADOPTION OF SEAL

[Sections 2051.002 to 2051.020 reserved for expansion]

SUBCHAPTER B. PAPER SUPPLIES AND EQUIPMENT

Sec. 2051.021. UNIFORM SIZE OF PAPER SUPPLY AND CABINET

Sec. 2051.022. STATE AGENCY TELEPHONE NUMBER REQUIRED ON STATIONERY

[Sections 2051.023 to 2051.040 reserved for expansion]

SUBCHAPTER C. NOTICE BY PUBLICATION IN NEWSPAPER

Sec. 2051.041. DEFINITIONS

Sec. 2051.042. APPLICABILITY OF SUBCHAPTER

- Sec. 2051.043. PUBLICATION IN AT LEAST ONE ISSUE REQUIRED
- Sec. 2051.044. TYPE OF NEWSPAPER REQUIRED
- Sec. 2051.045. LEGAL RATE CHARGED FOR PUBLICATION
- Sec. 2051.046. NOTICE OF COUNTY
- Sec. 2051.047. NOTICE OF CERTAIN CONSERVATION AND RECLAMATION DISTRICTS
- Sec. 2051.048. NOTICE OF OTHER POLITICAL SUBDIVISION
- Sec. 2051.049. SELECTION OF NEWSPAPER
- Sec. 2051.050. TIME OF PUBLICATION
- Sec. 2051.051. BILL FOR PUBLICATION
- Sec. 2051.052. CANCELLATION OF PUBLISHING CONTRACT
- Sec. 2051.053. REFUSAL OF NEWSPAPER TO PUBLISH NOTICE OR CITATION

## SUBTITLE B. INFORMATION AND PLANNING

### CHAPTER 2051. GOVERNMENT DOCUMENTS, PUBLICATIONS, AND NOTICES

#### SUBCHAPTER A. OFFICIAL SEALS

Sec. 2051.001. ADOPTION OF SEAL. A commission or board created by state law and a commissioner whose office is created by state law may adopt a seal with which to attest an official document, certificate, or other written paper. (V.A.C.S. Art. 27 (part).)

[Sections 2051.002 to 2051.020 reserved for expansion]

#### SUBCHAPTER B. PAPER SUPPLIES AND EQUIPMENT

Sec. 2051.021. UNIFORM SIZE OF PAPER SUPPLY AND CABINET. (a) A state agency may not purchase:

(1) forms, bond paper, stationery, pads, or similar paper supplies that exceed 8½ inches by 11 inches in size; or

(2) a filing cabinet designed to store completed documents that exceed 8½ inches by 11 inches in size.

(b) This section does not prohibit the purchase or use of:

(1) paper supplies that are perforated or otherwise designed to produce completed documents of 8½ inches by 11 inches in size or smaller;

(2) fanfold paper designed for use in a computer peripheral device; or

(3) forms or paper supplies used for:

(A) a document prepared on a form developed by a national organization for use by a state or a form designed to be compatible with that document;

(B) preparation of a document required by the federal government;

(C) maintenance of an accounting or bookkeeping record;

(D) preparation of a financial report;

(E) a budget document;

(F) a nontextual computer report or document;

(G) a chart, graph, table, or map;

(H) artwork;

(I) an architectural or engineering draft or document;

(J) a diploma;

(K) an enlargement of small print materials for a person with a visual impairment;

(L) a resale purpose; or

(M) protection or preservation of a historically valuable document.

(c) In this section, "state agency" means a board, commission, department, office, institution, including an institution of higher education as defined by Section 61.003, Education Code, or other agency of the state government. (V.A.C.S. Art. 6252-6c, Secs. 1, 2.)

Sec. 2051.022. STATE AGENCY TELEPHONE NUMBER REQUIRED ON STATIONERY. (a) A state agency shall print a telephone number for the agency on the letterhead of its official stationery.

(b) In this section, "state agency" means:

(1) a board, commission, department, office, or other agency in the executive branch of state government that was created by the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(2) the legislature or a legislative agency;

(3) the supreme court, the court of criminal appeals, a court of appeals, or a state judicial agency; or

(4) a river authority. (V.A.C.S. Art. 6252-6d.)

[Sections 2051.023 to 2051.040 reserved for expansion]

### SUBCHAPTER C. NOTICE BY PUBLICATION IN NEWSPAPER

Sec. 2051.041. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means an institution, board, commission, or department of:

(A) the state or a subdivision of the state; or

(B) a political subdivision of the state, including a municipality, a county, or any kind of district.

(2) "Governmental representative" includes an officer, employee, or agent of a governmental entity.

(3) "Notice" means any matter, including a proclamation or advertisement, required or authorized by law to be published in a newspaper by a governmental entity or representative. (V.A.C.S. Art. 28a, Secs. (1), (3), (4).)

Sec. 2051.042. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to the extent that the general or special law requiring or authorizing the publication of a notice in a newspaper by a governmental entity or representative does not specify the manner of the publication, including the number of times that the notice is required to be published and the period during which the notice is required to be published.

(b) This subchapter does not apply to the publication of a citation that relates to a civil suit and to which the Texas Rules of Civil Procedure apply. (V.A.C.S. Arts. 29 (part); 29a (part).)

Sec. 2051.043. PUBLICATION IN AT LEAST ONE ISSUE REQUIRED. Except as provided by Section 2051.046(b) or 2051.048(d), a notice shall be published in at least one issue of a newspaper. (V.A.C.S. Art. 29a (part).)

Sec. 2051.044. TYPE OF NEWSPAPER REQUIRED. (a) The newspaper in which a notice is published must:

(1) devote not less than 25 percent of its total column lineage to general interest items;

(2) be published at least once each week;

(3) be entered as second-class postal matter in the county where published; and

(4) have been published regularly and continuously for at least 12 months before the governmental entity or representative publishes notice.

(b) A weekly newspaper has been published regularly and continuously under Subsection (a) if the newspaper omits not more than two issues in the 12-month period. (V.A.C.S. Arts. 28a(2), 29a (part).)

Sec. 2051.045. LEGAL RATE CHARGED FOR PUBLICATION. The legal rate for publication of a notice in a newspaper is the newspaper's lowest published rate for classified advertising. (V.A.C.S. Art. 29 (part).)

Sec. 2051.046. NOTICE OF COUNTY. (a) A notice of a county shall be published in a newspaper published in the county that will publish the notice at or below the legal rate.

(b) If no newspaper that will publish the notice at or below the legal rate is published in the county, the notice shall be posted at the door of the county courthouse. (V.A.C.S. Art. 29a (part).)

Sec. 2051.047. NOTICE OF CERTAIN CONSERVATION AND RECLAMATION DISTRICTS. A conservation and reclamation district, other than a river authority, created under Article XVI, Section 59, of the Texas Constitution that furnishes water and sewer services to household users satisfies a requirement of general, special, or local law to publish notice in a newspaper of general circulation in the county in which the district is located by publishing the notice in a newspaper of general circulation in the district. (V.A.C.S. Art. 28a-1.)

Sec. 2051.048. NOTICE OF OTHER POLITICAL SUBDIVISION. (a) This section applies only to a political subdivision other than a county or a conservation and reclamation district under Section 2051.047.

(b) A notice of a political subdivision shall be published in a newspaper that is published in the political subdivision and that will publish the notice at or below the legal rate.

(c) If no newspaper published in the political subdivision will publish the notice at or below the legal rate, the political subdivision shall publish the notice in a newspaper that:

- (1) is published in the county in which the political subdivision is located; and
- (2) will charge the legal rate or a lower rate.

(d) If no newspaper published in the county in which the political subdivision is located will publish the notice at or below the legal rate, the political subdivision shall post the notice at the door of the county courthouse of the county in which the political subdivision is located. (V.A.C.S. Art. 29a (part).)

Sec. 2051.049. SELECTION OF NEWSPAPER. The governmental entity or representative required to publish a notice in a newspaper shall select, in accordance with this subchapter, one or more newspapers to publish the notice. (V.A.C.S. Art. 28a(6).)

Sec. 2051.050. TIME OF PUBLICATION. A notice must be published in a newspaper issued at least one day before the occurrence of the event to which the notice refers. (V.A.C.S. Art. 29a (part).)

Sec. 2051.051. BILL FOR PUBLICATION. A newspaper that publishes a notice shall submit a bill for the publication with a clipping of the published notice and a verified statement of the publisher that:

- (1) states the rate charged;
- (2) certifies that the rate charged is the newspaper's lowest published rate for classified advertising; and
- (3) certifies the number and dates of the publication. (V.A.C.S. Art. 29 (part).)

Sec. 2051.052. CANCELLATION OF PUBLISHING CONTRACT. The General Services Commission or a district or county official required to publish a notice may cancel a contract executed by the commission or official for the publication if the commission or official determines that the newspaper charges a rate higher than the legal rate. (V.A.C.S. Art. 29 (part).)

Sec. 2051.053. REFUSAL OF NEWSPAPER TO PUBLISH NOTICE OR CITATION. (a) The refusal of a newspaper to publish, without receiving advance payment for making the publication, a notice or citation in a state court proceeding in which the state or a political subdivision of the state is a party and in which the cost of the publication is to be charged as fees or costs of the proceeding is considered an unqualified refusal to publish the notice or citation.

(b) The sworn statement of the newspaper's publisher or the person offering to insert the notice or citation in the newspaper is subject to record as proof of the refusal. (V.A.C.S. Art. 29a (part).)

CHAPTER 2052. STATE AGENCY REPORTS AND PUBLICATIONS

SUBCHAPTER A. REPORTS FOR LEGISLATURE OR GOVERNOR

- Sec. 2052.001. FILING AND PRINTING OF REPORT
- Sec. 2052.002. DISTRIBUTION OF PUBLICATIONS TO LEGISLATORS
- Sec. 2052.003. REPORT ON EMPLOYMENT OF HANDICAPPED

[Sections 2052.004 to 2052.100 reserved for expansion]

SUBCHAPTER B. REPORTS ON STATE EMPLOYEES

- Sec. 2052.101. DEFINITION
- Sec. 2052.102. FULL-TIME EQUIVALENT EMPLOYEE
- Sec. 2052.103. REPORTS
- Sec. 2052.104. STATE AUDITOR'S POWERS AND DUTIES

[Sections 2052.105 to 2052.200 reserved for expansion]

SUBCHAPTER C. DISTRIBUTION OF PUBLICATIONS

- Sec. 2052.201. DEFINITIONS
- Sec. 2052.202. PUBLICATION REQUEST FORM
- Sec. 2052.203. PUBLICATION DISTRIBUTION LIST
- Sec. 2052.204. DISTRIBUTION
- Sec. 2052.205. COPIES TO LIBRARY
- Sec. 2052.206. APPLICABILITY TO INFORMATION REQUIRED BY LAW

[Sections 2052.207 to 2052.300 reserved for expansion]

SUBCHAPTER D. PUBLICATION PRODUCTION AND CHARGES

- Sec. 2052.301. SALES CHARGE
- Sec. 2052.302. PROHIBITION OF ECONOMIC BENEFIT
- Sec. 2052.303. USE OF RECYCLED PAPER

CHAPTER 2052. STATE AGENCY REPORTS AND PUBLICATIONS

SUBCHAPTER A. REPORTS FOR LEGISLATURE OR GOVERNOR

Sec. 2052.001. FILING AND PRINTING OF REPORT. (a) An annual or biennial report intended for the use of the legislature or the governor shall be sent to the secretary of state not later than November 1.

(b) Before the legislature convenes, the secretary of state promptly shall provide for the printing of each report that the secretary received for the legislature under Subsection (a). On the organization of the legislature, the secretary shall send 10 copies of each report to the presiding officer of each house of the legislature for legislative members. (V.A.C.S. Art. 13.)

Sec. 2052.002. DISTRIBUTION OF PUBLICATIONS TO LEGISLATORS. (a) To avoid waste in the duplication and distribution of state agency publications, a state agency that issues a publication relating to the work of the agency and distributes the publication to members of the legislature shall send to each member before distributing the publication a written notice to determine whether the member wants to receive the publication.

(b) The state agency shall include with the notice a brief written summary of the publication.

(c) A member who elects to receive the publication shall notify the state agency.

(d) This section does not apply to a report that is required by law.

(e) In this section, "state agency" means:

(1) a department, commission, board, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of this state;

(2) a university system or institution of higher education as defined by Section 61.003, Education Code; or

(3) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council. (V.A.C.S. Art. 4413(33b), Secs. 1, 2.)

Sec. 2052.003. **REPORT ON EMPLOYMENT OF HANDICAPPED.** (a) A state agency that sends to the governor an annual report on equal employment opportunities with the agency shall include in the statistical information of the report information relating to the number of handicapped individuals that the agency employs.

(b) In this section, "handicapped individual" means an individual who has a mental or physical handicap or impairment, including mental retardation, hardness of hearing, deafness, a speech impairment, blindness, or a crippling condition that requires special ambulatory devices or services. The term does not include an individual whose sole handicap or impairment is addiction to the use of alcohol or to a drug or other controlled substance. (V.A.C.S. Art. 6252-16b, Secs. 1, 2.)

[Sections 2052.004 to 2052.100 reserved for expansion]

## SUBCHAPTER B. REPORTS ON STATE EMPLOYEES

Sec. 2052.101. **DEFINITION.** In this subchapter, "state agency" means:

(1) a department, commission, board, office, or other agency that is in the executive or legislative branch of state government and that was created by the constitution or a statute, including an institution of higher education as defined by Section 61.003, Education Code; or

(2) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council or another agency in the judicial branch of state government. (V.A.C.S. Art. 6252-16c, Sec. 1(2).)

Sec. 2052.102. **FULL-TIME EQUIVALENT EMPLOYEE.** (a) An employee who maintains a workweek of at least 40 hours, including authorized vacation and leave, is a full-time equivalent employee.

(b) An employee who maintains a workweek of less than 40 hours is counted as a fractional full-time equivalent employee according to the ratio of the number of hours that the employee normally works a week to 40 hours. (V.A.C.S. Art. 6252-16c, Sec. 1(1).)

Sec. 2052.103. **REPORTS.** (a) Not later than the last day of the first month following each quarter of the fiscal year, a state agency shall file with the state auditor a written report that provides for that fiscal quarter:

(1) the number of full-time equivalent state employees employed by the agency and paid from funds in the state treasury;

(2) the number of full-time equivalent state employees employed by the agency and paid from funds outside of the state treasury;

(3) the increase or decrease, if any, of the number of full-time equivalent employees from the fiscal quarter preceding the quarter covered by the report;

(4) the number of positions of the agency paid from funds in the state treasury;

(5) the number of positions of the agency paid from funds outside of the state treasury; and

(6) the number of individuals who performed services for the agency under a contract, including consultants and individuals employed under contracts with temporary help services.

(b) The report must be made in the manner prescribed by the state auditor.



(c) A state agency, in accordance with specific guidelines adopted by the state auditor, may adopt rules for the collection of the information required under this section. (V.A.C.S. Art. 6252-16c, Secs. 2(a), (b), (c).)

Sec. 2052.104. STATE AUDITOR'S POWERS AND DUTIES. (a) The state auditor may audit a state agency to ensure:

- (1) the accuracy of information reported under this subchapter; and
- (2) compliance with this subchapter.

(b) The state auditor shall:

- (1) adopt rules for the manner in which a report must be made under Section 2052.103;
- (2) prepare quarterly summary reports from the information in the reports filed under Section 2052.103; and
- (3) provide copies of the summary reports to:
  - (A) the Legislative Budget Board;
  - (B) the governor; and
  - (C) the comptroller. (V.A.C.S. Art. 6252-16c, Secs. 2(d), 3.)

[Sections 2052.105 to 2052.200 reserved for expansion]

### SUBCHAPTER C. DISTRIBUTION OF PUBLICATIONS

Sec. 2052.201. DEFINITIONS. In this subchapter:

- (1) "Person" means an individual, association, corporation, or state agency.
- (2) "Publication" means printed matter containing news or other information and includes a magazine, newsletter, newspaper, pamphlet, or report.
- (3) "Publication request form" means a form that provides a means of requesting a state agency's publications.
- (4) "State agency" means a department, commission, board, office, or other agency that:
  - (A) is in the executive branch of state government;
  - (B) has authority that is not limited to a geographical portion of the state; and
  - (C) was created by the constitution or a statute of this state. (V.A.C.S. Art. 4413(33a), Secs. 4, 5(b).)

Sec. 2052.202. PUBLICATION REQUEST FORM. (a) A state agency that distributes publications to a person shall distribute a publication request form on request or with each copy of the last publication that it distributes before January 1 of each year.

(b) The comptroller shall:

- (1) print the publication request form; and
- (2) furnish to a state agency that distributes publications a sufficient number of publication request forms to enable the agency annually to distribute a form to each person that receives a publication. (V.A.C.S. Art. 4413(33a), Secs. 5(a), (c).)

Sec. 2052.203. PUBLICATION DISTRIBUTION LIST. (a) A state agency that receives a completed publication request form or other written request for its publications may place the name of the requestor on its publication distribution list. A state agency may not place the name of a person or other entity on its publication distribution list unless the state agency has received a completed publication request form or other written request from that person or entity.

(b) After January 1 of each year a state agency shall compile a publication distribution list from the completed publication request forms and other written requests received for publications for that calendar year.

(c) A state agency that distributes publications shall file a copy of its publication distribution list with the comptroller before March 1 of each year.

(d) A filed publication distribution list is public information. (V.A.C.S. Art. 4413(33a), Secs. 6, 9.)

Sec. 2052.204. DISTRIBUTION. A state agency may distribute a copy of a publication to a person or other entity that is not listed on the publication distribution list only if:

(1) the person or entity has requested orally or in writing a specific copy of the publication; or

(2) the person is a newly elected or appointed state officer, newly appointed executive head of a state agency, or newly established state agency. (V.A.C.S. Art. 4413(33a), Secs. 7, 8(a).)

Sec. 2052.205. COPIES TO LIBRARY. (a) A state agency shall send to the Legislative Reference Library five copies of each publication that it distributes.

(b) The library shall make the publications available to its users. (V.A.C.S. Art. 4413(33a), Sec. 8(b).)

Sec. 2052.206. APPLICABILITY TO INFORMATION REQUIRED BY LAW. This subchapter does not apply to the distribution of information required by law. (V.A.C.S. Art. 4413(33a), Sec. 10.)

[Sections 2052.207 to 2052.300 reserved for expansion]

#### SUBCHAPTER D. PUBLICATION PRODUCTION AND CHARGES

Sec. 2052.301. SALES CHARGE. (a) A department or agency in the executive branch of government, unless otherwise specifically directed by statute, may set and collect a sales charge for a publication or other printed matter if the charge is in the public interest.

(b) The amount of the sales charge for a publication or other printed matter not specifically set by statute may not be greater than an amount considered sufficient by the publishing department or agency to reasonably reimburse the state for the actual expense of printing the publication or printed matter.

(c) Money collected under this section shall be deposited in the fund from which the cost of printing the publication or other printed matter was paid. The deposited money is subject to legislative appropriation. (V.A.C.S. Art. 4413(33), Secs. 1, 2, 3, 4 (part).)

Sec. 2052.302. PROHIBITION OF ECONOMIC BENEFIT. (a) In accordance with Article XVI, Section 21, of the Texas Constitution, an officer or employee of the state may not, directly or indirectly, profit by or have a pecuniary interest in the preparation, printing, duplication, or sale of a publication or other printed matter issued by a department or agency of the executive branch.

(b) A person who violates this section shall be dismissed from state employment. (V.A.C.S. Art. 4413(33), Sec. 5.)

Sec. 2052.303. USE OF RECYCLED PAPER. (a) A state agency that issues publications, including reports, for general distribution, including distribution to members of the legislature, shall use recycled paper to produce the publications to the greatest extent possible when the use of recycled paper is cost-effective.

(b) In this section, "state agency" means:

(1) a department, commission, board, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of this state;

(2) a university system or institution of higher education as defined by Section 61.003, Education Code; or

(3) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council. (V.A.C.S. Art. 4413(33b), Secs. 1, 3.)

CHAPTER 2053. REPORT BY GOVERNOR ON ORGANIZATION  
AND EFFICIENCY OF STATE AGENCIES

Sec. 2053.001. DEFINITIONS

Sec. 2053.002. REPORT

Sec. 2053.003. PARTICIPATION BY INTERAGENCY PLANNING COUNCILS

Sec. 2053.004. LEGISLATION

CHAPTER 2053. REPORT BY GOVERNOR ON ORGANIZATION  
AND EFFICIENCY OF STATE AGENCIES

Sec. 2053.001. DEFINITIONS. In this chapter:

(1) "State agency" means a board, commission, department, office, or other agency, except a university system or institution of higher education as defined by Section 61.003, Education Code, that:

- (A) is in the executive branch of state government;
- (B) has statewide authority; and
- (C) is created by the constitution or by statute.

(2) "Functional area" means one of the following areas of concern to state government:

- (A) natural resources;
- (B) health and human resources;
- (C) education;
- (D) economic development and transportation;
- (E) agriculture;
- (F) public protection;
- (G) consumer protection;
- (H) work force; or

(I) any other area in which the governor appoints an interagency planning council under Section 772.003. (V.A.C.S. Art. 4413(34d), Sec. 1.)

Sec. 2053.002. REPORT. (a) Before the end of each even-numbered year, the governor shall prepare and submit to the legislature a report on the organization and efficiency of state agencies.

(b) The report must group state agencies into functional areas and must include the following items about the state agencies in each functional area:

- (1) information about the efficiency with which the agencies operate;
- (2) recommendations about the reorganization of the agencies and the consolidation, transfer, or abolition of their functions; and
- (3) any other information about the organization or efficiency of the agencies that the governor considers necessary.

(c) The Legislative Budget Board shall coordinate the collection of information to be included in the report. (V.A.C.S. Art. 4413(34d), Secs. 2(a), (c), (d).)

Sec. 2053.003. PARTICIPATION BY INTERAGENCY PLANNING COUNCILS. (a) In preparing the report required by this chapter, the governor shall request and consider from each interagency planning council appointed under Section 772.003 information about the efficiency of the state agencies in the council's functional area and recommendations about the reorganization of those agencies.

(b) Before submitting the report to the legislature, the governor shall submit to each interagency planning council for review and comment the part of the proposed report about the state agencies in the council's functional area.

(c) The governor shall submit with the report the comments received under Subsection (b). (V.A.C.S. Art. 4413(34d), Sec. 3.)

Sec. 2053.004. **LEGISLATION.** The Texas Legislative Council shall draft any legislation required to implement the recommendations contained in the report required by this chapter. (V.A.C.S. Art. 4413(34d), Sec. 4.)

**CHAPTER 2054. INFORMATION RESOURCES**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 2054.001. **LEGISLATIVE FINDINGS AND POLICY**
- Sec. 2054.002. **SHORT TITLE**
- Sec. 2054.003. **DEFINITIONS**
- Sec. 2054.004. **DEPARTMENT**
- Sec. 2054.005. **SUNSET PROVISION**
- Sec. 2054.006. **LAWS NOT AFFECTED**
- Sec. 2054.007. **EXCEPTION: STATE LOTTERY OPERATIONS**
- Sec. 2054.008. **EXCEPTION: EMERGENCY SITUATIONS**
- Sec. 2054.009. **EXCEPTION: TEXAS NATIONAL RESEARCH LABORATORY COMMISSION**
- Sec. 2054.010. **REFERENCES TO PRECEDING AGENCY**

[Sections 2054.011 to 2054.020 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATION OF DEPARTMENT**

- Sec. 2054.021. **COMPOSITION OF BOARD; TERMS**
- Sec. 2054.022. **CONFLICT OF INTEREST**
- Sec. 2054.023. **COMPENSATION; EXPENSES**
- Sec. 2054.024. **VACANCY**
- Sec. 2054.025. **REMOVAL OF BOARD MEMBER**
- Sec. 2054.026. **LIMITATION ON LIABILITY**
- Sec. 2054.027. **MEETINGS; ACTION OF BOARD**
- Sec. 2054.028. **PRESIDING OFFICER**
- Sec. 2054.029. **EXECUTIVE DIRECTOR; STAFF**
- Sec. 2054.030. **MERIT PAY**
- Sec. 2054.031. **CAREER LADDER**
- Sec. 2054.032. **EQUAL EMPLOYMENT OPPORTUNITY**
- Sec. 2054.033. **ADVISORY COMMITTEES**
- Sec. 2054.034. **FUND**

[Sections 2054.035 to 2054.050 reserved for expansion]

**SUBCHAPTER C. GENERAL POWERS AND DUTIES OF DEPARTMENT**

- Sec. 2054.051. **GENERAL DUTIES OF DEPARTMENT**
- Sec. 2054.052. **GENERAL POWERS OF DEPARTMENT**
- Sec. 2054.053. **LEGISLATIVE BUDGET INSTRUCTIONS; APPROPRIATION REQUESTS**
- Sec. 2054.054. **CLIENT OMNIBUS REGISTRY AND EXCHANGE DATA BASES**
- Sec. 2054.055. **ANNUAL REPORT**
- Sec. 2054.056. **COMPUTER SERVICE FACILITY**
- Sec. 2054.057. **PAYMENT AND ACCOUNTING FOR SERVICES**
- Sec. 2054.058. **CUSTOMER OVERSIGHT COMMITTEE**
- Sec. 2054.059. **TELECOMMUNICATIONS PLANNING AND POLICY**

[Sections 2054.060 to 2054.070 reserved for expansion]

SUBCHAPTER D. INFORMATION RESOURCES MANAGERS

- Sec. 2054.071. IDENTITY OF MANAGER
- Sec. 2054.072. CONFLICT OF INTEREST
- Sec. 2054.073. DESIGNATION OF DEPARTMENT
- Sec. 2054.074. RESPONSIBILITY OF INFORMATION RESOURCES MANAGER
- Sec. 2054.075. COOPERATION WITH INFORMATION RESOURCES MANAGER
- Sec. 2054.076. CONTINUING EDUCATION

[Sections 2054.077 to 2054.090 reserved for expansion]

SUBCHAPTER E. STRATEGIC AND OPERATING PLANS

- Sec. 2054.091. PREPARATION OF STATE STRATEGIC PLAN
- Sec. 2054.092. CONTENT OF STATE STRATEGIC PLAN
- Sec. 2054.093. AMENDMENT OF STATE STRATEGIC PLAN
- Sec. 2054.094. SUBMISSION OF STATE STRATEGIC PLAN
- Sec. 2054.095. PREPARATION OF AGENCY STRATEGIC PLAN
- Sec. 2054.096. CONTENT OF AGENCY STRATEGIC PLAN
- Sec. 2054.097. REVIEW OF AGENCY STRATEGIC PLAN
- Sec. 2054.098. APPROVAL OR DISAPPROVAL OF AGENCY STRATEGIC PLAN
- Sec. 2054.099. INITIAL OPERATING PLAN OF STATE AGENCY
- Sec. 2054.100. FINAL OPERATING PLAN OF STATE AGENCY
- Sec. 2054.101. INSTRUCTIONS FOR PREPARING OPERATING PLANS
- Sec. 2054.102. APPROVAL OR DISAPPROVAL OF OPERATING PLANS
- Sec. 2054.103. SUBMISSION OF OPERATING PLANS AND CERTAIN PROCUREMENT INFORMATION
- Sec. 2054.104. DENIAL OF ACCESS TO APPROPRIATIONS ON FAILURE TO SUBMIT OPERATING PLAN AND CERTAIN PROCUREMENT INFORMATION

[Sections 2054.105 to 2054.110 reserved for expansion]

SUBCHAPTER F. OTHER POWERS AND DUTIES OF STATE AGENCIES

- Sec. 2054.111. ANNUAL PERFORMANCE REPORT
- Sec. 2054.112. CONTENTS OF ANNUAL PERFORMANCE REPORT
- Sec. 2054.113. DENIAL OF ACCESS TO APPROPRIATIONS
- Sec. 2054.114. ACQUISITION SPECIFICATIONS
- Sec. 2054.115. SALE OR LEASE OF SOFTWARE
- Sec. 2054.116. COMPUTER SERVICES CONTRACTS
- Sec. 2054.117. ELECTRONIC DATA PROCESSING CENTER

CHAPTER 2054. INFORMATION RESOURCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2054.001. LEGISLATIVE FINDINGS AND POLICY. (a) The legislature finds that:

- (1) information and information resources possessed by agencies of state government are strategic assets belonging to the residents of this state that must be managed as valuable state resources;
- (2) technological and theoretical advances in information use are recent in origin, immense in scope and complexity, and growing at a rapid pace;
- (3) the nature of these advances presents this state with the opportunity to provide higher quality, more timely, and more cost-effective governmental services;

(4) the danger exists that state agencies could independently acquire uncoordinated and duplicative information resources technologies that are more appropriately acquired as part of a coordinated effort for maximum cost-effectiveness and use;

(5) the sharing of information resources technologies among state agencies is often the most cost-effective method of providing the highest quality and most timely governmental services that otherwise would be cost prohibitive;

(6) both considerations of cost and the need for the transfer of information among the various agencies and branches of state government in the most timely and useful form possible require a uniform policy and coordinated system for the use and acquisition of information resources technologies;

(7) considerations of cost and expertise require that, to the extent possible, the planning and coordinating functions reside in a separate agency from the purchasing function; and

(8) the need of officials in the executive branch of state government to have timely access to all needed information in a form most useful to them in their execution of the laws and the need of members of the legislative branch of state government to have timely access to all needed information in a form most useful to them in their evaluation of the practical effect of the laws and in their identification of areas in which legislation is needed for the future are equally paramount, requiring the greatest possible continuous and formal coordination and cooperation within and among the branches of state government.

(b) It is the policy of this state to coordinate and direct the use of information resources technologies by state agencies and to provide as soon as possible the most cost-effective and useful retrieval and exchange of information within and among the various agencies and branches of state government and from the agencies and branches of state government to the residents of this state and their elected representatives. The Department of Information Resources exists for these purposes. (V.A.C.S. Art. 4413(32j), Sec. 1.)

Sec. 2054.002. SHORT TITLE. This chapter may be cited as the Information Resources Management Act. (V.A.C.S. Art. 4413(32j), Sec. 2.)

Sec. 2054.003. DEFINITIONS. In this chapter:

(1) "Application" means a separately identifiable and interrelated set of information resources technologies that allows a state agency to manipulate information resources to support specifically defined objectives.

(2) "Board" means the governing board of the Department of Information Resources.

(3) "Data processing" means information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means. The term includes:

(A) central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters, and equipment and systems for computer networks;

(B) all related services, including feasibility studies, systems design, software development, and time-sharing services, provided by state employees or others; and

(C) the programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(4) "Department" means the Department of Information Resources.

(5) "Executive director" means the executive director of the Department of Information Resources.

(6) "Information resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(7) "Information resources technologies" means data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

(8) "Project" means a program to provide information resources technologies support to functions within or among elements of a state agency, that ideally is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(9) "State agency" means a department, commission, board, office, council, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(10) "Telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems. The term includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government. (V.A.C.S. Art. 4413(32j), Sec. 3.)

Sec. 2054.004. DEPARTMENT. The Department of Information Resources is an agency of the state. (V.A.C.S. Art. 4413(32j), Sec. 4.)

Sec. 2054.005. SUNSET PROVISION. The Department of Information Resources is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 1997. (V.A.C.S. Art. 4413(32j), Sec. 5.)

Sec. 2054.006. LAWS NOT AFFECTED. (a) This chapter does not affect laws, rules, or decisions relating to the confidentiality or privileged status of categories of information or communications.

(b) This chapter does not enlarge the right of state government to require information, records, or communications from the people. (V.A.C.S. Art. 4413(32j), Sec. 24.)

Sec. 2054.007. EXCEPTION: STATE LOTTERY OPERATIONS. (a) The lottery division in the office of the comptroller is not included in the agency strategic plan, initial operating plan, or final operating plan of the comptroller. The lottery division is not subject to the planning and procurement requirements of this chapter.

(b) The electronic funds transfer system for the operation of the state lottery is not included in the agency strategic plan, initial operating plan, or final operating plan of the state treasurer. Operations of the state treasurer that relate to the state lottery are not subject to the planning and procurement requirements of this chapter. (V.A.C.S. Art. 4413(32j), Sec. 26.)

Sec. 2054.008. EXCEPTION: EMERGENCY SITUATIONS. (a) A state agency may take an action described in this chapter without first complying with the procedures prescribed by this chapter if the agency finds that a situation caused by fire, natural disaster, or other actual emergency requires the action to be taken.

(b) A report explaining the emergency action must be filed with the department not later than the 30th day after the date the action is taken. (V.A.C.S. Art. 4413(32j), Sec. 18(e).)

Sec. 2054.009. EXCEPTION: TEXAS NATIONAL RESEARCH LABORATORY COMMISSION. The Texas National Research Laboratory Commission may take action described in this chapter without first complying with the procedures prescribed by this chapter if the agency determines that an acquisition of information resources technologies constitutes an eligible undertaking as defined by Section 465.021. (V.A.C.S. Art. 4413(32j), Sec. 18(f).)

Sec. 2054.010. REFERENCES TO PRECEDING AGENCY. Any reference in law to the Automated Information and Telecommunications Council means the Department of Information Resources. (V.A.C.S. Art. 4413(32j), Sec. 25.)

[Sections 2054.011 to 2054.020 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATION OF DEPARTMENT

Sec. 2054.021. COMPOSITION OF BOARD; TERMS. (a) The department is governed by a board composed of nine members appointed by the governor with the advice and consent of the senate. Three members must be appointed from a list of individuals submitted to the

governor by the speaker of the house of representatives, and at least one of those appointees must be a member of the house of representatives who serves on the board ex officio as a voting member. Three members must be appointed from a list of individuals submitted to the governor by the lieutenant governor, and at least one of those appointees must be a member of the senate who serves on the board ex officio as a voting member. One member must be employed by an institution of higher education as defined by Section 61.003, Education Code. In addition to the members of the legislature who must be appointed from the lists submitted by the lieutenant governor and the speaker of the house of representatives, the governor may appoint other members of the legislature to serve on the board ex officio as voting members.

(b) Members of the board serve for staggered six-year terms with three members' terms expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 4413(32j), Secs. 6(a), (b).)

Sec. 2054.022. CONFLICT OF INTEREST. (a) A member of the board or an employee of the department may not:

(1) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry;

(2) be an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government;

(3) own, control, or have, directly or indirectly, more than a 10 percent interest in a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(4) receive more than 25 percent of the individual's income from a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(5) be interested in or connected with a contract or bid for furnishing a state agency with information resources technologies;

(6) be employed by a state agency as a consultant on information resources technologies;  
or

(7) accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise.

(b) The executive director shall dismiss an employee of the department who violates a prohibition under Subsection (a), and the board shall remove the executive director if the executive director violates a prohibition under Subsection (a). (V.A.C.S. Art. 4413(32j), Sec. 8.)

Sec. 2054.023. COMPENSATION; EXPENSES. (a) A member of the board may not receive compensation for services as a board member.

(b) A member is entitled to reimbursement for actual and necessary expenses reasonably incurred in connection with the performance of those services, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(c) An ex officio member is entitled to reimbursement for those expenses under the rules of the member's office. (V.A.C.S. Art. 4413(32j), Sec. 6(e).)

Sec. 2054.024. VACANCY. (a) The governor shall appoint a board member to fill a vacancy under the same procedure that applied to the original appointment for that position.

(b) If the presiding officer's position is vacant, the executive director shall perform nonvoting duties of the presiding officer until the governor designates a new presiding officer.

(c) If the final result of an action brought in a court of competent jurisdiction is that an ex officio or other member of the board may not serve on the board under the Texas Constitution, the appropriate individual shall promptly submit a list to the governor for the appointment of a replacement who may serve. (V.A.C.S. Art. 4413(32j), Sec. 6(d).)



Sec. 2054.025. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

- (1) does not have at the time of appointment the qualifications or status required for appointment to the board;
- (2) does not maintain during service on the board the qualifications or status required for initial appointment to the board;
- (3) violates a prohibition established by Section 2054.022;
- (4) cannot discharge because of illness or disability the member's duties for a substantial part of the term for which the member is appointed; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a state fiscal year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken while a ground for removal of a member of the board exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall inform the presiding officer. The presiding officer shall then inform the governor of the potential ground for removal. (V.A.C.S. Art. 4413(32j), Sec. 7.)

Sec. 2054.026. LIMITATION ON LIABILITY. A member of the board is not liable in a civil action for an act performed in good faith in the performance of the member's duties. (V.A.C.S. Art. 4413(32j), Sec. 6(f).)

Sec. 2054.027. MEETINGS; ACTION OF BOARD. (a) The board shall meet at least once in each quarter of the state fiscal year and may meet at other times at the call of the presiding officer or as provided by department rule.

(b) When a quorum is present, an affirmative vote of a majority of the members of the board present is necessary for an action of the board to be effective. (V.A.C.S. Art. 4413(32j), Secs. 6(g), (h), (i).)

Sec. 2054.028. PRESIDING OFFICER. The governor shall designate a member of the board to serve as presiding officer at the discretion of the governor. (V.A.C.S. Art. 4413(32j), Sec. 6(c).)

Sec. 2054.029. EXECUTIVE DIRECTOR; STAFF. (a) The board shall employ an executive director and other employees necessary to implement its duties.

(b) The executive director shall provide to the department's employees, as often as necessary, information regarding their qualifications for employment and their responsibilities under applicable laws relating to standards of conduct for state employees. (V.A.C.S. Art. 4413(32j), Sec. 11(a).)

Sec. 2054.030. MERIT PAY. (a) The department shall develop a system of annual performance evaluations.

(b) All merit pay for department employees must be awarded under the system established under this section. (V.A.C.S. Art. 4413(32j), Sec. 11(b).)

Sec. 2054.031. CAREER LADDER. (a) The department shall develop an intraagency career ladder program.

(b) The program shall require intraagency postings of all nonentry level positions concurrently with any public posting. (V.A.C.S. Art. 4413(32j), Sec. 11(c).)

Sec. 2054.032. EQUAL EMPLOYMENT OPPORTUNITY. (a) The department shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel. (V.A.C.S. Art. 4413(32j), Sec. 11(d).)

Sec. 2054.033. ADVISORY COMMITTEES. (a) The board and the executive director, if authorized by the board, may appoint advisory committees as the department considers necessary to provide expertise to the department.

(b) A member of an advisory committee serves at the discretion of the board.

(c) A member of an advisory committee may not receive compensation for service on the committee. A member is entitled to reimbursement for actual and necessary expenses reasonably incurred in performing that service, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(d) At least one member of each advisory committee must be an employee of a state agency. (V.A.C.S. Art. 4413(32j), Sec. 10.)

Sec. 2054.034. FUND. The comptroller shall establish in the state treasury the Department of Information Resources revolving fund account for the administration of this chapter. The account may be used only:

(1) as a depository for funds received as payments from state agencies for services provided under this chapter for which payment is authorized under this chapter;

(2) as a source of funds for the department to purchase, lease, or acquire in any other manner services, supplies, software products, and equipment necessary for implementing the department's duties relating to services provided to state agencies for which the department receives payment from state agencies under this chapter; and

(3) to pay salaries, wages, and other costs directly attributable to the services provided to state agencies for which the department receives payment from those agencies under this chapter. (V.A.C.S. Art. 4413(32j), Sec. 22(d).)

[Sections 2054.035 to 2054.050 reserved for expansion]

## SUBCHAPTER C. GENERAL POWERS AND DUTIES OF DEPARTMENT

Sec. 2054.051. GENERAL DUTIES OF DEPARTMENT. (a) The department shall provide the leadership in and coordination of information resources management within state government.

(b) The department shall monitor national and international standards relating to information resources technologies, develop and publish policies, procedures, and standards relating to information resources management by state agencies, and ensure compliance with those policies, procedures, and standards.

(c) The department shall provide and coordinate an information resources management training program for the departments of state government.

(d) The department shall establish an information resources technology evaluation center for use by the department and other state agencies.

(e) The department shall provide for all interagency use of information resources technologies by state agencies, except for telecommunications services provided by the General Services Commission under other law. The department may provide for interagency use of information resources technologies either directly or by certifying another state agency to provide specified uses of information resources technologies to other state agencies. (V.A.C.S. Art. 4413(32j), Secs. 9(b), (d), (e), (i), (j).)

Sec. 2054.052. GENERAL POWERS OF DEPARTMENT. (a) The department may adopt rules as necessary to implement its responsibility under this chapter.

(b) The department may require each state agency to report to the department:

- (1) each agency's use of information resources technologies;
- (2) the effect of those technologies on the duties and functions of the agency;
- (3) the costs incurred by the agency in the acquisition and use of those technologies;
- (4) the procedures followed in obtaining those technologies;
- (5) the categories of information produced by the agency; and
- (6) other information relating to information resources management that in the judgment of the department should be reported.

(c) The department may provide technical and managerial assistance relating to information resources management at the request of a state agency.

(d) The department may report to the governor and to the presiding officer of each house of the legislature any factors that in the opinion of the department are outside the duties of the department but that inhibit or promote the effective exchange and use of information in state government. (V.A.C.S. Art. 4413(32j), Secs. 9(a), (c), (f), (l).)

Sec. 2054.053. LEGISLATIVE BUDGET INSTRUCTIONS; APPROPRIATION REQUESTS. (a) The department may identify, develop, and recommend to the Legislative Budget Board issues related to information resources management to be considered when developing the legislative budget instructions to state agencies. The department shall inform the governor of issues that are recommended to the Legislative Budget Board under this subsection.

(b) At the request of a state agency, the department may assist the agency in the preparation of projects to be submitted as part of the agency's legislative appropriation request and may make recommendations on any proposed projects. The recommendations under this subsection apply to a project and not to a specific procurement or set of specifications. (V.A.C.S. Art. 4413(32j), Secs. 9(g), (h).)

Sec. 2054.054. CLIENT OMNIBUS REGISTRY AND EXCHANGE DATA BASES. (a) The department may develop and maintain a client omnibus registry and exchange data bases to cover public and private health and human services, programs, and clients and to facilitate the exchange of data among the state's health and human services agencies.

(b) The department must assure in maintaining the information that:

(1) health and mental health communications and records privileged under Chapter 239, Acts of the 66th Legislature, Regular Session, 1979 (Article 5561h, Vernon's Texas Civil Statutes), the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and the Texas Rules of Civil Evidence remain confidential and privileged;

(2) personally identifiable health and mental health communications and records of persons involved in the receipt or delivery of health or human services are confidential and privileged; and

(3) a private source is not required to provide confidential health or mental health communications or records unless a law specifically requires disclosure. (V.A.C.S. Art. 4413(32j), Sec. 9(m).)

Sec. 2054.055. ANNUAL REPORT. (a) Not later than February 1 of each year, the board shall review and approve the department's annual report on the information resources management activities of state government, derived from the annual performance reports submitted to the department by state agencies under Section 2054.111.

(b) The annual report must:

(1) assess the progress made toward meeting the goals and objectives of the state strategic plan for information resources management;

(2) describe major accomplishments of the state and each state agency in information resources management;

(3) describe the existing major data bases and applications in each agency;

(4) describe all existing interagency computer networks;

(5) provide a summary of the total expenditures for information resources and information resources technologies by each agency and the state;

(6) provide an inventory list, by major categories, of the state's information resources technologies; and

(7) identify and make recommendations regarding opportunities for multiagency information resources management activities.

(c) The department shall submit to the governor and to the Legislative Budget Board the approved annual report.

(d) The department may make interim reports that it considers necessary. (V.A.C.S. Art. 4413(32j), Sec. 13.)

Sec. 2054.056. **COMPUTER SERVICE FACILITY.** (a) The department shall operate a self-supporting computer service facility and provide computer services to state agencies that choose to subscribe to the service.

(b) Services provided under this section may include:

- (1) automation feasibility studies;
- (2) systems analysis and design;
- (3) program development and maintenance;
- (4) computer operation;
- (5) remote device installation and services;
- (6) management of data processing facilities;
- (7) consulting services;
- (8) training;
- (9) technology evaluation;
- (10) installation and maintenance of interagency networks;
- (11) operation of a disaster recovery site to prevent loss of information; and
- (12) other related services. (V.A.C.S. Art. 4413(32j), Secs. 9(k); 21(b).)

Sec. 2054.057. **PAYMENT AND ACCOUNTING FOR SERVICES.** (a) The department shall develop a billing rate plan that makes the department's provision of services under Section 2054.056 self-supporting. The plan must coincide with the two-year state budgeting cycle.

(b) The department shall establish separate cost centers for different functions or groups of functions. The billing rate plan must show the proposed rates for the use of each cost center and apply the same rate structure to all state agencies using a given cost center. (V.A.C.S. Art. 4413(32j), Secs. 22(a), (b).)

Sec. 2054.058. **CUSTOMER OVERSIGHT COMMITTEE.** (a) The department shall establish a customer oversight committee composed of chosen representatives of state agencies that use the department's computer services provided under Section 2054.056.

(b) The department and committee must mutually determine the components of the rate structure under Section 2054.057.

(c) The committee shall review and comment on the billing rate plan under Section 2054.057 at least once each fiscal year. (V.A.C.S. Art. 4413(32j), Sec. 22(c).)

Sec. 2054.059. **TELECOMMUNICATIONS PLANNING AND POLICY.** (a) The department shall establish plans and policies for a system of telecommunications services to be managed and operated by the General Services Commission.

(b) The department, comptroller, and General Services Commission shall develop a statewide telecommunications operating plan for all state agencies. The plan shall implement a statewide network and include technical specifications that are binding on the managing and operating agency.

(c) The department shall adopt appropriate policies and standards that govern the cost-effective and efficient management, operation, and use of state telecommunications services and shall distribute those policies and standards to all state agencies.

(d) Each state agency shall comply with the rules, policies, standards, and guidelines adopted under this section.

(e) The department shall coordinate its duties in this section on matters relating to statewide telecommunications issues with:

- (1) the comptroller to achieve the goal of a single centralized telecommunications network; and
- (2) other state agencies as appropriate. (V.A.C.S. Art. 4413(32j), Sec. 9A.)

[Sections 2054.060 to 2054.070 reserved for expansion]

#### SUBCHAPTER D. INFORMATION RESOURCES MANAGERS

Sec. 2054.071. **IDENTITY OF MANAGER.** The individual required to sign a state agency's strategic plan under Subchapter E, or that individual's designated representative, shall serve as the agency's information resources manager. (V.A.C.S. Art. 4413(32j), Sec. 19(a) (part).)

Sec. 2054.072. **CONFLICT OF INTEREST.** A member of the board may not serve as the information resources manager of a state agency. (V.A.C.S. Art. 4413(32j), Sec. 19(a) (part).)

Sec. 2054.073. **DESIGNATION OF DEPARTMENT.** (a) If the department performs substantially all information processing for a state agency, the agency may designate the department as the agency's information resources manager.

(b) The department by rule may define the circumstances in which it may serve as a state agency's information resources manager. (V.A.C.S. Art. 4413(32j), Sec. 19(b).)

Sec. 2054.074. **RESPONSIBILITY OF INFORMATION RESOURCES MANAGER.** The information resources manager shall prepare the operating plans under Subchapter E and the annual performance report under Section 2054.111. (V.A.C.S. Art. 4413(32j), Sec. 19(e).)

Sec. 2054.075. **COOPERATION WITH INFORMATION RESOURCES MANAGER.** Each state agency shall cooperate as necessary with its information resources manager to enable that individual to perform the manager's duties. (V.A.C.S. Art. 4413(32j), Sec. 19(c).)

Sec. 2054.076. **CONTINUING EDUCATION.** (a) The department shall provide guidelines to state agencies regarding the initial and continuing education requirements needed for information resources managers.

(b) An individual who is appointed the information resources manager of a state agency before September 1, 1992, is exempt from the requirements of the department regarding initial education needed for that position.

(c) The department may provide educational materials and seminars for state agencies and information resources managers. (V.A.C.S. Art. 4413(32j), Sec. 19(d).)

[Sections 2054.077 to 2054.090 reserved for expansion]

#### SUBCHAPTER E. STRATEGIC AND OPERATING PLANS

Sec. 2054.091. **PREPARATION OF STATE STRATEGIC PLAN.** (a) The executive director shall prepare a state strategic plan for information resources management for the board's review and approval.

(b) In preparing the state strategic plan, the executive director shall assess and report on:

(1) practices of state agencies regarding information resources management, including interagency and interbranch communication and interagency resource sharing;

(2) current and future information resources management technologies and practices and their potential application to state government; and

(3) any issue the department determines is relevant to the development of the state strategic plan.

(c) Each state agency shall cooperate with the executive director in providing information that will enable the executive director to assess agency practices.

(d) The executive director shall appoint an advisory committee to assist in the preparation of the state strategic plan. The members of the advisory committee must be approved by the board and must include officers or employees of state government.

(e) The executive director shall consult the General Services Commission or its successor in function on the direction of developments in the telecommunications field. The commission

shall give the executive director the assistance that the executive director requests in preparing the state strategic plan. (V.A.C.S. Art. 4413(32j), Secs. 12(a) (part), (b)–(d).)

Sec. 2054.092. CONTENT OF STATE STRATEGIC PLAN. The state strategic plan must:

- (1) provide a strategic direction for information resources management in state government for the five fiscal years following adoption of the plan;
- (2) provide guidance to state agencies in the development of the agency strategic plans;
- (3) establish goals and objectives relating to information resources management;
- (4) provide long-range policy guidelines for information resources in state government, including the implementation of national and international standards for information resources technologies;
- (5) identify major issues relating to improved information resources management, including the identification of needed procurement policy initiatives to encourage competition between providers of information resources technologies; and

(6) identify priorities for the implementation of information resources technologies according to the relative economic and social impact on the state. (V.A.C.S. Art. 4413(32j), Sec. 12(a) (part).)

Sec. 2054.093. AMENDMENT OF STATE STRATEGIC PLAN. (a) After approval and adoption of the state strategic plan by the board, the board may amend the plan at any time in response to technological advancements, changes in legislation, practical experience, or new issues relating to information resources management.

(b) The board shall adopt a revised plan not later than November 1 of each odd-numbered year. (V.A.C.S. Art. 4413(32j), Sec. 12(e).)

Sec. 2054.094. SUBMISSION OF STATE STRATEGIC PLAN. The board shall send the state strategic plan and each amended or revised plan to the governor and to the Legislative Budget Board. (V.A.C.S. Art. 4413(32j), Sec. 12(f).)

Sec. 2054.095. PREPARATION OF AGENCY STRATEGIC PLAN. (a) Each state agency shall prepare an agency strategic plan for information resources management.

(b) The agency strategic plan must be signed by the presiding officer of the governing body of the state agency if the agency is governed by one or more fully paid full-time state officials, and otherwise by the executive director of the agency.

(c) The agency strategic plan shall be prepared in a format prescribed by the department.

(d) The department by rule shall adopt instructions, consistent with Section 2054.096, that guide state agencies in the preparation of their agency strategic plans. The instructions must include the general criteria under which the department will evaluate the plan. The department shall send the instructions to each state agency not later than February 1 of each even-numbered year. (V.A.C.S. Art. 4413(32j), Secs. 14(a) (part), (b).)

Sec. 2054.096. CONTENT OF AGENCY STRATEGIC PLAN. Each agency strategic plan must be consistent with the state strategic plan and include:

- (1) a statement of the state agency's goals, objectives, and programs as found in the agency's legislative appropriations request;
- (2) a description of the agency's major data bases and their applications;
- (3) a description of the agency's information resources management organizations, policies, and practices;
- (4) a description of interagency computer networks in which the agency participates;
- (5) a statement of the strategic objectives of the agency relating to information resources management for the next five fiscal years, beginning with the fiscal year during which the plan is submitted, with a description of how those objectives help achieve the agency's programs and goals, and a description of how those objectives support and promote the goals and policies of the state strategic plan; and
- (6) other planning components that the department may prescribe. (V.A.C.S. Art. 4413(32j), Sec. 14(c).)

Sec. 2054.097. REVIEW OF AGENCY STRATEGIC PLAN. (a) A state agency shall send its strategic plan to the department for review and approval not later than January 1 of each odd-numbered year.

(b) The department shall review and approve or disapprove each agency strategic plan not later than April 15 of each odd-numbered year.

(c) The department shall notify a state agency of plan approval in writing.

(d) The department may not disapprove an agency strategic plan or plan amendment on the ground that some aspect of the plan is not best suited to the state agency's execution of its own duty, but the department may make a finding to that effect and report that finding to the agency, the governor, the state auditor, the Legislative Budget Board, and the presiding officer of each house of the legislature. This subsection does not affect the powers of the governor, the Legislative Budget Board, or any other entity under other law. (V.A.C.S. Art. 4413(32j), Secs. 14(a) (part), (d) (part), (g).)

Sec. 2054.098. APPROVAL OR DISAPPROVAL OF AGENCY STRATEGIC PLAN. (a) If a plan is disapproved, the department shall provide to the state agency in writing notice of and the reasons for disapproval and the changes that are necessary for the plan's approval.

(b) If a state agency cannot resolve the problems that caused disapproval of a plan within 30 days after the date that the notice of disapproval is received, the information resources manager of the agency shall provide to the department in writing not later than the 30th day after the date that the notice of disapproval is received the reasons why the problems cannot be timely resolved.

(c) An approved agency strategic plan shall be amended by a state agency to reflect any significant changes being proposed by the agency that relate to information resources. A plan amendment shall be submitted to the department for approval. The department shall notify an agency in writing of approval or disapproval of the amendment within 30 days after the date the amendment is received. If a plan amendment is disapproved, the department shall provide to the individual responsible for signing the agency's plan the reasons for disapproval in writing.

(d) A state agency that disagrees with the department's final disapproval of an agency strategic plan or amendment to the plan may, after complying with Subsections (b) and (c), submit a written request to the executive director for special review. On receipt of a request, the executive director shall inform the board. The board shall consider the merits of the agency's position and make its decision on the matter at the next regularly scheduled board meeting. The state agency may appear and present its position at that meeting. The decision of the board is final. (V.A.C.S. Art. 4413(32j), Secs. 14(d) (part), (e), (f).)

Sec. 2054.099. INITIAL OPERATING PLAN OF STATE AGENCY. (a) Once each biennium, each state agency's information resources manager shall prepare an initial operating plan.

(b) A state agency is not required to identify specific acquisitions or the method of acquisition in the initial operating plan.

(c) An initial operating plan must be approved by the governing body of the state agency and submitted to the department for approval not later than the date that the agency is required to submit its first legislative appropriations request.

(d) An initial operating plan must, for each request under each Legislative Budget Board assumption:

(1) state how the state agency's requested appropriations for the management, operation, and procurement of information resources would be spent;

(2) contain a summary of the agency's needs for information resources technologies and the estimated cost of meeting those needs during the next biennium;

(3) list the existing and proposed projects for the agency during the next biennium, including:

(A) the anticipated measurable benefits of those projects and the measurement standards used to determine those benefits;

(B) the major resources required to conduct the projects;

(C) the agency's estimated total cost of each project by legislative program as found in the agency's legislative appropriations request;

(D) the cost and implementation schedule for each stage of each project;

(E) the number, type, approximate cost, schedule, and, if known, the planned method of acquisition for all procurements associated with each project that are subject to review under department rules; and

(F) the estimated internal development costs for each project, including an allocation of costs for the use of fixed assets and an allocation for administrative costs;

(4) provide an estimate, given the estimated work load, of the percentage of existing and proposed information resources technologies that will be required after all existing and proposed projects are implemented; and

(5) provide any other information that the department considers necessary. (V.A.C.S. Art. 4413(32j), Sec. 15.)

Sec. 2054.100. FINAL OPERATING PLAN OF STATE AGENCY. (a) Each state agency shall submit a final operating plan to the department not later than the earliest of the following dates of each odd-numbered year:

(1) September 1;

(2) the 60th day after the date the General Appropriations Act becomes law if it becomes law on or before July 31 of that year; or

(3) the 30th day after the date the General Appropriations Act becomes law if it becomes law after July 31 of that year.

(b) At a minimum, the plan must include, in addition to the information required in the initial operating plan, the following:

(1) the amount of money related to information resources actually appropriated to the state agency for the biennium beginning September 1; and

(2) an identification of changes, if any, in the agency's priorities for projects and associated procurements stated in the initial operating plan.

(c) The department may consult the comptroller to verify a state agency's approved funds.

(d) A state agency shall amend its final operating plan when necessary to:

(1) reflect changes in the plan during a biennium; or

(2) show the impact of a consulting services contract or report that may affect software development, hardware configuration, or changes in the agency's management of information resources.

(e) The substance of any amendment submitted to a final operating plan must also be included in an appropriate approved agency strategic plan or approved agency strategic plan amendment. (V.A.C.S. Art. 4413(32j), Sec. 16.)

Sec. 2054.101. INSTRUCTIONS FOR PREPARING OPERATING PLANS. (a) The department by rule shall adopt instructions to guide state agencies in their preparation of initial operating plans and final operating plans.

(b) The instructions must:

(1) specify the format of the plans;

(2) require the submission of the information required by this chapter; and

(3) list the general criteria that the department will use to evaluate the plans. (V.A.C.S. Art. 4413(32j), Sec. 17(a).)

Sec. 2054.102. APPROVAL OR DISAPPROVAL OF OPERATING PLANS. (a) The department shall notify a state agency in writing of the department's approval or disapproval of an initial operating plan. The notification shall be sent not later than the 120th day after the date the department receives the plan.

(b) The department shall notify a state agency in writing of the department's approval or disapproval of a final operating plan. The notification shall be sent not later than the 30th day after the date the department receives the plan. If the department's determination is



due after September 1 of an odd-numbered year, a state agency may operate as if the plan had been approved until the department actually makes its determination.

(c) If the department disapproves a state agency's initial operating plan or final operating plan, the department shall provide to the agency in writing the reasons for the disapproval. If the agency cannot resolve the problems that caused disapproval within 30 days after the date the notice of disapproval is received, the agency shall notify the department in writing of the reasons why the problems cannot be resolved. The notification shall be sent to the department not later than the 30th day after the date the agency receives notice of the department's disapproval.

(d) Before a state agency may amend its final operating plan, the agency must submit the proposed amendment to the department for approval. All amendments affecting operations during a fiscal year must be submitted not later than June 1 of that fiscal year. The department shall notify the agency of the department's approval or disapproval not later than the 30th day after the date the proposed amendment is received. If the department disapproves a proposed amendment, the department shall state the reasons for the disapproval in writing to the agency's information resources manager. The department shall adopt rules for the procedures a state agency must follow when submitting a revision of proposed amendments to the department after the department has disapproved the amendments.

(e) The department may not approve a state agency's initial operating plan or final operating plan unless the agency has submitted and the department has approved a current agency strategic plan.

(f) A state agency that disagrees with the department's disapproval of an initial operating plan, final operating plan, or an amendment to either of those plans may submit a written request to the department for special review. On receipt of a request, the executive director shall inform the board. The board shall consider the merits of the agency's position and make its decision on the matter at the next regularly scheduled board meeting. The state agency may appear and present its position at that meeting. The decision of the board is final. The board shall adopt rules for the fair and efficient administration of this subsection. (V.A.C.S. Art. 4413(32j), Secs. 17(b)-(g).)

Sec. 2054.103. SUBMISSION OF OPERATING PLANS AND CERTAIN PROCUREMENT INFORMATION. (a) Each state agency shall send a copy of its final operating plan, as approved by the department, to the governor, the Legislative Budget Board, and the state auditor not later than the 30th day after the date the department approves the plan.

(b) As a consequence of evaluating an initial operating plan or a final operating plan, the department may require a state agency to submit or obtain certain information as part of its procurement process when:

- (1) an agency is planning a noncompetitive procurement;
  - (2) an agency is planning a system conversion; or
  - (3) the department determines that the information would be necessary or appropriate.
- (V.A.C.S. Art. 4413(32j), Secs. 17(h) (part), (i).)

Sec. 2054.104. DENIAL OF ACCESS TO APPROPRIATIONS ON FAILURE TO SUBMIT OPERATING PLAN AND CERTAIN PROCUREMENT INFORMATION. (a) If a state agency fails to comply with Section 2054.103, the governor may direct the comptroller to deny the agency access to the agency's appropriations that relate to the management of information resources.

(b) The denial of access may continue until the governor is satisfied with the state agency's compliance with this section. (V.A.C.S. Art. 4413(32j), Sec. 17(h) (part).)

[Sections 2054.105 to 2054.110 reserved for expansion]

## SUBCHAPTER F. OTHER POWERS AND DUTIES OF STATE AGENCIES

Sec. 2054.111. ANNUAL PERFORMANCE REPORT. (a) Each state agency's information resources manager shall prepare an annual performance report.

(b) The department by rule shall prescribe the format for the annual performance report.

(c) Each state agency shall provide a copy of its annual performance report to the department for review and analysis not later than November 1 of each year. (V.A.C.S. Art. 4413(32j), Secs. 20(a), (b), (d) (part).)

Sec. 2054.112. CONTENTS OF ANNUAL PERFORMANCE REPORT: The annual performance report must contain:

(1) a description of the state agency's management of information resources in the preceding fiscal year;

(2) an assessment, by application, of the progress made toward implementing the agency strategic plan under Subchapter E;

(3) an assessment of the progress made toward implementing the agency's final operating plan under Subchapter E, which notes and explains any major differences between that plan and actual accomplishments;

(4) a summary, by project, of the major functional uses of information resources by the agency;

(5) a summary, by project, of the total estimated expenditures for information resources management and use by the agency, including allocated administrative costs;

(6) a comparison of the agency's expenditures for information resources in the preceding fiscal year with the appropriations for those resources in the agency's approved budget, which notes and justifies differences between the two;

(7) an inventory, by major category as defined by rule of the department, of the agency's information resources technologies, which specifically identifies the resources acquired during the preceding fiscal year; and

(8) an assessment of opportunities for participation with other state agencies in the use and management of information resources. (V.A.C.S. Art. 4413(32j), Sec. 20(c).)

Sec. 2054.113. DENIAL OF ACCESS TO APPROPRIATIONS. (a) If a state agency fails to comply with the date its annual performance report is due under Section 2054.111 without good cause, the department may request the comptroller to deny the agency access to the agency's appropriations that relate to the management of information resources.

(b) If the comptroller denies access, the denial of access may continue until the department is satisfied with the state agency's compliance with this section. (V.A.C.S. Art. 4413(32j), Sec. 20(d) (part).)

Sec. 2054.114. ACQUISITION SPECIFICATIONS. (a) A state agency may not acquire information resources technologies unless the agency first submits the specifications for the proposed acquisition to the department. If the agency determines that the acquisition may be obtained from only one source, the agency shall state the reasons for that determination.

(b) The department shall determine whether the specifications of the proposed acquisition are consistent with the appropriate final operating plan and plan amendments under Subchapter E.

(c) If the department finds that the acquisition of information resources technologies described by the specifications would be inconsistent with the appropriate plan and plan amendments, the department shall notify the state agency and, for acquisitions made through the General Services Commission, the commission in writing of the finding and of the specific reasons for the finding. The acquisition may not be made unless the department overturns its finding.

(d) If the department finds that the proposed acquisition is consistent with the appropriate plan and plan amendments, or if the department does not issue the notification of its finding of inconsistency on or before the 30th day after the date the department receives the specifications for the proposed acquisition, the acquisition may be made.

(e) The department by rule may establish procedures to exempt certain procurements from the requirements of this section and to expedite the requirements of this section for certain procurements. The exempted procurements shall include technologies that are acquired through contracts and grants by an institution of higher education as defined by Section 61.003, Education Code, for instruction or research purposes. (V.A.C.S. Art. 4413(32j), Secs. 18(a)-(d).)

Sec. 2054.115. SALE OR LEASE OF SOFTWARE. (a) A state agency that develops automated information systems software may enter a contract with an individual or company for the sale, lease, marketing, or other distribution of the software.

(b) The state agency shall obtain under the contract a royalty, license right, or other appropriate means of securing appropriate compensation for the development of the software.

(c) Money received under the contract shall be deposited to the credit of the fund from which the development of the software was financed.

(d) To the extent of a conflict between this section and another provision of state law relating to automated information systems software, the other provision prevails. (V.A.C.S. Art. 4413(32j), Sec. 23.)

Sec. 2054.116. COMPUTER SERVICES CONTRACTS. (a) A state agency that uses the department's computer services or computer services facility under Section 2054.056 must do so under contract with the department.

(b) A contract under this section is not subject to Chapter 771 and is binding on the parties for the length of the contract.

(c) A contract may not be canceled before the end of a state fiscal biennium, unless the cancellation is approved by the department after having received at least 90 days' notice of the proposed cancellation.

(d) A state agency may contract with persons outside of government to obtain a service listed by Section 2054.056 if that would lower costs to the state and if the contract complies with this chapter. (V.A.C.S. Art. 4413(32j), Secs. 21(a), (c).)

Sec. 2054.117. ELECTRONIC DATA PROCESSING CENTER. (a) Each state agency, if practicable, shall use the electronic data processing center operated by the comptroller in performing any of the agency's accounting and data processing activities that can be practically adapted to the use of the center's equipment.

(b) The comptroller shall permit the use of the center's computer and other data processing equipment by state agencies with or without charge under rules that ensure the proper use of the equipment for the efficient and economical management of state government. (V.A.C.S. Art. 6252-12.)

CHAPTER 2055. FACULTY INFORMATION AND RESEARCH  
SERVICE FOR TEXAS COMMITTEE

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2055.001. DEFINITIONS
- Sec. 2055.002. COMPOSITION OF COMMITTEE
- Sec. 2055.003. OFFICERS
- Sec. 2055.004. COMPENSATION AND EXPENSES
- Sec. 2055.005. MEETINGS
- Sec. 2055.006. PERSONNEL; VOLUNTEERS

[Sections 2055.007 to 2055.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

- Sec. 2055.021. GENERAL POWERS AND DUTIES
- Sec. 2055.022. GIFT, GRANT, AND CONTRIBUTED SERVICE OR FACILITY
- Sec. 2055.023. FUNDING

CHAPTER 2055. FACULTY INFORMATION AND RESEARCH  
SERVICE FOR TEXAS COMMITTEE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2055.001. DEFINITIONS. In this chapter:

(1) "Administrators or faculty" means the administrators or faculty of a public or private institution of higher education in this state.

(2) "Committee" means the Faculty Information and Research Service for Texas Committee, FIRST Committee.

(3) "Service" means the Faculty Information and Research Service for Texas, Project FIRST. (New.)

Sec. 2055.002. COMPOSITION OF COMMITTEE. (a) The committee is composed of:

(1) the chairman of the Senate Committee on Natural Resources;

(2) the chairman of the House Committee on Environmental Affairs;

(3) the director of the Legislative Reference Library;

(4) the president of the Texas Association of College Teachers;

(5) the president of the Texas chapter of the American Association of University Professors;

(6) a representative of the Independent Colleges and Universities of Texas, Inc.;

(7) a representative of the Texas Junior College Teachers Association;

(8) a representative of the Texas Public Community/Junior Colleges Association;

(9) a representative of the Council of Presidents of the Public Senior Colleges and Universities of Texas; and

(10) a representative of the Texas Legislative Council.

(b) A member who holds public office serves as an ex officio member. The functions performed by an ex officio member are additional functions of the member's public office.

(c) An organization that is not represented on the committee may participate in the service and send a representative to the committee if the organization:

(1) represents the interests of an accredited public or private institution of higher education or its administrators or faculty; and

(2) requests and receives permission of the presiding officer of the committee.

(d) A committee member may designate a representative to act in the member's place at a meeting of the committee. (V.A.C.S. Art. 4413(57), Secs. 2, 4.)

Sec. 2055.003. OFFICERS. The committee annually shall elect from its members a presiding officer and other officers it considers necessary. (V.A.C.S. Art. 4413(57), Sec. 3(a).)

Sec. 2055.004. COMPENSATION AND EXPENSES. (a) A member of the committee or a designated representative of a member may not receive compensation for service performed for the committee.

(b) A member of the committee or a designated representative of a member may receive reimbursement for actual or necessary expenses incurred in performing service for the committee only if the reimbursement is provided by an organization represented on the committee. (V.A.C.S. Art. 4413(57), Sec. 5.)

Sec. 2055.005. MEETINGS. The committee shall meet at the call of the presiding officer or as provided by committee rule. (V.A.C.S. Art. 4413(57), Sec. 3(b).)

Sec. 2055.006. PERSONNEL; VOLUNTEERS. (a) The committee may employ personnel and may use the voluntary assistance of administrators or faculty.

(b) An administrator or faculty member who provides information for the service is a volunteer and is not required to respond to a request for information from the service. An administrator or faculty member may provide requested information if the administrator's or

faculty member's time permits and the administrator or faculty member has expertise related to the request. (V.A.C.S. Art. 4413(57), Secs. 6(a), 8(c).)

[Sections 2055.007 to 2055.020 reserved for expansion]

### SUBCHAPTER B. POWERS AND DUTIES

Sec. 2055.021. GENERAL POWERS AND DUTIES. (a) The committee shall:

- (1) establish and govern the service;
- (2) make available to a legislative member, committee, or agency the expertise of administrators or faculty;
- (3) use the expertise of administrators or faculty to provide an answer to a request for information from a legislative member, committee, or agency; and
- (4) provide to the governor a service that the committee provides to a legislative member, committee, or agency if the governor requests the service and the committee approves the request.

(b) The committee may:

- (1) adopt rules necessary for the administration of its functions; and
- (2) before using the expertise of administrators or faculty, refer a legislative member, committee, or agency to a source of information located at an agency or other organization of the state to supplement an existing source of information. (V.A.C.S. Art. 4413(57), Secs. 1; 8(ε), (b); 10.)

Sec. 2055.022. GIFT, GRANT, AND CONTRIBUTED SERVICE OR FACILITY. (a) The committee may accept a gift or grant from any source to be used by the committee to administer its functions.

(b) The committee may use a service or facility contributed to the committee by an officer or employee of the legislature. (V.A.C.S. Art. 4413(57), Secs. 6(b), 7.)

Sec. 2055.023. FUNDING. The committee is to be funded by appropriations to the committee or to another organization in state government designated by the committee as having operational control of the service. (V.A.C.S. Art. 4413(57), Sec. 9.)

### CHAPTER 2056. STRATEGIC PLANS OF OPERATION

- Sec. 2056.001. DEFINITION
- Sec. 2056.002. STRATEGIC PLANS
- Sec. 2056.003. FORMS AND INSTRUCTIONS
- Sec. 2056.004. ASSISTANCE FOR AGENCIES
- Sec. 2056.005. INFORMATION PROVIDED TO AGENCIES
- Sec. 2056.006. GOALS
- Sec. 2056.007. ADDITIONAL INFORMATION
- Sec. 2056.008. HEARING
- Sec. 2056.009. STATE PLAN
- Sec. 2056.010. AGENCY CONFORMANCE TO STRATEGIC PLAN

### CHAPTER 2056. STRATEGIC PLANS OF OPERATION

Sec. 2056.001. DEFINITION. In this chapter, "state agency" means an agency, board, commission, or other office of the executive branch of state government, other than the office of the lieutenant governor. (V.A.C.S. Art. 6252-31, Sec. 1, as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.002. STRATEGIC PLANS. (a) A state agency shall make a strategic plan for its operations. Not later than March 1 of each even-numbered year, the agency shall issue a plan covering six years beginning on that date.

(b) Except as provided by Subsection (c), a plan must include:

- (1) a statement of the mission and goals of the state agency;
- (2) a description of the indicators developed under this chapter and used to measure the output and outcome of the agency;
- (3) identification of the groups of people served by the agency, including those having service priorities, or other service measures established by law, and estimates of changes in those groups expected during the term of the plan;
- (4) an analysis of the use of the agency's resources to meet the agency's needs, including future needs, and an estimate of additional resources that may be necessary to meet future needs;
- (5) an analysis of expected changes in the services provided by the agency because of changes in state or federal law;
- (6) a description of the means and strategies for meeting the agency's needs, including future needs, and achieving the goals established under Section 2056.006 for each area of state government for which the agency provides services; and
- (7) other information that may be required.

(c) A state agency's plan that does not include an item described by Subsection (b) must include the reason the item does not apply to the agency.

(d) A state agency shall send two copies of each plan to the Legislative Reference Library and one copy each to:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives;
- (4) the Legislative Budget Board;
- (5) the Sunset Advisory Commission;
- (6) the state auditor; and
- (7) the comptroller. (V.A.C.S. Art 6252-31, Secs. 2(a), (b), (c), as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.003. **FORMS AND INSTRUCTIONS.** The Governor's Office of Budget and Planning and the Legislative Budget Board shall develop forms and instructions for a state agency to use in preparing the agency's strategic plan. (V.A.C.S. Art. 6252-31, Sec. 2(d)(1), as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.004. **ASSISTANCE FOR AGENCIES.** The Governor's Office of Budget and Planning and the Legislative Budget Board shall work with each state agency to determine acceptable measures of workload, output, and outcome for use in the agency's plan. (V.A.C.S. Art. 6252-31, Sec. 2(d)(2), as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.005. **INFORMATION PROVIDED TO AGENCIES.** (a) Not later than September 1 of each odd-numbered year, the comptroller shall provide a long-term forecast of the state's economy and population to each state agency for use in the agency's strategic planning.

(b) The comptroller, the Governor's Office of Budget and Planning, and the Legislative Budget Board jointly shall determine the information to be included in the forecast. (V.A.C.S. Art. 6252-31, Sec. 4, as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.006. **GOALS.** (a) The governor, in cooperation with the Legislative Budget Board, shall establish and adopt achievement goals for each functional area of state government, including:

- (1) education;
- (2) regulation;
- (3) natural resources;
- (4) health;
- (5) human services;
- (6) transportation;

- (7) public safety and corrections;
- (8) general government; and
- (9) state employee benefits.

(b) Not later than October 1 of each odd-numbered year, the governor shall provide to each state agency a statement of the goals for each area in which the agency provides services. (V.A.C.S. Art. 6252-31, Sec. 3, as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.007. **ADDITIONAL INFORMATION.** After a state agency issues its strategic plan, the Governor's Office of Budget and Planning and the Legislative Budget Board may request additional information relating to the plan from the agency. The agency shall provide the information in a timely manner. (V.A.C.S. Art. 6252-31, Sec. 2(d)(4), as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.008. **HEARING.** The Governor's Office of Budget and Planning and the Legislative Budget Board jointly may hold a hearing on any matter required by this chapter. (V.A.C.S. Art. 6252-31, Sec. 2(d)(5), as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.009. **STATE PLAN.** (a) The Governor's Office of Budget and Planning and the Legislative Budget Board jointly shall compile a long-range strategic plan for state government using the state agency plans issued under Section 2056.002 and information obtained under Section 2056.007.

(b) The state plan shall be sent to the governor, lieutenant governor, comptroller, and each member of the legislature not later than September 1 of each even-numbered year. (V.A.C.S. Art. 6252-31, Secs. 2(d)(3), (6), as added Acts 72nd Leg., R.S., Ch. 384.)

Sec. 2056.010. **AGENCY CONFORMANCE TO STRATEGIC PLAN.** The comptroller, the Sunset Advisory Commission, the state auditor, the Legislative Budget Board, or another agency that conducts performance audits of a state agency shall consider in the evaluation of an agency the extent to which the agency conforms to the agency's strategic plan. (V.A.C.S. Art. 6252-31, Sec. 5, as added Acts 72nd Leg., R.S., Ch. 384.)

## CHAPTER 2057. CAPITAL IMPROVEMENT PLAN

- Sec. 2057.001. **DEFINITIONS**
- Sec. 2057.002. **ADOPTION AND SUBMISSION OF PLAN**
- Sec. 2057.003. **CONTENTS OF PLAN**
- Sec. 2057.004. **COOPERATION BY STATE AGENCIES**
- Sec. 2057.005. **ADVISORY COMMITTEE**

## CHAPTER 2057. CAPITAL IMPROVEMENT PLAN

Sec. 2057.001. **DEFINITIONS.** In this chapter:

- (1) "Board" means the Legislative Budget Board.
- (2) "Bond review board" means the bond review board created under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes).
- (3) "Capital improvement" means any building or infrastructure project that will be owned by the state and built with direct appropriations or with the proceeds of state-issued bonds designed to be repaid with the general revenues of the state. The term does not include a building or project financed with bonds that, although backed by the full faith and credit of the state, are reasonably expected to be paid from other revenue sources and that are not expected to require payments of general revenues.

(4) "Capital improvement plan" means a six-year strategic capital improvement plan adopted under this chapter.

(5) "State agency" means a governmental entity that spends money appropriated by the General Appropriations Act. (V.A.C.S. Art. 6252-32, Sec. 1; New.)

Sec. 2057.002. **ADOPTION AND SUBMISSION OF PLAN.** (a) Not later than October 31 of each even-numbered year, the governor and the board shall jointly adopt a six-year strategic capital improvement plan.

(b) The governor shall submit the plan to the bond review board for review and to the legislature. (V.A.C.S. Art. 6252-32, Sec. 2.)

Sec. 2057.003. CONTENTS OF PLAN. (a) A capital improvement plan must include:

- (1) a description of the capital improvement needs of state agencies during the six-year period;
- (2) establishment of priorities, if appropriate, for those needs;
- (3) an estimate about how those needs may be financed during the six-year period;
- (4) recommended debt limits for the six-year period; and
- (5) estimates of the effects capital improvements will have on operating budgets.

(b) The board shall develop and periodically revise criteria for the inclusion in a capital improvement plan of a proposed capital improvement project or of an acquisition or expenditure for capital improvements. The board shall obtain the advice and recommendations of the bond review board before developing or revising the criteria. (V.A.C.S. Art. 6252-32, Sec. 3.)

Sec. 2057.004. COOPERATION BY STATE AGENCIES. (a) The governor and the board shall solicit the advice and recommendations of each state agency before adopting a capital improvement plan.

(b) In formulating a capital improvement plan, the governor and the board shall take into account each state agency's strategic plan for operations developed under Chapter 2056.

(c) The governor and the board may require a state agency to:

- (1) submit information, reports, plans, and documentation;
- (2) answer inquiries; and
- (3) cooperate in the preparation of a plan. (V.A.C.S. Art. 6252-32, Sec. 4.)

Sec. 2057.005. ADVISORY COMMITTEE. (a) The governor and the board may establish an advisory committee composed of officers and employees of the Department of Information Resources, the General Services Commission, the bond review board, and other state agencies.

(b) The committee shall advise the governor and the board on the development and content of a capital improvement plan.

(c) Service on the committee is an additional duty of the member's office or employment. (V.A.C.S. Art. 6252-32, Sec. 5.)

## CHAPTER 2058. RECOGNITION OF FEDERAL CENSUS

Sec. 2058.001. GOVERNMENTAL RECOGNITION OF AND ACTION ON FEDERAL CENSUS

Sec. 2058.002. EXCEPTIONS

## CHAPTER 2058. RECOGNITION OF FEDERAL CENSUS

Sec. 2058.001. GOVERNMENTAL RECOGNITION OF AND ACTION ON FEDERAL CENSUS. (a) A governmental entity may not recognize or act on a report or publication, in any form, of a federal decennial census, in whole or in part, before September 1 of the year after the calendar year during which the census was taken.

(b) A governmental entity shall recognize and act on a published report or count relating to a federal decennial census and released by the director of the Bureau of the Census of the United States Department of Commerce:

- (1) on September 1 of the year after the calendar year during which the census was taken if the report or count is published on or before that date; or
- (2) on the date of its publication if the report or count is published after September 1 of the year after the calendar year during which the census was taken.

(c) In this section, "governmental entity" means the state or an agency or political subdivision of the state. (V.A.C.S. Art. 29d, Secs. 1(a) (part), 2.)



Sec. 2058.002. EXCEPTIONS. (a) The legislature or the Legislative Redistricting Board under Article III, Section 28, of the Texas Constitution may officially recognize or act on a federal decennial census before September 1 of the year after the calendar year during which the census was taken.

(b) A political subdivision governed by a body elected from single-member districts may recognize and act on tabulations of population of a federal decennial census, for redistricting purposes, on or after the date the governor receives a report of the basic tabulations of population from the secretary of commerce under 13 U.S.C. Section 141(c). This subsection does not apply to a political subdivision that was not subject to a statute requiring certain political subdivisions, classified by population, to elect their governing bodies from single-member districts under the preceding federal census. (V.A.C.S. Art. 29d, Secs. 1(a) (part), (b).)

[Chapters 2059 to 2100 reserved for expansion]

SUBTITLE C. STATE ACCOUNTING, FISCAL  
MANAGEMENT, AND PRODUCTIVITY

CHAPTER 2101. ACCOUNTING PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2101.001. DEFINITION

[Sections 2101.002 to 2101.010 reserved for expansion]

SUBCHAPTER B. FINANCIAL REPORTING

Sec. 2101.011. FINANCIAL INFORMATION REQUIRED OF STATE AGENCIES  
("100-DAY REPORTS")

Sec. 2101.012. UNIFORM ACCOUNTING AND REPORTING PROCEDURES

Sec. 2101.013. REVIEW OF PROPOSED PROCEDURES

Sec. 2101.014. DUTIES OF STATE AUDITOR

[Sections 2101.015 to 2101.030 reserved for expansion]

SUBCHAPTER C. UNIFORM STATEWIDE ACCOUNTING

Sec. 2101.031. UNIFORM STATEWIDE ACCOUNTING PROJECT

Sec. 2101.032. PROJECT ADVISORY COMMITTEE

Sec. 2101.033. PROJECT DIRECTOR

Sec. 2101.034. PROJECT SUPPORT; RECOVERY OF COSTS

Sec. 2101.035. ADMINISTRATION OF USAS

Sec. 2101.036. STATE AGENCY INTERNAL ACCOUNTING SYSTEMS

Sec. 2101.037. STATE AGENCY COOPERATION

Sec. 2101.038. DUTIES OF STATE AUDITOR

Sec. 2101.039. CONTRACTS; EXEMPTION

SUBTITLE C. STATE ACCOUNTING, FISCAL  
MANAGEMENT, AND PRODUCTIVITY

CHAPTER 2101. ACCOUNTING PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2101.001. DEFINITION. In this chapter, "state agency" has the meaning assigned by Section 403.013. (V.A.C.S. Arts. 4345a(e) (part); 4348e, Sec. 1(4); 4348f, Sec. 2(5).)

[Sections 2101.002 to 2101.010 reserved for expansion]

SUBCHAPTER B. FINANCIAL REPORTING

Sec. 2101.011. FINANCIAL INFORMATION REQUIRED OF STATE AGENCIES ("100-DAY REPORTS"). (a) A state agency shall submit the financial information requested by the comptroller, including information about state funds held outside the state treasury, to:

- (1) the governor;
- (2) the comptroller;
- (3) the state treasurer;
- (4) the state auditor; and
- (5) the Legislative Budget Board.

(b) A state agency other than a university system or institution of higher education, as defined by Section 61.003, Education Code, shall submit the information to the listed officials not later than December 9 of each year. A university system or institution of higher education shall submit the information to the listed officials not later than the following January 1.

(c) A state agency is not required to submit the information if the comptroller determines the agency is not a component unit of state government for purposes of this subchapter. (V.A.C.S. Arts. 4345a(b), (e) (part).)

Sec. 2101.012. UNIFORM ACCOUNTING AND REPORTING PROCEDURES. (a) The comptroller shall prescribe uniform accounting and financial reporting procedures that each state agency shall use in the preparation of the information requested under Section 2101.011.

(b) The procedures must:

(1) comply with generally accepted accounting principles as established by the Governmental Accounting Standards Board and the American Institute of Certified Public Accountants or their successors;

(2) include the requirements for compliance with the federal Single Audit Act of 1984 and Office of Management and Budget Circular A-128 and any subsequent changes or amendments that will fulfill the audit requirements for a statewide single audit; and

(3) to provide for maximum consistency with the national reporting system for higher education, incorporate insofar as possible the provisions of the financial accounting and reporting manual published by the National Association of College and University Business Officers.

(c) The accounts of the institutions shall be maintained and audited in accordance with the approved reporting system. (V.A.C.S. Art. 4345a(a).)

Sec. 2101.013. REVIEW OF PROPOSED PROCEDURES. (a) Before adopting or changing the accounting and financial reporting procedures, the comptroller shall submit the proposed procedures to the state auditor for review and comment.

(b) In adopting or changing procedures, the comptroller shall consider any comments of the state auditor. (V.A.C.S. Art. 4345a(c).)

Sec. 2101.014. DUTIES OF STATE AUDITOR. The state auditor shall ensure that the accounting and financial reporting procedures of each state agency conform to the procedures adopted under this subchapter. (V.A.C.S. Art. 4345a(d).)

[Sections 2101.015 to 2101.030 reserved for expansion]

SUBCHAPTER C. UNIFORM STATEWIDE ACCOUNTING

Sec. 2101.031. UNIFORM STATEWIDE ACCOUNTING PROJECT. (a) The uniform statewide accounting project is in the comptroller's office.

(b) The project includes each component of the uniform statewide accounting system as designed in accordance with Chapter 852, Acts of the 70th Legislature, Regular Session, 1987,

as defined by Section 1, Chapter 781, Acts of the 71st Legislature, Regular Session, 1989, and as developed or revised by the project advisory committee, including:

- (1) the uniform statewide accounting system (USAS) and related subsystems;
- (2) the uniform statewide payroll system (USPS);
- (3) the human resource information system (HRIS);
- (4) the budget execution and monitoring system (BEAMS); and
- (5) the statewide telecommunication network system. (V.A.C.S. Art. 4348e, Sec. 1(5); Art. 4348f, Secs. 2(6), 3.)

Sec. 2101.032. **PROJECT ADVISORY COMMITTEE.** (a) The project advisory committee shall review and make recommendations to the project director about matters related to the project.

(b) The committee is composed of:

- (1) the comptroller;
- (2) the governor;
- (3) the lieutenant governor;
- (4) the speaker of the house of representatives;
- (5) the state treasurer;
- (6) the executive director of the Department of Information Resources;
- (7) the state auditor; and
- (8) eight appointees of the governor, including:

(A) an employee of the Legislative Budget Board; and

(B) one individual each with experience in the following areas: education, natural resources, criminal justice, human services, business regulation, and employee benefits.

(c) The comptroller is presiding officer of the committee.

(d) The committee shall meet monthly or at the call of the presiding officer.

(e) The governor, lieutenant governor, speaker of the house of representatives, and comptroller may designate another individual to serve in the member's place on the committee. The designee of the governor must be an employee of the governor's office, the designee of the lieutenant governor must be a member of the senate, the designee of the speaker must be a member of the house of representatives, and the designee of the comptroller must be an employee of the comptroller's office.

(f) A member of the committee is entitled to reimbursement for expenses as provided by law. (V.A.C.S. Art. 4348f, Sec. 4.)

Sec. 2101.033. **PROJECT DIRECTOR.** (a) The comptroller shall appoint a project director to administer the project.

(b) The project director reports directly to the comptroller or chief deputy comptroller.

(c) To be appointed project director, an individual must be qualified by training and experience to perform the duties of the position.

(d) The project director shall:

- (1) administer the project as provided by this subchapter;
- (2) employ and remove project staff;
- (3) administer all money entrusted to the project;
- (4) obtain necessary office space, equipment, and supplies for the project; and
- (5) contract for goods and services necessary to carry out this subchapter. (V.A.C.S. Arts. 4348e, Sec. 3(e) (part); 4348f, Secs. 5, 6(a).)

Sec. 2101.034. **PROJECT SUPPORT; RECOVERY OF COSTS.** (a) The comptroller shall provide support services for the project, including accounting, purchasing, and personnel services. The cost of the services shall be paid from money appropriated to the comptroller.

(b) The comptroller may recover from a state agency the cost of implementation or use of any component of the project by the agency. (V.A.C.S. Art. 4348f, Sec. 8.)

Sec. 2101.035. ADMINISTRATION OF USAS. (a) The comptroller is responsible for the administration, maintenance, and modification of the uniform statewide accounting system and shall adopt rules for the effective operation of the system.

(b) The comptroller shall cooperate and consult with the project advisory committee during the implementation of the uniform statewide accounting system.

(c) The comptroller shall implement the uniform statewide accounting system in accordance with generally accepted accounting principles, including the guidelines of the National Association of College and University Business Officers.

(d) The comptroller shall ensure that the system encompasses each state agency. The comptroller may, after consulting with the project advisory committee, exclude any state agency from the centralized computation function of the statewide payroll component of the system. (V.A.C.S. Art. 4348e, Secs. 1(3), 3(b), (d), (g), (h).)

Sec. 2101.036. STATE AGENCY INTERNAL ACCOUNTING SYSTEMS. (a) The comptroller by rule may require state agencies to modify, delay, or stop the implementation of individual accounting and payroll systems so that those systems are compatible with the uniform statewide accounting system.

(b) The comptroller may require a state agency to replace its internal accounting and payroll system with project components to provide uniformity in internal accounting.

(c) The expenditure of state funds for the establishment, modification, or maintenance of an individual accounting or payroll system must be in accordance with any rules regarding the development, implementation, or use of the uniform statewide accounting system. (V.A.C.S. Arts. 4348e, Sec. 3(c); 4348f, Sec. 7 (part).)

Sec. 2101.037. STATE AGENCY COOPERATION. (a) A state agency shall make available to the project director all records of the agency for purposes of developing and implementing the project.

(b) To ensure continuous reporting of comprehensive financial management information, including information on encumbrances and performance and workload measures, the comptroller shall require each state agency to report the necessary information to the project director on time. The reports of each agency must comply with the comptroller's rules and procedures about content and frequency. (V.A.C.S. Arts. 4348e, Secs. 1(6), 3(f); 4348f, Sec. 7 (part).)

Sec. 2101.038. DUTIES OF STATE AUDITOR. The state auditor, when reviewing the operation of a state agency, shall audit for compliance with the uniform statewide accounting system, the comptroller's rules, and the Legislative Budget Board's performance and workload measures. The state auditor shall notify the project advisory committee, the comptroller, the governor, and the Legislative Budget Board as soon as practicable when a state agency is not in compliance. (V.A.C.S. Art. 4348e, Sec. 4.)

Sec. 2101.039. CONTRACTS; EXEMPTION. (a) Contracts made under this subchapter are not subject to:

(1) the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes);

(2) Chapter 2254; or

(3) Chapter 2054.

(b) The project director must submit all proposed contracts for professional or consulting services and all proposed purchases of computer equipment or software to the project advisory committee for review and recommendation before procurement. (V.A.C.S. Arts. 4348e, Sec. 3(e) (part); 4348f, Secs. 6(b), (c).)

## CHAPTER 2102. INTERNAL AUDITING

Sec. 2102.001. SHORT TITLE

Sec. 2102.002. PURPOSE

- Sec. 2102.003. DEFINITIONS
- Sec. 2102.004. APPLICABILITY
- Sec. 2102.005. INTERNAL AUDITING REQUIRED
- Sec. 2102.006. INTERNAL AUDITOR; STAFF
- Sec. 2102.007. DUTIES OF INTERNAL AUDITOR
- Sec. 2102.008. APPROVAL OF AUDIT PLAN AND AUDIT REPORT
- Sec. 2102.009. ANNUAL REPORT
- Sec. 2102.010. CONSULTATIONS
- Sec. 2102.011. INTERNAL AUDIT STANDARDS
- Sec. 2102.012. PROFESSIONAL DEVELOPMENT

## CHAPTER 2102. INTERNAL AUDITING

Sec. 2102.001. SHORT TITLE. This chapter may be cited as the Texas Internal Auditing Act. (V.A.C.S. Art. 6252-5d, Sec. 1.)

Sec. 2102.002. PURPOSE. The purpose of this chapter is to establish guidelines for a program of internal auditing to assist agency administrators by furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of a state agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. (V.A.C.S. Art. 6252-5d, Sec. 2.)

Sec. 2102.003. DEFINITIONS. In this chapter:

- (1) "Administrator" means the executive head of a state agency.
- (2) "Audit" means:
  - (A) a financial audit described by Section 321.0131;
  - (B) a compliance audit described by Section 321.0132;
  - (C) an economy and efficiency audit described by Section 321.0133;
  - (D) an effectiveness audit described by Section 321.0134; or
  - (E) an investigation described by Section 321.0136.

(3) "State agency" includes a department, board, bureau, institution, commission, or other agency of the state. (V.A.C.S. Art. 6252-5d, Sec. 3 (part).)

Sec. 2102.004. APPLICABILITY. This chapter applies only to a state agency that:

- (1) has an operating budget exceeding \$10 million annually;
- (2) has a staff of more than 300 employees; or
- (3) receives and processes cash items in excess of \$10 million annually. (V.A.C.S. Art. 6252-5d, Sec. 3 (part).)

Sec. 2102.005. INTERNAL AUDITING REQUIRED. A state agency shall conduct a full-time program of internal auditing that includes:

- (1) an annual audit plan that is prepared using risk assessment techniques and that identifies the individual audits to be conducted during the year; and
- (2) periodic audits of the agency's major systems and controls, including:
  - (A) accounting systems and controls;
  - (B) administrative systems and controls; and
  - (C) electronic data processing systems and controls. (V.A.C.S. Art. 6252-5d, Sec. 4.)

Sec. 2102.006. INTERNAL AUDITOR; STAFF. (a) The governing board of a state agency or its designee, or the administrator of a state agency without a governing board, shall appoint an internal auditor.

(b) An internal auditor must:

- (1) be a certified public accountant or a certified internal auditor; and
- (2) have at least three years of auditing experience.

(c) The state agency shall employ additional professional and support staff the administrator determines necessary to implement an effective program of internal auditing. (V.A.C.S. Art. 6252-5d, Sec. 5.)

Sec. 2102.007. DUTIES OF INTERNAL AUDITOR. (a) The internal auditor shall:

- (1) report directly to the state agency's governing board;
- (2) develop an annual audit plan;
- (3) conduct audits as specified in the audit plan and document deviations;
- (4) prepare audit reports;
- (5) conduct quality assurance reviews in accordance with professional standards and periodically take part in a comprehensive external peer review; and
- (6) conduct economy and efficiency audits and program results audits as directed by the state agency's governing board.

(b) The program of internal auditing conducted by a state agency must provide for the auditor to:

- (1) have access to the administrator; and
- (2) be free of all operational and management responsibilities that would impair the auditor's ability to review independently all aspects of the state agency's operation. (V.A.C.S. Art. 6252-5d, Sec. 6 (part).)

Sec. 2102.008. APPROVAL OF AUDIT PLAN AND AUDIT REPORT. The annual audit plan developed by the internal auditor must be approved by the state agency's governing board or its designee, or by the administrator of a state agency without a governing board. Audit reports must be reviewed by the state agency's governing board and the administrator. (V.A.C.S. Art. 6252-5d, Sec. 6 (part).)

Sec. 2102.009. ANNUAL REPORT. (a) The internal auditor shall prepare an annual report and submit the report before November 1 of each year to the governor, the Legislative Budget Board, the Sunset Advisory Commission, the state auditor, the state agency's governing board, and the administrator.

(b) The report must contain:

- (1) a copy of the annual audit plan;
- (2) a list of audits completed;
- (3) an explanation of any deviation from the approved annual audit plan;
- (4) a narrative description of the most significant findings and recommendations for each audit;
- (5) a narrative description of the management actions taken in response to the audit findings and recommendations;
- (6) a table listing the auditor's audit recommendations and the five-year fiscal impact for each recommendation;
- (7) a table of the audit recommendations from the previous fiscal year's report and an explanation of the status of each recommendation; and
- (8) a statement of the last date on which an external peer review of the agency's internal audit program was conducted.

(c) Each audit recommendation must show whether:

- (1) the recommendation has been implemented;
- (2) the recommendation is in the process of implementation;
- (3) action on implementation of the recommendation has been delayed; or
- (4) the agency does not intend to take action on the recommendation.

(d) The report must emphasize the findings in important areas that are difficult to quantify, including weaknesses in management controls or quality of services. (V.A.C.S. Art. 6252-5d, Sec. 6A.)

Sec. 2102.010. CONSULTATIONS. An internal auditor may consult the state agency's governing board, the governor's office, the state auditor, and legislative agencies or commit-

tees about matters affecting duties or responsibilities under this chapter. (V.A.C.S. Art. 6252-5d, Sec. 7.)

Sec. 2102.011. INTERNAL AUDIT STANDARDS. The internal audit program shall conform to the Standards for the Professional Practice of Internal Auditing, generally accepted governmental auditing standards, the Certified Internal Auditor Code of Professional Ethics, and the Statement of Responsibilities of Internal Auditing of the Institute of Internal Auditors. (V.A.C.S. Art. 6252-5d, Sec. 8.)

Sec. 2102.012. PROFESSIONAL DEVELOPMENT. (a) The state auditor shall make available and shall coordinate a program of training and technical assistance to ensure that state agency internal auditors have access to current information about internal audit techniques, policies, and procedures and to provide general technical and audit assistance to agency internal auditors on request.

(b) The state auditor is entitled to reimbursement for costs associated with providing the services under the terms of interagency cooperation contracts negotiated between the state auditor and each agency. The costs may not exceed those allowed by the General Appropriations Act. (V.A.C.S. Art. 6252-5d, Sec. 9.)

CHAPTER 2103. EXPENDITURES BY STATE AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2103.001. DEFINITION
- Sec. 2103.002. APPLICABILITY OF CHAPTER TO APPROPRIATED LOCAL FUND
- Sec. 2103.003. STATE AGENCY SPENDING OF APPROPRIATED FUNDS
- Sec. 2103.004. WARRANT DRAWN BY COMPTROLLER

[Sections 2103.005 to 2103.030 reserved for expansion]

SUBCHAPTER B. APPROVAL AND SUBMISSION OF VOUCHERS BY ELECTRONIC MEANS

- Sec. 2103.031. APPLICABILITY OF SUBCHAPTER
- Sec. 2103.032. APPROVAL AND SUBMISSION OF VOUCHERS

[Sections 2103.033 to 2103.060 reserved for expansion]

SUBCHAPTER C. APPROVAL AND SUBMISSION OF VOUCHERS BY NONELECTRONIC MEANS

- Sec. 2103.061. STATE AGENCY ADMINISTERED BY GOVERNING BODY
- Sec. 2103.062. STATE AGENCY ADMINISTERED BY ELECTED OR APPOINTED OFFICIAL
- Sec. 2103.063. GENERAL SERVICES COMMISSION
- Sec. 2103.064. TEXAS TRANSPORTATION COMMISSION

CHAPTER 2103. EXPENDITURES BY STATE AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2103.001. DEFINITION. In this chapter, "state agency" means a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes an institution of higher education as defined by Section 61.003, Education Code, other than a public junior college. (V.A.C.S. Art. 6252-31, Sec. 1 (part), as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

Sec. 2103.002. APPLICABILITY OF CHAPTER TO APPROPRIATED LOCAL FUND. (a) This chapter does not apply to an expenditure from an appropriated local fund.

(b) This chapter applies to the reimbursement to a state agency for an expenditure from an appropriated local fund. (V.A.C.S. Art. 6252-31, Sec. 9, as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

**Sec. 2103.003. STATE AGENCY SPENDING OF APPROPRIATED FUNDS.** A state agency may spend appropriated funds only by:

- (1) a warrant drawn by the comptroller; or
- (2) an electronic funds transfer from the comptroller. (V.A.C.S. Art. 6252-31, Secs. 2(a), (c) (part), as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

**Sec. 2103.004. WARRANT DRAWN BY COMPTROLLER.** The comptroller may not draw a warrant until:

- (1) the state agency from whose appropriation the warrant is payable has submitted a voucher to the comptroller;
- (2) the state agency has approved the voucher in accordance with this chapter; and
- (3) the comptroller has audited and approved the voucher as required by law. (V.A.C.S. Art. 6252-31, Sec. 2(b), as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

[Sections 2103.005 to 2103.030 reserved for expansion]

#### **SUBCHAPTER B. APPROVAL AND SUBMISSION OF VOUCHERS BY ELECTRONIC MEANS**

**Sec. 2103.031. APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to approval and submission of vouchers by electronic means. (V.A.C.S. Art. 6252-31, Sec. 6(b) (part), as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

**Sec. 2103.032. APPROVAL AND SUBMISSION OF VOUCHERS.** (a) The comptroller by rule may establish a system for state agencies to submit and approve electronically vouchers if the comptroller determines that the system will facilitate the operation and administration of the uniform statewide accounting system. The comptroller may establish an electronic method to approve a voucher submitted by a state agency and may establish an electronic system for the approval of vouchers by the General Services Commission.

(b) The degree of security for an electronic system must at least equal the degree of security for the nonelectronic approval of vouchers by state agencies under this chapter.

(c) A state agency must approve a voucher and submit the voucher to the comptroller before the comptroller may make an electronic funds transfer. (V.A.C.S. Art. 6252-31, Secs. 2(c) (part), 6(a), (b) (part), (c), 7(b), as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

[Sections 2103.033 to 2103.060 reserved for expansion]

#### **SUBCHAPTER C. APPROVAL AND SUBMISSION OF VOUCHERS BY NONELECTRONIC MEANS**

**Sec. 2103.061. STATE AGENCY ADMINISTERED BY GOVERNING BODY.** (a) A state agency administered by a governing body may approve a voucher only in accordance with this section.

(b) A governing body may authorize its presiding officer or executive director to designate one or more officers or employees of the agency to approve vouchers of the agency. The presiding officer shall notify the comptroller in writing that the governing body has made the authorization of the presiding officer or executive director before the presiding officer or executive director may make or revoke a designation.

(c) The presiding officer of the governing body may approve a voucher after submitting a signature card to the comptroller.

(d) An officer or employee of the state agency may approve the voucher after:

- (1) the governing body of the agency has authorized the officer or employee to approve vouchers or the presiding officer or executive director authorized under Subsection (b) has designated the officer or employee to approve vouchers;



(2) the comptroller has received written notice from the presiding officer of the governing body or the executive director, if authorized under Subsection (b), that the officer or employee has been authorized or designated to approve vouchers; and

(3) the comptroller has received a signature card from the officer or employee.

(e) The presiding officer or executive director authorized under Subsection (b) shall ensure that the comptroller is notified of the revocation of the authorization of an officer or employee to approve vouchers. This notice shall be given within 10 days after the effective date of the revocation.

(f) In this section:

(1) "Executive director" means the individual who is the chief administrative officer of a state agency and who is not a member of the agency's governing body; and

(2) "Governing body" means a board, commission, committee, council, or other group of individuals that is collectively authorized by law to administer a state agency. (V.A.C.S. Art. 6252-31, Secs. 1 (part), 3, 5, as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

Sec. 2103.062. STATE AGENCY ADMINISTERED BY ELECTED OR APPOINTED OFFICIAL. (a) A state agency administered by an elected or appointed state official may approve a voucher only in accordance with this section.

(b) The elected or appointed state official who is authorized by law to administer a state agency may authorize the chief deputy of the agency to designate one or more officers or employees of the agency to approve vouchers.

(c) The chief deputy may make or revoke a designation under this section after the comptroller has received written notice from the elected or appointed official of the authorization.

(d) The elected or appointed official may approve a voucher after submitting a signature card to the comptroller.

(e) An officer or employee of the state agency may approve a voucher after:

(1) the elected or appointed official or the chief deputy, if authorized under Subsection (b) or (c), has designated the officer or employee to approve vouchers;

(2) the comptroller has received written notice from the elected or appointed official or the chief deputy, if authorized under Subsection (b) or (c), that the official or chief deputy has authorized the officer or employee to approve vouchers; and

(3) the comptroller has received a signature card from the officer or employee.

(f) The elected or appointed official or the chief deputy authorized under Subsection (b) or (c) shall ensure that the comptroller is notified of the revocation of the authorization of an officer or employee to approve vouchers. This notice shall be given within 10 days after the effective date of the revocation.

(g) In this section, "chief deputy" means the individual authorized by law to administer a state agency that is administered by an elected or appointed state official during the absence of the official or during the official's inability to act. (V.A.C.S. Art. 6252-31, Secs. 1 (part), 4, 5, as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

Sec. 2103.063. GENERAL SERVICES COMMISSION. (a) Only the General Services Commission may approve a voucher sent by a state agency, along with related documentation, for approval by the commission unless the commission has designated one or more officers or employees of the commission to approve vouchers.

(b) The commission shall give to the comptroller:

(1) written notice of an officer or employee of the commission designated by the commission to approve a voucher; and

(2) the signature card from the designated individual. (V.A.C.S. Art. 6252-31, Secs. 5, 7(a), as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

Sec. 2103.064. TEXAS TRANSPORTATION COMMISSION. (a) The Texas Transportation Commission may delegate to one or more employees of the Texas Department of Transportation the authority to approve vouchers for expenditures from the state highway fund and the authority to approve and sign contracts and other documents. These delega-

tions of authority are limited to effect the orders, policies, and work programs of the department.

(b) The Texas Transportation Commission may require a recipient of a delegation of authority to post a bond payable to the state in the amount the commission considers necessary.

(c) If the commission requires the posting of a bond, the bond must be conditioned on faithful performance.

(d) The commission shall pay the premium on all bonds from the state highway fund. (V.A.C.S. Art. 6252-31, Sec. 8, as added by Acts 1991, 72nd Leg., R.S., Ch. 641.)

CHAPTER 2104. CONSERVATORSHIP AS A RESULT  
OF FISCAL MISMANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2104.001. DEFINITIONS
- Sec. 2104.002. APPLICABILITY OF CHAPTER

[Sections 2104.003 to 2104.010 reserved for expansion]

SUBCHAPTER B. STATE CONSERVATORSHIP BOARD

- Sec. 2104.011. BOARD COMPOSITION; TERMS
- Sec. 2104.012. PRESIDING OFFICER; MEETINGS
- Sec. 2104.013. COMPENSATION; EXPENSES
- Sec. 2104.014. RULES
- Sec. 2104.015. ADMINISTRATIVE SERVICES

[Sections 2104.016 to 2104.020 reserved for expansion]

SUBCHAPTER C. CONSERVATORSHIP OF STATE AGENCIES

- Sec. 2104.021. MISMANAGEMENT FINDING; CONSERVATORSHIP ORDER
- Sec. 2104.022. ASSUMPTION OF POLICY FUNCTIONS
- Sec. 2104.023. BOARD CONSERVATORSHIP POWERS AND DUTIES
- Sec. 2104.024. REPORT
- Sec. 2104.025. DURATION OF CONSERVATORSHIP

[Sections 2104.026 to 2104.030 reserved for expansion]

SUBCHAPTER D. CONSERVATORSHIP OF PUBLIC JUNIOR COLLEGES

- Sec. 2104.031. MISMANAGEMENT FINDING; CONSERVATORSHIP ORDER
- Sec. 2104.032. REPORTS
- Sec. 2104.033. DURATION OF CONSERVATORSHIP

CHAPTER 2104. CONSERVATORSHIP AS A RESULT  
OF FISCAL MISMANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2104.001. DEFINITIONS. In this chapter:

- (1) "Board" means the State Conservatorship Board.
- (2) "Gross fiscal mismanagement" includes:
  - (A) failure to keep adequate fiscal records;

- (B) failure to maintain proper control over assets;
- (C) failure to discharge fiscal obligations in a timely manner; and
- (D) misuse of state funds.

(3) "State agency" means a department, commission, board, office, or other agency, including a university system or an institution of higher education other than a public junior college, that:

- (A) is in the executive branch of state government;
- (B) is created by statute; and
- (C) does not have statutory geographical boundaries limited to a part of the state.

(4) "State fiscal management policies" means laws or rules relating to:

- (A) fiscal recordkeeping and reporting;
- (B) use or control of state property;
- (C) timely discharge of fiscal obligations; or
- (D) use of state funds. (V.A.C.S. Art. 4413(203), Sec. 1; New.)

Sec. 2104.002. **APPLICABILITY OF CHAPTER.** This chapter does not apply to an agency that is under the direction of an elected officer, board, or commission. (V.A.C.S. Art. 4413(203), Sec. 2.)

[Sections 2104.003 to 2104.010 reserved for expansion]

#### SUBCHAPTER B. STATE CONSERVATORSHIP BOARD

Sec. 2104.011. **BOARD COMPOSITION; TERMS.** (a) The board is composed of three members appointed by the governor with the advice and consent of the senate.

(b) To be eligible for appointment to the board, a person must be qualified, by experience or education, in administration or fiscal management.

(c) A public officer is ineligible to serve on the board.

(d) Members serve staggered six-year terms with the term of one member expiring on January 31 of each odd-numbered year. (V.A.C.S. Art. 4413(203), Secs. 3(b), (c), (d).)

Sec. 2104.012. **PRESIDING OFFICER; MEETINGS.** (a) The governor shall designate a board member to serve as presiding officer for a two-year period expiring on January 31 of odd-numbered years.

(b) The board shall meet at the call of the presiding officer or as provided by board rule. (V.A.C.S. Art. 4413(203), Secs. 4(b), (c).)

Sec. 2104.013. **COMPENSATION; EXPENSES.** A board member may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. (V.A.C.S. Art. 4413(203), Sec. 5.)

Sec. 2104.014. **RULES.** The board may adopt and enforce rules necessary to administer this chapter. (V.A.C.S. Art. 4413(203), Sec. 11.)

Sec. 2104.015. **ADMINISTRATIVE SERVICES.** (a) The governor shall provide the board with administrative services.

(b) If necessary, the governor may use appropriations made under Section 403.075 to provide the administrative services. (V.A.C.S. Art. 4413(203), Sec. 6.)

[Sections 2104.016 to 2104.020 reserved for expansion]

#### SUBCHAPTER C. CONSERVATORSHIP OF STATE AGENCIES

Sec. 2104.021. **MISMANAGEMENT FINDING; CONSERVATORSHIP ORDER.** (a) The legislative audit committee shall notify the governor of the committee's finding that a condition of gross fiscal mismanagement exists in a state agency.

(b) After receipt of the notice, the governor by proclamation may order the board to act as conservator of the agency. (V.A.C.S. Art. 4413(203), Sec. 7.)

Sec. 2104.022. ASSUMPTION OF POLICY FUNCTIONS. The board, acting on an order of the governor under Section 2104.021, shall assume all the powers and duties of the officers responsible for policy direction of the state agency subject to the order, and those officers may not act unless authorized by the board. (V.A.C.S. Art. 4413(203), Sec. 8.)

Sec. 2104.023. BOARD CONSERVATORSHIP POWERS AND DUTIES. (a) The board, acting as conservator of a state agency under this subchapter, shall ensure that the agency complies with state fiscal management policies.

(b) The board, acting as conservator of a state agency under this subchapter, may:

(1) terminate the employment of any employee whose conduct the board determines contributed to the condition that caused the conservatorship;

(2) employ personnel for the agency;

(3) change the agency's organization or structure as necessary to alleviate the conditions that caused the conservatorship; and

(4) contract with persons for management or administrative services necessary to effect the conservatorship.

(c) The board may delegate any part of its powers or duties as conservator other than its rulemaking authority to a person with whom it contracts under Subsection (b)(4). (V.A.C.S. Art. 4413(203), Sec. 9.)

Sec. 2104.024. REPORT. (a) The board shall report on a conservatorship under this subchapter to the governor and the legislative audit committee not later than the 60th day after the date the governor orders the conservatorship and at the end of each subsequent 60-day period until the conservatorship is dissolved.

(b) The report must include a description of the measures taken to ensure that the state agency complies with state fiscal management policies and an estimate of the progress the board has made in attaining that goal. (V.A.C.S. Art. 4413(203), Sec. 10.)

Sec. 2104.025. DURATION OF CONSERVATORSHIP. A conservatorship under this subchapter continues until the earlier of:

(1) the governor's issuing of a proclamation declaring that the condition of gross fiscal mismanagement in the state agency no longer exists and that the conservatorship is dissolved; or

(2) the legislative audit committee's finding and certifying to the governor that the condition of gross fiscal mismanagement in the agency no longer exists, in which case the conservatorship is dissolved. (V.A.C.S. Art. 4413(203), Sec. 12.)

[Sections 2104.026 to 2104.030 reserved for expansion]

#### SUBCHAPTER D. CONSERVATORSHIP OF PUBLIC JUNIOR COLLEGES

Sec. 2104.031. MISMANAGEMENT FINDING; CONSERVATORSHIP ORDER. (a) On the governor's request, the Texas Higher Education Coordinating Board with the advice and assistance of the state auditor shall determine if a condition of gross fiscal mismanagement exists at a public junior college.

(b) If the coordinating board finds a condition of gross fiscal mismanagement of a public junior college, the governor by proclamation may order the board to act as conservator of the college.

(c) Except as otherwise provided by this subchapter, the board shall act as conservator of a public junior college in the manner provided by this chapter for conservatorship of state agencies by the board. (V.A.C.S. Art. 4413(203), Sec. 2A(a).)

Sec. 2104.032. REPORTS. The board shall file the reports relating to public junior colleges required by Section 2104.024 with the Texas Higher Education Coordinating Board. (V.A.C.S. Art. 4413(203), Sec. 2A(b).)

Sec. 2104.033. DURATION OF CONSERVATORSHIP. A conservatorship of a public junior college under this subchapter continues until the earlier of:

- (1) the governor's issuing of a proclamation declaring that the condition of gross fiscal mismanagement no longer exists and that the conservatorship is dissolved; or
- (2) the Texas Higher Education Coordinating Board's finding and certifying to the governor that the condition of gross fiscal mismanagement no longer exists, in which case the conservatorship is dissolved. (V.A.C.S. Art. 4413(203), Sec. 2A(c).)

CHAPTER 2105. ADMINISTRATION OF BLOCK GRANTS

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2105.001. DEFINITIONS
- Sec. 2105.002. COMBINATION OF PROGRAMS NOT INTENDED TO REDUCE SERVICES
- Sec. 2105.003. CHANGE IN FEDERAL LAW OR REGULATION
- Sec. 2105.004. DISCRIMINATION PROHIBITED
- Sec. 2105.005. PRIORITY TO POVERTY PROGRAMS
- Sec. 2105.006. AGENCY AUDITS
- Sec. 2105.007. PROVIDER AUDITS
- Sec. 2105.008. UNIFORM MANAGEMENT
- Sec. 2105.009. PRIMARY CARE BLOCK GRANT

[Sections 2105.010 to 2105.050 reserved for expansion]

SUBCHAPTER B. DEVELOPMENT OF PLAN; PUBLIC INFORMATION

- Sec. 2105.051. DEFINITION
- Sec. 2105.052. CONTENTS OF PLAN
- Sec. 2105.053. PUBLIC HEARINGS ON INTENDED USE OF FUNDS
- Sec. 2105.054. NOTICE OF HEARING
- Sec. 2105.055. PUBLIC COMMENTS
- Sec. 2105.056. PUBLIC INFORMATION
- Sec. 2105.057. CONSULTATION ACTIVITIES
- Sec. 2105.058. PUBLIC HEARING BY CERTAIN PROVIDERS
- Sec. 2105.059. AVAILABILITY OF RULES AND ELIGIBILITY REQUIREMENTS

[Sections 2105.060 to 2105.100 reserved for expansion]

SUBCHAPTER C. COMPLAINTS

- Sec. 2105.101. PUBLICATION OF PROCEDURES
- Sec. 2105.102. INVESTIGATION
- Sec. 2105.103. NOTICE TO PROVIDER; RESPONSE
- Sec. 2105.104. USE OF COMPLAINTS; ANNUAL SUMMARY

[Sections 2105.105 to 2105.150 reserved for expansion]

SUBCHAPTER D. DENIAL OF SERVICES OR BENEFITS

- Sec. 2105.151. RIGHT TO REQUEST HEARING ON DENIAL OF SERVICES OR BENEFITS
- Sec. 2105.152. DEPARTMENT OF HUMAN SERVICES' PROCEDURES FOR FAIR HEARING
- Sec. 2105.153. HEARING ON DENIAL OF SERVICES OR BENEFITS BY AGENCY
- Sec. 2105.154. HEARING ON DENIAL OF SERVICES OR BENEFITS BY PROVIDER

[Sections 2105.155 to 2105.200 reserved for expansion]

SUBCHAPTER E. NONRENEWAL OR REDUCTION OF  
BLOCK GRANT FUNDS OF SPECIFIC PROVIDER

- Sec. 2105.201. APPLICATION OF SUBCHAPTER; EXCEPTION
- Sec. 2105.202. RULES; CONSIDERATIONS
- Sec. 2105.203. NOTICE TO PROVIDER OF REDUCTION
- Sec. 2105.204. HEARING ON REDUCTION OF FUNDING
- Sec. 2105.205. INTERIM CONTRACT PENDING HEARING

[Sections 2105.206 to 2105.250 reserved for expansion]

SUBCHAPTER F. REDUCTION OF BLOCK GRANT  
FUNDS FOR GEOGRAPHIC AREA

- Sec. 2105.251. APPLICATION OF SUBCHAPTER; EXCEPTION
- Sec. 2105.252. NOTICE TO PROVIDER
- Sec. 2105.253. RULES; CONSIDERATIONS

[Sections 2105.254 to 2105.300 reserved for expansion]

SUBCHAPTER G. TERMINATION OF BLOCK GRANT FUNDS

- Sec. 2105.301. NOTICE TO PROVIDER
- Sec. 2105.302. HEARING

[Sections 2105.303 to 2105.350 reserved for expansion]

SUBCHAPTER H. JUDICIAL REVIEW

- Sec. 2105.351. JUDICIAL REVIEW

CHAPTER 2105. ADMINISTRATION OF BLOCK GRANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2105.001. DEFINITIONS. In this chapter:

(1) "Agency" means the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Housing and Community Affairs, the Central Education Agency, the Texas Department of Mental Health and Mental Retardation, or any other commission, board, or department designated to receive block grant funds.

(2) "Block grant" means a program resulting from the consolidation or transfer of separate federal grant programs, including federal categorical programs, so that the state determines the amounts to be allocated or the method of allocating the amounts to various agencies or programs from the combined amounts, including a program consolidated or transferred under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35).

(3) "Program" means an activity designed to deliver services or benefits provided by state or federal law.

(4) "Provider" means a public or private organization that receives block grant funds or may be eligible to receive block grant funds to provide services or benefits to the public, including:

- (A) a local government unit;
- (B) a council of government;
- (C) a community action agency; or

(D) a private new community developer or nonprofit community association in a community originally established as a new community development program under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4511 et seq.).

(5) "Recipient" means an individual or a class of individuals who receives services or benefits available through block grants. (V.A.C.S. Art. 6252-13e, Secs. 2, 3(1), (2), (3), (5).)

Sec. 2105.002. COMBINATION OF PROGRAMS NOT INTENDED TO REDUCE SERVICES. The process of combining categorical federal assistance programs into block grants should not have an overall effect of reducing the relative proportion of services and benefits made available to low-income individuals, elderly individuals, disabled individuals, and migrant and seasonal agricultural workers. (V.A.C.S. Art. 6252-13e, Sec. 1(d).)

Sec. 2105.003. CHANGE IN FEDERAL LAW OR REGULATION. If a change in a federal law or regulation does not provide for temporary waivers to allow compliance with state law and because of the change an agency or provider does not have sufficient time to comply with a procedure required by this chapter, the agency or provider may act in compliance with federal law and shall comply with procedures required by this chapter as soon as possible. (V.A.C.S. Art. 6252-13e, Sec. 15(a).)

Sec. 2105.004. DISCRIMINATION PROHIBITED. An agency or provider may not use block grant funds in a manner that discriminates on the basis of race, color, national origin, sex, or religion. (V.A.C.S. Art. 6252-13e, Sec. 16.)

Sec. 2105.005. PRIORITY TO POVERTY PROGRAMS. (a) An agency should give priority to programs that remedy the causes and cycle of poverty if:

- (1) the alleviation of poverty is a purpose of the block grant; and
- (2) the agency has discretion over the types of programs that may be funded with the block grant.

(b) In administering a block grant, an agency shall consult:

- (1) low-income recipients;
- (2) low-income intended recipients; and
- (3) organizations representing low-income individuals.

(c) To the extent consistent with the purpose of the block grant, an agency by rule shall ensure that providers use block grant funds to the maximum benefit of low-income recipients and intended recipients. (V.A.C.S. Art. 6252-13e, Sec. 14.)

Sec. 2105.006. AGENCY AUDITS. (a) An agency's expenditure of block grant funds is subject to audit by the state auditor in accordance with Chapter 321.

(b) The state auditor immediately shall transmit a copy of an audit of an agency to the governor. Not later than the 30th day after the date on which an audit of an agency is completed, the governor shall transmit a copy of the audit to the appropriate federal authority. (V.A.C.S. Art. 6252-13e, Secs. 12(a), (c), (d).)

Sec. 2105.007. PROVIDER AUDITS. A provider that receives block grant funds from an agency shall provide the agency with evidence that an annual audit of the provider has been performed. (V.A.C.S. Art. 6252-13e, Sec. 12(b).)

Sec. 2105.008. UNIFORM MANAGEMENT. Chapter 783 applies to agencies and providers for the purpose of block grant administration. (V.A.C.S. Art. 6252-13e, Sec. 13.)

Sec. 2105.009. PRIMARY CARE BLOCK GRANT. (a) The Texas Department of Health shall administer the primary care block grant if the department satisfies federal requirements relating to the designation of an agency to administer the grant.

(b) In administering the primary care block grant, the department may:

- (1) receive the primary care block grant funds on behalf of the state;
- (2) spend primary care block grant funds and state funds specifically appropriated by the legislature to match funds received under a primary care block grant;
- (3) make grants to, advance funds to, contract with, and take other actions through community health centers that meet the requirements of 42 U.S.C. Section 254c(e)(3) to

provide for the delivery of primary and supplemental health services to medically underserved populations of the state;

(4) adopt necessary rules; and

(5) perform other activities necessary to administer the primary care block grant.

(c) In this section:

(1) "Community health center" has the meaning assigned by 42 U.S.C. Section 254c(a).

(2) "Medically underserved population," "primary health services," and "supplemental health services" have the meanings assigned by 42 U.S.C. Section 254c(b). (V.A.C.S. Art. 6252-13e, Sec. 17.)

[Sections 2105.010 to 2105.050 reserved for expansion]

## SUBCHAPTER B. DEVELOPMENT OF PLAN; PUBLIC INFORMATION

Sec. 2105.051. DEFINITION. In this subchapter, "plan" means a report submitted to the federal government that contains a statement of activities and programs to show the intended and actual use of block grant funds. (V.A.C.S. Art. 6252-13e, Sec. 3(4).)

Sec. 2105.052. CONTENTS OF PLAN. A plan must describe:

(1) major changes in policy for each program;

(2) the extent of anticipated reductions or increases in services under the block grant; and

(3) the nature of any fees a recipient must pay to receive services funded under the block grant. (V.A.C.S. Art. 6252-13e, Sec. 4(g).)

Sec. 2105.053. PUBLIC HEARINGS ON INTENDED USE OF FUNDS. (a) In developing a request for appropriations before each regular legislative session, an agency shall hold public hearings in four locations in different areas of the state to solicit public comment on the intended use of block grant funds.

(b) An agency must conduct at least two of the hearings required by this section after normal agency working hours.

(c) An agency may hold a hearing required by this section in conjunction with:

(1) another agency without regard to whether the block grants administered by the agencies are for different purposes; or

(2) the governor's office. (V.A.C.S. Art. 6252-13e, Secs. 4(a), (b), (i).)

Sec. 2105.054. NOTICE OF HEARING. (a) An agency shall:

(1) provide notice of a public hearing regarding the plan for a block grant not later than the 15th day before the date of the hearing;

(2) post the notice in a conspicuous place in each agency office;

(3) include in the notice a clear and concise description of the matters to be considered and a statement of the manner in which written comments may be submitted;

(4) maintain lists of interested persons;

(5) mail notices of hearings to interested persons; and

(6) conduct other activities necessary to promote public participation in the public hearing.

(b) A notice prepared under this section must be printed in English and Spanish. (V.A.C.S. Art. 6252-13e, Secs. 4(c), (d), (j).)

Sec. 2105.055. PUBLIC COMMENTS. (a) An agency shall summarize, in a fair manner, the types of public comments received by the agency during public hearings regarding a plan.

(b) If an agency's final decision does not reflect the recommendations of particular classes of public comments, the agency shall provide a reasoned response justifying the agency's decision as to each comment.



(c) An agency shall distribute the summary of public comments and the responses to the comments as part of the plan and shall:

- (1) have the summary and response published in the Texas Register; and
- (2) make the summary and response available to the public. (V.A.C.S. Art. 6252-13e, Secs. 4(e), (f), (h).)

Sec. 2105.056. PUBLIC INFORMATION. (a) An agency shall publish information for the public:

- (1) describing the manner in which the agency's staff develops preliminary options for the use of block grants; and
- (2) stating the period in which the preliminary work is usually performed.

(b) An agency shall undertake public information activities necessary to ensure that recipients and intended recipients are informed of the availability of services and benefits.

(c) Information published under this section must be printed in English and Spanish. (V.A.C.S. Art. 6252-13e, Secs. 5(a), (h), (j).)

Sec. 2105.057. CONSULTATION ACTIVITIES. (a) An agency shall consult interested members of the public to assist the agency in developing preliminary staff recommendations on the use of block grant funds.

(b) During preparation or amendment of a plan, an agency shall consult:

(1) affected groups, including local governments, charitable organizations, and businesses that provide or fund services similar to the services that may be provided by the agency under the block grant; and

(2) any state advisory or coordinating council that has responsibility over programs similar to the programs that may be provided under the block grant.

(c) An agency that is authorized to approve the allocation of more than \$10 million in block grant funds in a year by a discretionary manner other than an objective formula required by federal law shall provide that the consultation required by Subsections (a) and (b)(1) must occur in each of the agency's regions. (V.A.C.S. Art. 6252-13e, Secs. 5(b), (c), (d), (e).)

Sec. 2105.058. PUBLIC HEARING BY CERTAIN PROVIDERS. (a) This section applies to a provider that receives more than \$5,000 in block grant funds to be used as the provider determines appropriate.

(b) Annually, a provider shall submit evidence to the agency that a public meeting or hearing was held in a timely manner solely to seek public comment on the needs or uses of block grant funds received by the provider.

(c) A provider may hold a meeting or hearing under Subsection (b) in conjunction with another meeting or hearing of the provider if the meeting or hearing to consider block grant funds is clearly noted in an announcement of the other meeting or hearing.

(d) An agency by rule may require a provider to undertake other reasonable efforts to seek public participation. (V.A.C.S. Art. 6252-13e, Secs. 5(f), (g).)

Sec. 2105.059. AVAILABILITY OF RULES AND ELIGIBILITY REQUIREMENTS. An agency shall maintain for public inspection in each office:

(1) the rules and eligibility requirements relating to the administration of block grant funds; and

(2) a digest or index to rules and decisions. (V.A.C.S. Art. 6252-13e, Sec. 5(i).)

[Sections 2105.060 to 2105.100 reserved for expansion]

### SUBCHAPTER C. COMPLAINTS

Sec. 2105.101. PUBLICATION OF PROCEDURES. An agency shall distribute publications that describe:

- (1) the block grant programs administered by the agency; and
- (2) how to make public comments and complaints about the quality of services funded by the block grant. (V.A.C.S. Art. 6252-13e, Sec. 6(a).)

Sec. 2105.102. INVESTIGATION. (a) An agency shall have a procedure for investigating complaints about the programs funded by a block grant.

(b) Before the 31st day after the date on which the complaint is received, the agency shall:

(1) complete the investigation; or

(2) notify the complainant when the investigation can be completed, if the investigation cannot be completed within the period provided by this subsection. (V.A.C.S. Art. 6252-13e, Secs. 6(b) (part), (c).)

Sec. 2105.103. NOTICE TO PROVIDER; RESPONSE. (a) An agency shall inform a provider of any complaint received concerning the provider's services.

(b) An agency shall give a provider a reasonable time to respond to a complaint. (V.A.C.S. Art. 6252-13e, Sec. 6(d).)

Sec. 2105.104. USE OF COMPLAINTS; ANNUAL SUMMARY. (a) An agency shall use the complaint system to monitor and ensure compliance with applicable federal and state law.

(b) An agency shall consider the history of complaints regarding a provider in determining whether to renew a contract or subgrant for the use of block grant funds by the provider.

(c) An agency shall summarize annually the types of complaints received by the agency. (V.A.C.S. Art. 6252-13e, Secs. 6(b) (part), (e), (f).)

[Sections 2105.105 to 2105.150 reserved for expansion]

#### SUBCHAPTER D. DENIAL OF SERVICES OR BENEFITS

Sec. 2105.151. RIGHT TO REQUEST HEARING ON DENIAL OF SERVICES OR BENEFITS. Except as provided by Section 2001.223(1), an affected person who alleges that a provider or an agency has denied all or part of a service or benefit funded by block grant funds in a manner that is unjust, discriminatory, or without reasonable basis in law or fact may request an administrative hearing under Chapter 2001. (V.A.C.S. Art. 6252-13e, Sec. 7(a) (part).)

Sec. 2105.152. DEPARTMENT OF HUMAN SERVICES PROCEDURES FOR FAIR HEARING. The Texas Department of Human Services shall use procedures for conducting a fair hearing under this subchapter. (V.A.C.S. Art. 6252-13e, Sec. 7(a) (part).)

Sec. 2105.153. HEARING ON DENIAL OF SERVICES OR BENEFITS BY AGENCY. (a) An agency administering block grant funds shall conduct a timely hearing on the denial of a service or benefit by the agency.

(b) On determining that services were wrongfully denied, an agency shall take appropriate action to correct the practices or procedures of the agency. (V.A.C.S. Art. 6252-13e, Sec. 7(b).)

Sec. 2105.154. HEARING ON DENIAL OF SERVICES OR BENEFITS BY PROVIDER. (a) The agency that provides block grant funds to a provider shall conduct a timely hearing on the denial of a service or benefit by the provider.

(b) A hearing under this section must be held in the locality served by the provider.

(c) On determining that services were wrongfully denied, an agency shall take appropriate action to correct the practices or procedures of the provider. (V.A.C.S. Art. 6252-13e, Sec. 7(c).)

[Sections 2105.155 to 2105.200 reserved for expansion]

#### SUBCHAPTER E. NONRENEWAL OR REDUCTION OF BLOCK GRANT FUNDS OF SPECIFIC PROVIDER

Sec. 2105.201. APPLICATION OF SUBCHAPTER; EXCEPTION. (a) This subchapter applies if:

(1) an agency reduces a provider's block grant funding by 25 percent or more; and

(2) the agency provides the block grant funds to another provider in the same geographic area to provide similar services.

(b) This subchapter does not apply if a provider's block grant funding becomes subject to the agency's competitive bidding rules requiring the agency to invite bids for competitive evaluation. (V.A.C.S. Art. 6252-13e, Secs. 9(a), (i).)

Sec. 2105.202. RULES; CONSIDERATIONS. (a) An agency shall adopt specific rules defining good cause for nonrenewal of a provider's contract or reduction of a provider's funding.

(b) In deciding whether to renew a provider's contract or to reduce a provider's funding, an agency shall consider:

- (1) the effectiveness of services rendered by various providers;
- (2) the cost efficiency of programs undertaken by each provider;
- (3) the extent to which the services of each provider meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;
- (4) the degree to which services can be provided by other programs in that area;
- (5) the extent to which recipients are involved in the providers' decision making; and
- (6) the need to provide services in the state without discrimination as to race, religion, or geographic region. (V.A.C.S. Art. 6252-13e, Secs. 9(c), (d).)

Sec. 2105.203. NOTICE TO PROVIDER OF REDUCTION. Not later than the 30th day before the date on which block grant funds are reduced, an agency shall send a provider a written statement specifying the reason for reducing the funding. (V.A.C.S. Art. 6252-13e, Sec. 9(b).)

Sec. 2105.204. HEARING ON REDUCTION OF FUNDING. (a) After receiving notice that block grant funds are to be reduced as provided by Section 2105.203, a provider may request an administrative hearing under Chapter 2001 if the provider alleges that a reduction of funding:

- (1) violates the rules adopted under Section 2105.202(a);
- (2) is discriminatory; or
- (3) is without reasonable basis in law or fact.

(b) Not later than the 30th day after the date the request is received, the agency shall conduct a hearing to determine whether the funding should be reduced. The agency and the provider may agree to postpone the hearing.

(c) An agency shall hold at least one session of the hearing in the locality served by the provider and shall hear local public comment on the matter at that time if requested to do so by:

- (1) a local elected official; or
- (2) an organization with 25 or more members. (V.A.C.S. Art. 6252-13e, Secs. 9(e), (f), (g).)

Sec. 2105.205. INTERIM CONTRACT PENDING HEARING. If a provider requests an administrative hearing under Section 2105.204, the agency may enter into an interim contract with the provider or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending. (V.A.C.S. Art. 6252-13e, Sec. 9(h).)

[Sections 2105.206 to 2105.250 reserved for expansion]

## SUBCHAPTER F. REDUCTION OF BLOCK GRANT FUNDS FOR GEOGRAPHIC AREA

Sec. 2105.251. APPLICATION OF SUBCHAPTER; EXCEPTION. (a) This subchapter applies if:

- (1) an agency reduces a provider's block grant funding by 25 percent or more; and

(2) the agency does not provide the block grant funds to another provider in the same geographic area.

(b) This subchapter does not apply if the provider received block grant funds for a specified period under a competitive evaluation of proposals. (V.A.C.S. Art. 6252-13e, Secs. 10(a), (d).)

Sec. 2105.252. NOTICE TO PROVIDER. Not later than the 30th day before the date on which the block grant funds are to be reduced, an agency shall send a provider a written statement specifying the reason for reducing the funding. The statement must be sent to the provider so that the provider has sufficient time to participate in public hearings and consultation proceedings provided by Subchapter B. (V.A.C.S. Art. 6252-13e, Sec. 10(b).)

Sec. 2105.253. RULES; CONSIDERATIONS. The rules adopted under Section 2105.202(a) and the considerations provided by Section 2105.202(b) apply to a reduction of block grant funds under this subchapter. (V.A.C.S. Art. 6252-13e, Sec. 10(c).)

[Sections 2105.254 to 2105.300 reserved for expansion]

#### SUBCHAPTER G. TERMINATION OF BLOCK GRANT FUNDS

Sec. 2105.301. NOTICE TO PROVIDER. An agency that proposes to terminate block grant funds of a provider that has violated the terms of a contract or grant shall send the provider a written statement specifying the reasons for the termination not later than the 31st day before the termination date. (V.A.C.S. Art. 6252-13e, Sec. 8(a).)

Sec. 2105.302. HEARING. (a) After receiving notice of termination of a contract or subgrant from block grant funds, a provider may request an administrative hearing under Chapter 2001.

(b) Not later than the 30th day after the date the request is received, the agency shall conduct a hearing to determine whether the funding should be terminated. The agency and the provider may agree to postpone the hearing. (V.A.C.S. Art. 6252-13e, Secs. 8(b) (part). (c).)

[Sections 2105.303 to 2105.350 reserved for expansion]

#### SUBCHAPTER H. JUDICIAL REVIEW

Sec. 2105.351. JUDICIAL REVIEW. A party to a hearing under Subchapter D, E, F, or G may seek judicial review of the agency's action as provided by Subchapter G, Chapter 2001. (V.A.C.S. Art. 6252-13e, Sec. 11.)

#### CHAPTER 2106. INDIRECT COST RECOVERY PROGRAM

- Sec. 2106.001. DEFINITIONS
- Sec. 2106.002. STATEWIDE COST ALLOCATION PLAN
- Sec. 2106.003. AGENCY INDIRECT COST RECOVERY PLAN
- Sec. 2106.004. TECHNICAL ASSISTANCE
- Sec. 2106.005. AGENCY RECOVERY OF INDIRECT COSTS
- Sec. 2106.006. GENERAL REVENUE FUND REIMBURSEMENT
- Sec. 2106.007. APPROPRIATION OF FEDERALLY REIMBURSED INDIRECT COSTS

#### CHAPTER 2106. INDIRECT COST RECOVERY PROGRAM

Sec. 2106.001. DEFINITIONS. In this chapter:

(1) "Federally reimbursable indirect cost" means a cost, as defined by Office of Management and Budget Circular No. A-87 or a subsequent revision of or successor to that circular, that is:

(A) incurred by a state agency in support of a federally funded program, other than a research program funded by a federal grant at an institution of higher education; and

(B) eligible for reimbursement from the federal government.

(2) "Indirect cost" means the cost of administering a state or federally funded program and includes a cost of providing a statewide support service. The term does not include the actual costs of the program.

(3) "State agency" means a department, board, commission, or other entity in the executive branch of state government that has statewide jurisdiction and administers a program to provide a service to the public or to regulate persons engaged in an occupation or activity.

(4) "Support service" includes accounting, auditing, budgeting, centralized purchasing, and legal services. (V.A.C.S. Art. 6252-5f, Sec. 1; New.)

Sec. 2106.002. STATEWIDE COST ALLOCATION PLAN. (a) The office of the governor shall prepare annually a statewide cost allocation plan.

(b) The plan must:

- (1) identify the costs of providing statewide support services to each state agency;
- (2) allocate to each state agency an appropriate portion of the total costs of statewide support services; and
- (3) identify, to the extent possible, the amount of federally reimbursable indirect costs in each allocated portion.

(c) The office of the governor shall distribute a copy of the plan to each state agency. (V.A.C.S. Art. 6252-5f, Sec. 2.)

Sec. 2106.003. AGENCY INDIRECT COST RECOVERY PLAN. (a) A state agency that receives federal money or charges a fee for a service it provides shall prepare annually an indirect cost recovery plan.

(b) The plan must include proposals to recover the indirect costs of the agency's programs, including the portion of statewide support service costs allocated to the agency under the statewide cost allocation plan.

(c) A state agency that receives federal money shall also prepare a separate schedule indicating its federally reimbursable indirect costs. (V.A.C.S. Art. 6252-5f, Sec. 3(a).)

Sec. 2106.004. TECHNICAL ASSISTANCE. The office of the governor shall provide to a state agency on request technical assistance for developing the agency's indirect cost recovery plan. (V.A.C.S. Art. 6252-5f, Sec. 3(c).)

Sec. 2106.005. AGENCY RECOVERY OF INDIRECT COSTS. A state agency shall implement its indirect cost recovery plan by:

- (1) applying for reimbursement for federally reimbursable indirect costs; and
- (2) when permitted by law, setting fees and billing rates at amounts sufficient to recover the indirect costs of the agency. (V.A.C.S. Art. 6252-5f, Sec. 3(b).)

Sec. 2106.006. GENERAL REVENUE FUND REIMBURSEMENT. (a) A state agency that receives federal money for federally reimbursable indirect costs shall send to the state treasurer for deposit to the credit of the general revenue fund the lesser of:

- (1) the amount received for federally reimbursable indirect costs; or
- (2) the amount allocated to the agency in the governor's statewide cost allocation plan for the cost of providing statewide support services to the agency.

(b) This section does not apply to money received by a state agency for federally reimbursable indirect costs to the extent that the agency has previously paid another state agency for services for which the first agency has been reimbursed. (V.A.C.S. Art. 6252-5f, Secs. 4(a), (c).)

Sec. 2106.007. APPROPRIATION OF FEDERALLY REIMBURSED INDIRECT COSTS. (a) The legislature may appropriate to a state agency for any purpose the amount of federal money the agency is estimated to receive for federally reimbursable indirect costs during a fiscal biennium.

(b) The appropriation for a state agency may include the amount of federal money for federally reimbursable indirect costs that the agency recovers, during a fiscal biennium that exceeds the estimated amount. (V.A.C.S. Art. 6252-5f, Sec. 4(b).)

CHAPTER 2107. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

- Sec. 2107.001. DEFINITIONS
- Sec. 2107.002. AGENCY COLLECTION PROCESS
- Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL OR OUTSIDE AGENT
- Sec. 2107.004. NOTICE TO ATTORNEY GENERAL FOR FURTHER COLLECTION
- Sec. 2107.005. REPORTS TO ATTORNEY GENERAL
- Sec. 2107.006. ATTORNEY FEES AND COSTS
- Sec. 2107.007. RETENTION OF COLLECTION FEE

CHAPTER 2107. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

Sec. 2107.001. DEFINITIONS. In this chapter:

(1) "Obligation" includes a debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(2) "State agency" means an agency, board, commission, institution, or other unit of state government. (V.A.C.S. Art. 6252-5e, Sec. 1.)

Sec. 2107.002. AGENCY COLLECTION PROCESS. (a) The attorney general shall adopt uniform guidelines for the process by which a state agency collects delinquent obligations owed to the agency.

(b) A state agency that collects delinquent obligations owed to the agency shall establish procedures by rule for collecting a delinquent obligation and a reasonable period for collection. The rules must conform to the guidelines established by the attorney general.

(c) Until a state agency adopts rules under this section, the attorney general by rule may establish collection procedures for the agency, including the period for collecting a delinquent obligation. (V.A.C.S. Art. 6252-5e, Sec. 2(a) (part).)

Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL OR OUTSIDE AGENT. (a) A state agency shall request the attorney general to collect an obligation before the agency may employ, retain, or contract with a person other than a full-time employee of the state agency to collect the obligation.

(b) The attorney general may authorize the requesting state agency to employ, retain, or contract with a person other than a full-time employee of the agency to collect an obligation that the attorney general cannot collect. (V.A.C.S. Art. 6252-5e, Sec. 4.)

Sec. 2107.004. NOTICE TO ATTORNEY GENERAL FOR FURTHER COLLECTION. Not later than the 30th day after the date a state agency determines that normal agency collection procedures for an obligation owed the agency have failed, the agency shall report the uncollected and delinquent obligation to the attorney general for further collection efforts. (V.A.C.S. Art. 6252-5e, Sec. 2(a) (part).)

Sec. 2107.005. REPORTS TO ATTORNEY GENERAL. The attorney general may develop specific reporting procedures for each state agency and may adopt rules relating to the reports, including rules specifying when an agency must report and what information must be included in the report. (V.A.C.S. Art. 6252-5e, Sec. 2(b).)

Sec. 2107.006. ATTORNEY FEES AND COSTS. In any proceeding under this chapter or other law in which the state seeks to collect or recover a delinquent obligation or damages, the attorney general may recover reasonable attorney fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant. (V.A.C.S. Art. 6252-5e, Sec. 3.)

Sec. 2107.007. RETENTION OF COLLECTION FEE. (a) An obligation reported to the attorney general for collection under this chapter is subject to a collection fee for the use and benefit of the attorney general as provided by legislative appropriation.

(b) The attorney general may retain the amount of the collection fee from the amount of the obligation collected.

(c) A collection fee may not be retained from amounts collected for the unemployment compensation fund established by Section 9, Texas Unemployment Compensation Act (Article 5221b-7, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 6252-5e, Sec. 5 (part).)

CHAPTER 2108. EMPLOYEE INCENTIVE AND AGENCY PRODUCTIVITY

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2108.001. DEFINITION
- Sec. 2108.002. COMMISSION
- Sec. 2108.003. COMMISSION COMPOSITION; PRESIDING OFFICER; TERMS
- Sec. 2108.004. COMMISSION POWERS AND DUTIES
- Sec. 2108.005. EXECUTIVE DIRECTOR; STAFF
- Sec. 2108.006. REPORT
- Sec. 2108.007. APPLICATION OF SUNSET ACT

[Sections 2108.008 to 2108.020 reserved for expansion]

SUBCHAPTER B. STATE EMPLOYEE INCENTIVE PROGRAM

- Sec. 2108.021. DEFINITIONS
- Sec. 2108.022. STATE EMPLOYEE INCENTIVE PROGRAM
- Sec. 2108.023. AWARDS
- Sec. 2108.024. EMPLOYEE ELIGIBILITY
- Sec. 2108.025. EMPLOYEE STATUS; FORMER EMPLOYEES
- Sec. 2108.026. ELIGIBLE SUGGESTION
- Sec. 2108.027. MULTIPLE AND JOINT SUGGESTIONS
- Sec. 2108.028. AGENCY COORDINATOR
- Sec. 2108.029. ELIGIBILITY DETERMINATION BY AGENCY COORDINATOR
- Sec. 2108.030. PROCEDURE
- Sec. 2108.031. COMMISSION AS ARBITER; APPEAL
- Sec. 2108.032. REEVALUATION OF SUGGESTION
- Sec. 2108.033. SUGGESTION ADOPTED BEFORE SUBMISSION TO AGENCY COORDINATOR
- Sec. 2108.034. SUGGESTION REQUIRING LEGISLATIVE ACTION
- Sec. 2108.035. CONFIDENTIALITY
- Sec. 2108.036. CLAIMS ASSIGNED TO STATE
- Sec. 2108.037. FUNDS TRANSFER
- Sec. 2108.038. SPECIAL FUND
- Sec. 2108.039. CHANGE TO INCENTIVE PROGRAM

[Sections 2108.040 to 2108.100 reserved for expansion]

SUBCHAPTER C. PRODUCTIVITY BONUS PROGRAM

- Sec. 2108.101. DEFINITIONS
- Sec. 2108.102. PLAN
- Sec. 2108.103. APPLICATION
- Sec. 2108.104. QUALIFICATIONS FOR PRODUCTIVITY BONUS
- Sec. 2108.105. NOTICE OF AWARD
- Sec. 2108.106. AWARD TO EMPLOYEES
- Sec. 2108.107. AWARD TO STATE AGENCY OR DIVISION
- Sec. 2108.108. DETERMINATION OF COST REDUCTION
- Sec. 2108.109. PRODUCTIVITY BONUS FUND; AGENCY AND DIVISION ACCOUNTS
- Sec. 2108.110. LEGISLATIVE INTENT

CHAPTER 2108. EMPLOYEE INCENTIVE AND AGENCY PRODUCTIVITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2108.001. DEFINITION. In this chapter, "commission" means the Texas Incentive and Productivity Commission. (V.A.C.S. Art. 6252-29a, Sec. 1.001.)

Sec. 2108.002. COMMISSION. The commission is a state agency. (V.A.C.S. Art. 6252-29a, Sec. 1.002.)

Sec. 2108.003. COMMISSION COMPOSITION; PRESIDING OFFICER; TERMS. (a) The commission is composed of:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the comptroller;
- (4) the state treasurer;
- (5) the agency administrator of the Texas Employment Commission;
- (6) the chairman of the Texas Higher Education Coordinating Board or the chairman's designee; and

(7) three public members appointed by the governor who have experience in the administration of bonus, incentive, or related programs used in private industry.

(b) A commission member who is an elected official may designate another individual to act in the official's place as a voting member of the commission.

(c) The governor or the governor's designee serves as presiding officer of the commission.

(d) Public members serve a two-year term, with the term of one member expiring February 1 of each even-numbered year and the term of two members expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 6252-29a, Sec. 1.003.)

Sec. 2108.004. COMMISSION POWERS AND DUTIES. (a) The commission shall develop policies, procedures, and record-keeping measures to administer this chapter.

(b) The commission may adopt rules to carry out this chapter.

(c) The commission may accept contributions or assistance from private institutions and organizations and may request and receive aid and assistance from the governor's office and other state governmental bodies to effectively implement this chapter. (V.A.C.S. Art. 6252-29a, Sec. 1.006.)

Sec. 2108.005. EXECUTIVE DIRECTOR; STAFF. (a) The commission may hire an executive director and other staff necessary to perform its functions.

(b) The commission may designate separate division directors to oversee the administration of the state employee incentive program under Subchapter B and the productivity bonus program under Subchapter C. (V.A.C.S. Art. 6252-29a, Sec. 1.005.)

Sec. 2108.006. REPORT. Not later than January 1 before each regular session of the legislature, the commission shall report in writing to the governor, the lieutenant governor, and the speaker of the house of representatives on the commission's activities, decisions, awards, and recommendations. (V.A.C.S. Art. 6252-29a, Sec. 1.007.)

Sec. 2108.007. APPLICATION OF SUNSET ACT. The Texas Incentive and Productivity Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2001. (V.A.C.S. Art. 6252-29a, Sec. 1.004.)

[Sections 2108.008 to 2108.020 reserved for expansion]

SUBCHAPTER B. STATE EMPLOYEE INCENTIVE PROGRAM

Sec. 2108.021. DEFINITIONS. In this subchapter:

(1) "Agency coordinator" means a state employee who is designated by the executive director of the employee's agency to act as the liaison between that agency and the commission.



(2) "Award" means a bonus or certificate of appreciation.

(3) "Bonus" means a monetary award that is granted to a state employee in payment for an employee suggestion.

(4) "Certificate of appreciation" means a nonmonetary award that is granted to a state employee in recognition of an employee suggestion.

(5) "Incentive program" means the state employee incentive program.

(6) "State agency" means a department, commission, board, office, or other agency in the executive or judicial branch of government that is created under the constitution or a statute of this state.

(7) "State employee" means an employee of a state agency and does not include an elected or appointed agency official. (V.A.C.S. Art. 6252-29a, Secs. 2.001, 2.004(b).)

Sec. 2108.022. STATE EMPLOYEE INCENTIVE PROGRAM. (a) The purposes of the state employee incentive program are to:

(1) reduce state expenditures, increase state revenues, and improve the quality of state services; and

(2) recognize the contributions made by certain state employees in achieving the goals described in Subdivision (1).

(b) An employee may be compensated for a suggestion under the incentive program only as provided by this subchapter. (V.A.C.S. Art. 6252-29a, Secs. 2.002(a), 2.008(a) (part).)

Sec. 2108.023. AWARDS. (a) From funds appropriated or otherwise available for this purpose, the commission may grant an award to an eligible state employee who makes a suggestion that:

(1) reduces state expenditures, increases state revenues, increases agency productivity, or improves the quality of state services; and

(2) is approved and implemented.

(b) The commission may grant an award, and the comptroller may transfer funds under this subchapter, before the end of the first year in which a suggestion is implemented.

(c) An award or transfer of funds must be computed on the net annual actual or projected savings or increased revenues, including savings or increased revenues that result from increased productivity, that are certified by the affected state agency and the commission.

(d) An employee is eligible for a bonus of 10 percent of the net savings or revenue increases, not to exceed an award of \$5,000, if the employee's suggestion results in savings or increased revenues, including savings or increased revenues that result from increased productivity, that:

(1) can be computed using a cost-benefit analysis; and

(2) equal or exceed \$100 after implementation costs.

(e) An employee is not eligible for a bonus but may be recognized by a certificate of appreciation if the employee's suggestion results in:

(1) intangible savings or benefits that cannot be computed using a cost-benefit analysis; or

(2) a net annual savings or increase in revenues of less than \$100.

(f) The commission may also issue a certificate of appreciation to each employee who is granted a bonus under this subchapter. (V.A.C.S. Art. 6252-29a, Secs. 2.002(b), (c), (d), (e).)

Sec. 2108.024. EMPLOYEE ELIGIBILITY. Each state employee is eligible to participate in the incentive program except an employee:

(1) who has authority to implement the suggestion being made;

(2) who is on an unpaid leave of absence;

(3) whose job description includes responsibility for cost analysis, efficiency analysis, savings implementation, or other similar programs in the employee's agency;

(4) who is involved in or has access to agency research and development information used as the basis of the suggestion; or

(5) whose job description or routine job duties include developing the type of change in agency operations recommended by the suggestion. (V.A.C.S. Art. 6252-29a, Sec. 2.004(a).)

Sec. 2108.025. **EMPLOYEE STATUS; FORMER EMPLOYEES.** (a) An employee's eligibility under Section 2108.024 is determined on the employee's status when the agency coordinator receives the original employee suggestion.

(b) A former employee is eligible for an award if the employee's suggestion is implemented on or before the second anniversary of the date of final disposition of the suggestion. A bonus granted to an employee who dies before the bonus is received shall be paid to the employee's estate. (V.A.C.S. Art. 6252-29a, Sec. 2.007(b).)

Sec. 2108.026. **ELIGIBLE SUGGESTION.** (a) To be eligible for consideration under the incentive program an employee suggestion must:

- (1) be given to the agency coordinator;
- (2) be in writing and in the form the commission prescribes;
- (3) be signed by the employee;
- (4) propose a reasonable implementation method; and
- (5) describe the type of cost savings or other benefit the employee foresees if the suggestion is adopted.

(b) An employee is not eligible to receive an award under this subchapter for a suggestion that:

- (1) does not describe a method to achieve the desired savings or benefit;
- (2) proposes an idea under implementation or consideration on the date the suggestion is given to the agency;
- (3) relates only to personnel matters or grievances, including employee classification or compensation;
- (4) proposes a correction for a condition that resulted only because applicable established procedures were not properly followed; or
- (5) proposes implementation of a policy or procedure that the employee's agency adopted before the employee made the suggestion to the agency. (V.A.C.S. Art. 6252-29a, Secs. 2.005(a), (part), 2.006.)

Sec. 2108.027. **MULTIPLE AND JOINT SUGGESTIONS.** (a) If two or more employees submit the same suggestion relating to the same agency, the first suggestion that the agency coordinator receives is eligible for consideration.

(b) If the same suggestion is received on the same day from two or more employees working at different locations, a bonus granted for the suggestion may be divided equally among the employees.

(c) Two or more employees may submit a joint suggestion. A bonus granted for the suggestion may be divided equally among the employees. (V.A.C.S. Art. 6252-29a, Secs. 2.005(c), (d).)

Sec. 2108.028. **AGENCY COORDINATOR.** (a) Each state agency shall designate an agency coordinator.

(b) An agency coordinator shall:

- (1) promote employee participation in the incentive program;
- (2) obtain an impartial evaluation of each employee suggestion;
- (3) promote the implementation of adopted suggestions by the agency;
- (4) monitor the cost savings and other benefits that result from the implementation of an employee suggestion;
- (5) file reports with the commission as required by commission rule; and
- (6) arrange and conduct intraagency award ceremonies to recognize agency employees who are granted awards under this subchapter. (V.A.C.S. Art. 6252-29a, Sec. 2.003(a).)

Sec. 2108.029. **ELIGIBILITY DETERMINATION BY AGENCY COORDINATOR.** (a) An agency coordinator shall make the initial determination of the eligibility of an employee suggestion or of an agency employee who makes a suggestion.

(b) An employee who is aggrieved by an eligibility determination of an agency coordinator may request a redetermination.

(c) The commission shall adopt rules to govern the redetermination process. An agency coordinator shall give each employee who makes a suggestion a copy of the commission rules relating to redeterminations or reevaluations. (V.A.C.S. Art. 6252-29a, Sec. 2.003(b).)

Sec. 2108.030. **PROCEDURE.** (a) Not later than the 90th day after the date an agency coordinator receives an employee suggestion, the agency coordinator shall send the suggestion and the evaluation of the suggestion to the commission for further analysis and comment regarding implementation. If, after any necessary analysis, the commission determines that the suggestion has merit, the commission shall refer the suggestion to each appropriate state agency for proposed adoption and implementation.

(b) Not later than the 30th day after the date the commission makes a final determination on adoption or rejection of an employee suggestion, the commission shall notify in writing each employee who proposed the suggestion of the commission's determination.

(c) Final adoption of an employee suggestion is at the discretion of the chief administrative officers of each agency. An agency that implements a suggestion proposed under this subchapter shall provide information the commission requests that is necessary to compute the amount of savings or other benefits derived from the suggestion. (V.A.C.S. Art. 6252-29a, Secs. 2.005(a) (part), (e), (f).)

Sec. 2108.031. **COMMISSION AS ARBITER; APPEAL.** (a) The commission is the final arbiter of any dispute arising from the implementation of the incentive program or from eligibility determination.

(b) An employee may not appeal a commission decision to a court. (V.A.C.S. Art. 6252-29a, Secs. 2.002(g), 2.008(a) (part).)

Sec. 2108.032. **REEVALUATION OF SUGGESTION.** An employee whose suggestion has been rejected may request a reevaluation of the suggestion if the employee has reasonable grounds to believe that the importance of the suggestion has been overlooked or misinterpreted. The employee must make the request in writing not later than the 30th day after the date the employee receives notice of the rejection. The employee shall provide any additional information that the employee considers useful to the reevaluation. (V.A.C.S. Art. 6252-29a, Sec. 2.007(c).)

Sec. 2108.033. **SUGGESTION ADOPTED BEFORE SUBMISSION TO AGENCY COORDINATOR.** The commission may grant a bonus or issue a certificate of appreciation to an employee who makes a suggestion that results in an agency's adopting a policy or procedure before the suggestion is submitted to the agency coordinator if the employee or agency demonstrates to the commission that:

(1) the employee making the suggestion is eligible under this subchapter;

(2) the suggestion is eligible under this subchapter;

(3) the employee proposed a reasonable method of implementation and described the type of savings or benefit foreseen to the agency before agency implementation; and

(4) the agency adopted the policy or procedure as a result of the suggestion. (V.A.C.S. Art. 6252-29a, Sec. 2.005(g).)

Sec. 2108.034. **SUGGESTION REQUIRING LEGISLATIVE ACTION.** The commission shall note a suggestion that requires legislative action. If, as a direct result of an employee suggestion, legislation is passed to implement the suggestion, the commission shall consider the suggestion for an award. The employee's agency coordinator shall notify the commission if implementing legislation is passed. (V.A.C.S. Art. 6252-29a, Sec. 2.005(b).)

Sec. 2108.035. **CONFIDENTIALITY.** On request of an employee who has made a suggestion under this subchapter, the commission to the greatest extent possible shall maintain the employee's confidentiality in the evaluation or award process. (V.A.C.S. Art. 6252-29a, Sec. 2.007(a).)

Sec. 2108.036. CLAIMS ASSIGNED TO STATE. By submitting a suggestion under this subchapter, an employee agrees with the state that a claim of the employee based on the suggestion, including a patent, copyright, trademark, or other similar claim, is assigned to the state. (V.A.C.S. Art. 6252-29a, Sec. 2.008(b).)

Sec. 2108.037. FUNDS TRANSFER. (a) The comptroller shall transfer the amount certified by the commission and the affected agency as the actual or projected savings or increased revenues attributable to an implemented suggestion from a fund affected by the savings or increased revenues.

(b) The comptroller shall transfer the amount certified under subsection (a) as follows:

(1) 40 percent to the fund from which the original appropriation to the affected fund was made;

(2) 40 percent to an appropriate fund from which the affected agency may award merit pay increases to individuals in the agency; and

(3) 20 percent to the special fund established for the commission under Section 2108.038.

(c) If increased productivity attributable to an implemented suggestion results in savings or increased revenues that can be computed as provided by Section 2108.023(c) but that will not permit the affected agency to transfer or to have an unexpended balance of appropriated money, the commission and the affected agency shall certify the amount of actual or projected savings or increased revenues that are attributable to the suggestion, and the comptroller shall transfer 20 percent of that amount from a fund affected by the savings or increased revenues to the special fund established under Section 2108.038. (V.A.C.S. Art. 6252-29a, Sec. 2.002(f) (part).)

Sec. 2108.038. SPECIAL FUND. (a) An amount transferred under Section 2108.037(b)(3) or (c) shall be deposited in the state treasury to the credit of a special fund. Money in the fund may be used by the commission for bonuses awarded under this subchapter and to administer the commission.

(b) The comptroller shall transfer any amount remaining in the special fund on the last day of a state fiscal biennium to the general revenue fund or other funds as appropriate. (V.A.C.S. Art. 6252-29a, Sec. 2.002(f) (part).)

Sec. 2108.039. CHANGE TO INCENTIVE PROGRAM. The state may change or terminate the incentive program at any time without prior notice. (V.A.C.S. Art. 6252-29a, Sec. 2.008(a) (part).)

[Sections 2108.040 to 2108.100 reserved for expansion]

### SUBCHAPTER C. PRODUCTIVITY BONUS PROGRAM

Sec. 2108.101. DEFINITIONS. In this subchapter:

(1) "Division" means a unit of a state agency that:

(A) has an identifiable self-contained budget; or

(B) maintains its financial records under an accounting system that permits the accurate identification of the unit's expenditures and receipts.

(2) "Productivity bonus" means a cash bonus awarded to an eligible state agency or division in recognition of increased productivity.

(3) "State agency" means a department, commission, board, office, or other agency in the executive or judicial branch of state government, but does not include:

(A) the office of the governor; or

(B) an institution of higher education, as defined by Section 61.003, Education Code.

(V.A.C.S. Art. 6252-29a, Sec. 3.001.)

Sec. 2108.102. PLAN. (a) Before a state agency may apply for a productivity bonus for the agency or a division of the agency, the commission must approve an agency plan submitted by the agency's executive director. The plan must outline a strategy to be followed by the agency or division that, if implemented, would qualify the agency or division for a productivity bonus.

(b) The commission may return a plan to the executive director to request additional information or clarification of details relating to the plan.

(c) Not later than the 30th day after the date the commission receives the plan, the commission shall approve or reject the plan and inform the executive director in writing of its decision. (V.A.C.S. Art. 6252-29a, Sec. 3.002.)

Sec. 2108.103. APPLICATION. (a) After approval of a plan under Section 2108.102, the executive director of a state agency may apply to the commission for a productivity bonus for the agency or one of the agency's divisions. To apply, the executive director must provide the commission with evaluation components developed by the agency or division that permit a quantitative measure of the agency's or division's productivity and performance.

(b) The application must be:

- (1) in the form the commission prescribes;
- (2) approved by the executive director of the agency; and
- (3) submitted not later than the 30th day before the last day of the fiscal year. (V.A.C.S. Art. 6252-29a, Sec. 3.003.)

Sec. 2108.104. QUALIFICATIONS FOR PRODUCTIVITY BONUS. (a) The commission may not award a productivity bonus unless the commission determines that:

(1) the state agency or division has demonstrated that during the fiscal year the agency or division operated at a lower cost than the amount appropriated to the agency or division for that fiscal year without a decrease in the level of services required to be rendered by the agency or division during that year; and

(2) the cost of operation that the agency or division claims is not the result, in whole or part, of:

- (A) lowering of the quality of services rendered;
- (B) reduced pass-through or transfer expenditures;
- (C) receipts exceeding budgeted amounts;
- (D) failure to implement a merited promotion, reclassification, or authorized salary increase;
- (E) postponement of a scheduled purchase, repair, or payment of accounts to a future fiscal year;
- (F) stockpiling of inventory in the preceding fiscal year to reduce requirements during the fiscal year;
- (G) substitution of nonstate funds for state appropriations; or
- (H) another practice, event, or device that the commission determines has caused a distortion that results in an inaccurate claimed cost of operation.

(b) For the purposes of Subsection (a)(1), if an appropriation for a fiscal biennium is not divided between the fiscal years, the commission shall base its determination on the amount reasonably attributable to the fiscal year involved.

(c) The commission shall consider as legitimate savings a reduction in expenditures made possible by:

- (1) reduction in overtime for eligible employees;
- (2) elimination of:
  - (A) consultant fees;
  - (B) budgeted positions;
  - (C) unnecessary travel, printing, and mailing; and
  - (D) payments for unnecessary advertising, membership dues, and subscriptions and other nonessential expenditures of the agency's or division's funds;
- (3) increased efficiency in energy use;
- (4) improved office procedures and systems; and
- (5) another practice or device that the commission determines has resulted in verifiable savings. (V.A.C.S. Art. 6252-29a, Sec. 3.004.)

Sec. 2108.105. NOTICE OF AWARD. If the commission determines that a state agency or division qualifies for a productivity bonus, the commission shall notify the executive director of the agency. (V.A.C.S. Art. 6252-29a, Sec. 3.007(a).)

Sec. 2108.106. AWARD TO EMPLOYEES. (a) The commission shall award eligible employees of an agency or division an amount not to exceed 25 percent of the amount in the agency's or division's productivity bonus account. The awarded amount shall be distributed in equal shares to the eligible current employees of the agency or division. A bonus awarded to an individual employee may not exceed \$1,000.

(b) An eligible employee who worked for less than the entire fiscal year or who worked part-time is entitled to a proportional share computed on the part of the fiscal year or the average part of the work week, as applicable, that the employee worked.

(c) An employee is eligible under this section if the employee:

(1) is an hourly, part-time, or temporary employee;

(2) is a classified employee under Chapter 654; or

(3) performs functions equivalent to functions performed by a classified employee in another state agency. (V.A.C.S. Art. 6252-29a, Sec. 3.007(b).)

Sec. 2108.107. AWARD TO STATE AGENCY OR DIVISION. If the commission awards a productivity bonus to a state agency or division of a state agency, the balance in the agency's or division's productivity bonus account, as appropriate, shall be distributed as follows:

(1) one-third shall be appropriated to the agency for use by the agency's administration to promote agency productivity during the subsequent fiscal year; and

(2) two-thirds shall be credited to the fund from which the original agency or division appropriation was made. (V.A.C.S. Art. 6252-29a, Secs. 3.007(c), (d).)

Sec. 2108.108. DETERMINATION OF COST REDUCTION. (a) At the end of a fiscal year the commission shall compare the expenditures of a state agency or division that participates in the productivity bonus program for the fiscal year with the agency's or division's appropriation for that fiscal year or, if appropriate, the amount attributable to that year. The commission shall determine the amount by which the agency or division has reduced its cost of operations during the fiscal year.

(b) The commission shall make any necessary adjustments in its determination to eliminate distortions. The commission may consider legislative increases in employee compensation and inflationary increases in the cost of services, materials, and supplies. (V.A.C.S. Art. 6252-29a, Sec. 3.006.)

Sec. 2108.109. PRODUCTIVITY BONUS FUND; AGENCY AND DIVISION ACCOUNTS. (a) The productivity bonus fund is in the state treasury. Money in the fund may be used for payment of bonuses under this subchapter and may be appropriated only as provided by this subchapter.

(b) The state treasurer shall create in the productivity bonus fund a productivity bonus account for each state agency or division participating in the productivity bonus program and an account for the commission.

(c) During each fiscal year the executive director of an eligible agency shall monitor agency or division activities and estimate the savings resulting from increased economy and efficiency. At the end of the fiscal year the executive director shall certify the amount of savings to the comptroller. The comptroller shall transfer three-fourths of that amount from the appropriation of the state agency to the agency's or division's productivity bonus account and one-fourth of that amount from the appropriation of the state agency to the commission's account.

(d) The commission may use the amount in its account to administer this chapter. (V.A.C.S. Art. 6252-29a, Sec. 3.005.)

Sec. 2108.110. LEGISLATIVE INTENT. The legislature intends that a state agency or division that reduces its cost of operations and qualifies for a productivity bonus under this chapter may not be penalized for those savings through a corresponding reduction in appropriations for the subsequent fiscal biennium. (V.A.C.S. Art. 6252-29a, Sec. 3.007(e).)

## CHAPTER 2109. VOLUNTEERS

- Sec. 2109.001. DEFINITIONS
- Sec. 2109.002. USE OF VOLUNTEERS FOR HUMAN SERVICES
- Sec. 2109.003. DEVELOPMENT OF PROGRAMS
- Sec. 2109.004. PROGRAM REQUIREMENTS AND GUIDELINES
- Sec. 2109.005. MERIT PAY; PERFORMANCE EVALUATIONS
- Sec. 2109.006. STATE BUDGET RECOMMENDATIONS

## CHAPTER 2109. VOLUNTEERS

Sec. 2109.001. DEFINITIONS. In this chapter:

(1) "Governmental entity" means a state agency or any other governmental entity supported in whole or in part by funds received from the state.

(2) "Human services" means providing for basic human mental or physical needs. (V.A.C.S. Art. 6252-11e, Sec. 1; New.)

Sec. 2109.002. USE OF VOLUNTEERS FOR HUMAN SERVICES. A governmental entity that provides human services shall use volunteers, if feasible, to assist in providing human services of a high quality. (V.A.C.S. Art. 6252-11e, Sec. 2.)

Sec. 2109.003. DEVELOPMENT OF PROGRAMS. (a) Each governmental entity shall develop a volunteer program.

(b) In developing the program, the governmental entity shall consider volunteers a resource that requires advance planning and preparation for effective use.

(c) The governmental entity shall include, if practicable, volunteers in addition to paid staff in planning the implementation of the program. (V.A.C.S. Art. 6252-11e, Secs. 3(a), (b), (c).)

Sec. 2109.004. PROGRAM REQUIREMENTS AND GUIDELINES. (a) A volunteer program must include:

- (1) an effective training program for paid staff and prospective volunteers;
- (2) the use of paid staff to plan and implement the volunteer program;
- (3) an evaluation mechanism to assess:
  - (A) the performance of the volunteers;
  - (B) the cooperation of paid staff with the volunteers; and
  - (C) the volunteer program; and
- (4) follow-up studies to ensure the effectiveness of the volunteer program.

(b) A volunteer program may:

- (1) establish a program to reimburse volunteers for actual and necessary expenses incurred in the performance of volunteer services;
- (2) establish an insurance program to protect volunteers in the performance of volunteer services;
- (3) cooperate with private organizations that provide services similar to those provided by the governmental entity; and
- (4) purchase engraved certificates, plaques, pins, or awards of a similar nature, with a value that does not exceed \$75 for each volunteer, to recognize special achievement and outstanding services of volunteers.

(c) This section applies to a volunteer program of a governmental entity, regardless of whether the governmental entity provides human services. (V.A.C.S. Art. 6252-11e, Secs. 4, 5.)

Sec. 2109.005. MERIT PAY; PERFORMANCE EVALUATIONS. A governmental entity that has a volunteer program shall consider the use of volunteers in determining merit pay increases and performance evaluations. (V.A.C.S. Art. 6252-11e, Sec. 3(d).)

Sec. 2109.006. STATE BUDGET RECOMMENDATIONS. During the preparation of budget recommendations, the Legislative Budget Board shall review the use of funds requested for volunteer programs. (V.A.C.S. Art. 6252-11e, Sec. 3(e).)

[Chapters 2110 to 2150 reserved for expansion]

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

[Chapters 2151 to 2200 reserved for expansion]

SUBTITLE E. GOVERNMENT PROPERTY

CHAPTER 2201. TEXAS CAPITAL TRUST FUND

Sec. 2201.001. TEXAS CAPITAL TRUST FUND

Sec. 2201.002. USE OF FUND

Sec. 2201.003. RELATION TO GENERAL REVENUE FUND

SUBTITLE E. GOVERNMENT PROPERTY

CHAPTER 2201. TEXAS CAPITAL TRUST FUND

Sec. 2201.001. TEXAS CAPITAL TRUST FUND. The Texas capital trust fund is in the state treasury. (V.A.C.S. Art. 601e, Sec. 1 (part).)

Sec. 2201.002. USE OF FUND. (a) The fund may be used only to finance:

(1) the acquisition, construction, repair, improvement, or equipping of a building by a state agency for a state purpose;

(2) the acquisition of real or personal property necessary for a state agency to take an action described by Subdivision (1); or

(3) the administration of the asset management division of the General Land Office.

(b) The fund may not be used to pay for an activity of:

(1) the Texas Department of Transportation;

(2) an institution of higher education as defined by Section 61.003, Education Code;

(3) the Texas State Technical College System;

(4) the Southwest Collegiate Institute for the Deaf;

(5) the Employees Retirement System of Texas; or

(6) the Teacher Retirement System of Texas. (V.A.C.S. Art. 601e, Secs. 1 (part), 2.)

Sec. 2201.003. RELATION TO GENERAL REVENUE FUND. (a) Income from the fund shall be deposited to the credit of the general revenue fund.

(b) At the end of each fiscal biennium the unencumbered balance of the fund in excess of \$500 million shall be transferred to the credit of the general revenue fund. (V.A.C.S. Art. 601e, Sec. 3.)

CHAPTER 2202. TEXAS SURPLUS PROPERTY AGENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2202.001. DEFINITIONS

Sec. 2202.002. SUNSET PROVISION

[Sections 2202.003 to 2202.020 reserved for expansion]



SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- Sec. 2202.021. COMPOSITION OF AGENCY
- Sec. 2202.022. COMPOSITION OF BOARD
- Sec. 2202.023. APPOINTMENTS
- Sec. 2202.024. ELIGIBILITY
- Sec. 2202.025. CONFLICTS OF INTEREST
- Sec. 2202.026. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT
- Sec. 2202.027. REMOVAL OF BOARD MEMBERS
- Sec. 2202.028. TERMS
- Sec. 2202.029. VACANCY
- Sec. 2202.030. PRESIDING OFFICER; MEETINGS
- Sec. 2202.031. PER DIEM; REIMBURSEMENT FOR EXPENSES
- Sec. 2202.032. ADVISORY BOARDS OR COMMITTEES
- Sec. 2202.033. PUBLIC INTEREST INFORMATION AND COMPLAINTS
- Sec. 2202.034. PUBLIC ACCESS AND TESTIMONY
- Sec. 2202.035. ANNUAL REPORT

[Sections 2202.036 to 2202.040 reserved for expansion]

SUBCHAPTER C. PERSONNEL

- Sec. 2202.041. EXECUTIVE DIRECTOR
- Sec. 2202.042. GENERAL POWERS AND DUTIES OF EXECUTIVE DIRECTOR
- Sec. 2202.043. PERSONNEL
- Sec. 2202.044. MERIT PAY
- Sec. 2202.045. CAREER LADDER
- Sec. 2202.046. BOND ON CERTAIN EMPLOYEES
- Sec. 2202.047. EQUAL EMPLOYMENT OPPORTUNITY POLICY

[Sections 2202.048 to 2202.060 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

- Sec. 2202.061. GENERAL POWERS AND DUTIES OF AGENCY
- Sec. 2202.062. CONTRACTS
- Sec. 2202.063. INFORMATION CLEARINGHOUSE
- Sec. 2202.064. ACQUISITION OR IMPROVEMENT OF PROPERTY; RENT PAYMENTS
- Sec. 2202.065. CHARGES
- Sec. 2202.066. FUND

[Sections 2202.067 to 2202.080 reserved for expansion]

SUBCHAPTER E. FEDERAL PROPERTY ADMINISTRATION

- Sec. 2202.081. DESIGNATED AGENCY
- Sec. 2202.082. ACQUISITION, WAREHOUSING, AND DISTRIBUTION OF FEDERAL PROPERTY
- Sec. 2202.083. FEDERAL SURPLUS REAL PROPERTY

CHAPTER 2202. TEXAS SURPLUS PROPERTY AGENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2202.001. DEFINITIONS. In this chapter:

- (1) "Agency" means the Texas Surplus Property Agency;
- (2) "Board" means the governing board of the Texas Surplus Property Agency;
- (3) "Federal Property and Administrative Services Act" means the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Section 484). (New.)

Sec. 2202.002. SUNSET PROVISION. The Texas Surplus Property Agency is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the agency is abolished and this chapter expires September 1, 2001. (V.A.C.S. Art. 6252-6b, Sec. 1a.)

[Sections 2202.003 to 2202.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 2202.021. COMPOSITION OF AGENCY. The agency is composed of:

- (1) the board;
- (2) an executive director; and
- (3) other officers and employees required to carry out this chapter effectively. (V.A.C.S. Art. 6252-6b, Sec. 1(a).)

Sec. 2202.022. COMPOSITION OF BOARD. The board is composed of:

- (1) the presiding officer of the General Services Commission or the officer's designated representative; and
- (2) nine representatives of the public appointed by the governor with the advice and consent of the senate. (V.A.C.S. Art. 6252-6b, Sec. 1(b) (part).)

Sec. 2202.023. APPOINTMENTS. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees. (V.A.C.S. Art. 6252-6b, Sec. 1(b) (part).)

Sec. 2202.024. ELIGIBILITY. (a) An individual appointed to the board must be an outstanding resident of this state who is knowledgeable in property management.

(b) An individual is not eligible for appointment as a public member of the board if the individual or the individual's spouse:

- (1) is employed by or participates in the management of a business entity or other organization that receives property from the agency;
- (2) owns or controls, directly or indirectly, more than a 10 percent interest in an organization that receives property from the agency; or
- (3) uses or receives a substantial amount of tangible goods, services, or funds from the agency, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(c) A nonelective state officer or employee may be appointed to the board if serving as a board member does not conflict with holding the original office or position for which the officer or employee receives compensation. (V.A.C.S. Art. 6252-6b, Secs. 1(b) (part), (d), (f).)

Sec. 2202.025. CONFLICTS OF INTEREST. (a) An individual may not serve as a member of the board or act as the general counsel to the board if the individual is required to register as a lobbyist under Chapter 305 because of the individual's activities for compensation on behalf of a profession related to the operation of the board.

(b) An officer, employee, or paid consultant of a Texas trade association in surplus property management may not be a board member or an agency employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the

General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) An individual who is the spouse of an officer, manager, or paid consultant of a Texas trade association in surplus property management may not be a board member and may not be an agency employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. (V.A.C.S. Art. 6252-6b, Sec. 1b.)

Sec. 2202.026. **INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT.** The board shall provide to its members and agency employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 6252-6b, Sec. 3a(c).)

Sec. 2202.027. **REMOVAL OF BOARD MEMBERS.** (a) It is a ground for removal of an appointed member from the board if the member:

(1) does not have at the time of appointment the qualifications required by Section 2202.024(b);

(2) does not maintain during service on the board the qualifications required by Section 2202.024(b);

(3) violates a prohibition established by Section 2202.025;

(4) cannot discharge because of illness or disability the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 6252-6b, Sec. 1c.)

Sec. 2202.028. **TERMS.** Public board members serve for staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 6252-6b, Sec. 1(c) (part).)

Sec. 2202.029. **VACANCY.** The governor by appointment shall fill the unexpired term of a vacancy on the board. (V.A.C.S. Art. 6252-6b, Sec. 1(c) (part).)

Sec. 2202.030. **PRESIDING OFFICER; MEETINGS.** (a) The governor shall designate a board member as presiding officer to serve in that position at the pleasure of the governor.

(b) The board shall meet quarterly in regular session and at other times at the call of the presiding officer when necessary to transact agency business. (V.A.C.S. Art. 6252-6b, Secs. 1(e), (g).)

Sec. 2202.031. **PER DIEM; REIMBURSEMENT FOR EXPENSES.** A board member is entitled to receive per diem compensation for each day the member performs an official duty and reimbursement for actual and necessary expenses incurred in discharging an official duty, as provided by the General Appropriations Act. (V.A.C.S. Art. 6252-6b, Sec. 1(h).)

Sec. 2202.032. **ADVISORY BOARDS OR COMMITTEES.** The agency may appoint advisory boards and committees necessary and suitable to administer this chapter. (V.A.C.S. Art. 6252-6b, Sec. 4(i) (part).)

Sec. 2202.033. **PUBLIC INTEREST INFORMATION AND COMPLAINTS.** (a) The board shall prepare information of public interest describing the functions of the board and

the agency and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the agency for directing complaints to the board.

(c) The agency shall keep an information file about each complaint filed with the agency that the agency has authority to resolve.

(d) If a written complaint is filed with the agency that the agency has authority to resolve, the agency, at least quarterly and until the final disposition of the complaint, shall notify parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. (V.A.C.S. Art. 6252-6b, Secs. 3c(a), (b); 3d.)

Sec. 2202.034. PUBLIC ACCESS AND TESTIMONY. (a) The agency shall prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the agency's programs.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. (V.A.C.S. Art. 6252-6b, Secs. 3c(c), (d).)

Sec. 2202.035. ANNUAL REPORT. (a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the agency during the preceding fiscal year.

(b) The annual report must be in the form and be reported in the time provided by the General Appropriations Act. (V.A.C.S. Art. 6252-6b, Sec. 3b.)

[Sections 2202.036 to 2202.040 reserved for expansion]

### SUBCHAPTER C. PERSONNEL

Sec. 2202.041. EXECUTIVE DIRECTOR. (a) The board shall appoint the executive director, to be selected according to education, training, experience, and demonstrated ability.

(b) The executive director serves at the pleasure of the board.

(c) The executive director shall act as the board's secretary and the agency's chief administrative officer.

(d) The executive director shall administer this chapter under operational policies established by the board. (V.A.C.S. Art. 6252-6b, Sec. 2.)

Sec. 2202.042. GENERAL POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director, with board approval, shall:

(1) adopt rules governing the protection of records and confidential information;

(2) adopt rules establishing an accounting system to accurately reflect the agency's financial transactions;

(3) adopt other rules the director finds necessary to administer this chapter;

(4) make long-range and intermediate plans for the scope and development of surplus property management;

(5) make decisions relating to the allocation of resources in administering those plans; and

(6) establish appropriate subordinate administrative units.

(b) The executive director shall:

(1) appoint personnel, according to personnel policies adopted by the board, the director considers necessary for the efficient performance of the agency's functions;

(2) prepare and submit to the governor an annual report of activities and expenditures;

(3) certify for disbursement, in accordance with rules, funds available to administer this chapter; and

(4) take other action the director considers necessary or appropriate to administer this chapter.

(c) The executive director, with board approval, may delegate to an officer or employee of the agency a power or duty of the executive director, other than rule making and appointing personnel, that the director finds necessary to administer this chapter. (V.A.C.S. Art. 6252-6b, Secs. 3(a) (part), (b), (c), (d), (e), (f), (g), (h).)

Sec. 2202.043. PERSONNEL. (a) The agency may employ, compensate, and prescribe the duties of personnel, other than members of advisory boards and committees, necessary and suitable to administer this chapter.

(b) The executive director, with board approval, by rule shall adopt personnel standards.

(c) A personnel position may only be filled by an individual selected and appointed on a nonpartisan merit basis.

(d) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the agency. (V.A.C.S. Art. 6252-6b, Secs. 3(a) (part); 3a(d); 4(i) (part).)

Sec. 2202.044. MERIT PAY. The executive director or the executive director's designated representative shall develop a system of annual performance evaluations. All merit pay for agency employees must be given under the system established under this section. (V.A.C.S. Art. 6252-6b, Sec. 3a(a).)

Sec. 2202.045. CAREER LADDER. The executive director or the executive director's designated representative shall develop an intraagency career ladder program. The program shall require intraagency postings of all non-entry-level positions concurrently with any public posting. (V.A.C.S. Art. 6252-6b, Sec. 3a(b).)

Sec. 2202.046. BOND ON CERTAIN EMPLOYEES. The executive director may bond an agency employee who handles money, signs checks, or receives or distributes property under this chapter. (V.A.C.S. Art. 6252-6b, Sec. 3(i).)

Sec. 2202.047. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designated representative shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the agency's work force that meets state and federal guidelines;

(3) procedures by which a determination can be made of significant underuse in the agency work force of all persons for whom state or federal guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature. (V.A.C.S. Art. 6252-6b, Secs. 3a(e), (f), (g).)

[Sections 2202.048 to 2202.060 reserved for expansion]

#### SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

Sec. 2202.061. GENERAL POWERS AND DUTIES OF AGENCY. (a) The agency shall:

(1) file a state plan of operation that complies with federal law and operate in accordance with the plan;

(2) take necessary action to meet the minimum standards for a state agency in accordance with the Federal Property and Administrative Services Act; and

(3) cooperate to the fullest extent consistent with this chapter.

(b) The agency may:

(1) make the necessary certifications and undertake necessary action, including an investigation;

(2) make expenditures or reports that may be required by federal law or regulation or that are otherwise necessary to provide for the proper and efficient management of the agency's functions;

(3) provide information and reports relating to the agency's activities that may be required by a federal agency or department; and

(4) adopt rules necessary for the efficient operation of its activities or as may be required by federal law or regulation. (V.A.C.S. Art. 6252-6b, Secs. 4(e), (f), (k).)

Sec. 2202.062. **CONTRACTS.** (a) The agency may enter into agreements, including:

(1) a cooperative agreement with a federal agency under Section 484(n) of the Federal Property and Administrative Services Act;

(2) an agreement with a state agency for surplus property of a state agency that will promote the administration of the Texas Surplus Property Agency's functions; or

(3) an agreement with a group or association of state agencies for surplus property that will promote the administration of the Texas Surplus Property Agency's functions.

(b) Articles 8 and 9 of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), relating to the responsibility and accounting for state property, do not apply to the agency in the acquisition or disposition of federal surplus property. (V.A.C.S. Art. 6252-6b, Sec. 4(g).)

Sec. 2202.063. **INFORMATION CLEARINGHOUSE.** (a) The agency may act as an information clearinghouse for an entity or institution that may be eligible to acquire federal surplus property.

(b) The agency may assist, as necessary, the entity or institution obtaining federal surplus property. (V.A.C.S. Art. 6252-6b, Sec. 4(j).)

Sec. 2202.064. **ACQUISITION OR IMPROVEMENT OF PROPERTY; RENT PAYMENTS.** The agency may:

(1) acquire and hold title or make capital improvements to real property, in accordance with Section 2202.065; or

(2) make an advance payment of rent for a distribution center, office space, or another facility that is required to carry out the agency's functions under this chapter. (V.A.C.S. Art. 6252-6b, Sec. 4(h).)

Sec. 2202.065. **CHARGES.** (a) The agency may collect a service charge for the agency's acquisition, warehousing, distribution, or transfer of property.

(b) The agency may not collect a charge for real property in an amount that is greater than the reasonable administrative cost the agency incurs in transferring the property. (V.A.C.S. Art. 6252-6b, Sec. 4(l) (part).)

Sec. 2202.066. **FUND.** (a) A charge collected under Section 2202.065 shall be deposited in the state treasury to the credit of the surplus property service charge fund, and income earned on money in the surplus property service charge fund shall be credited to that fund.

(b) Money in the fund may be used only to carry out the functions of the agency. (V.A.C.S. Art. 6252-6b, Secs. 4(l) (part), (m).)

[Sections 2202.067 to 2202.080 reserved for expansion]

#### SUBCHAPTER E. FEDERAL PROPERTY ADMINISTRATION

Sec. 2202.081. **DESIGNATED AGENCY.** The agency is the designated state agency under Section 484(j) of the Federal Property and Administrative Services Act. (V.A.C.S. Art. 6252-6b, Sec. 4(a).)

Sec. 2202.082. ACQUISITION, WAREHOUSING, AND DISTRIBUTION OF FEDERAL PROPERTY. The agency may:

- (1) acquire and warehouse federal property allocated to the agency under the Federal Property and Administrative Services Act; and
- (2) distribute the property to an entity or institution that meets the qualifications for eligibility for the property under the Federal Property and Administrative Services Act. (V.A.C.S. Art. 6252-6b, Sec. 4(b).)

Sec. 2202.083. FEDERAL SURPLUS REAL PROPERTY. The agency may:

- (1) disseminate information and assist a potential applicant regarding the availability of federal surplus real property;
- (2) assist in the processing of an application for acquisition of federal real property and related personal property under Section 484(k) of the Federal Property and Administrative Services Act;
- (3) assist in assuring use of the property; and
- (4) engage in an activity relating to the use of federal surplus property by another state agency, institution, or organization engaging in or receiving assistance under a federal program. (V.A.C.S. Art. 6252-6b, Secs. 4(c), (d).)

CHAPTER 2203. USE OF STATE PROPERTY

- Sec. 2203.001. REPORTING USE OF STATE VEHICLE; PENALTIES
- Sec. 2203.002. STATE POSTAGE METERS
- Sec. 2203.003. STATE PROPERTY UNDER CONTROL OF THE DAUGHTERS OF THE CONFEDERACY, TEXAS DIVISION, AND THE DAUGHTERS OF THE REPUBLIC OF TEXAS

CHAPTER 2203. USE OF STATE PROPERTY

Sec. 2203.001. REPORTING USE OF STATE VEHICLE; PENALTIES. (a) A person who uses a state-owned automobile or truck shall, for each day that the vehicle is used, submit a separate written report of the use to the head of the state agency, including a department, institution, board, or commission of the state, in charge of the vehicle.

(b) The report must be made daily on a form prescribed by the comptroller.

(c) A report filed under this section must show:

- (1) the purpose for which the vehicle was used;
- (2) the mileage traveled;
- (3) the amounts of gasoline and oil consumed;
- (4) the passengers carried; and
- (5) other information necessary to a proper record of the use of the vehicle.

(d) A report filed under this section is an official state record and is subject to inspection by a state official who is authorized to audit or inspect claims, accounts, or records of a state agency.

(e) A person commits an offense if the person does not file a report as required by this section on or before the 10th day after the date on which the person uses the vehicle. An offense under this subsection is punishable by a fine of not less than \$5 nor more than \$100. (V.A.C.S. Art. 6252-21, Secs. 1, 2.)

Sec. 2203.002. STATE POSTAGE METERS. (a) A state department, board, commission, or educational institution that installs a postage meter shall place on the machine an imprint plate stating that:

- (1) the mail carried by the postage is official state mail; and
- (2) there is a penalty for the unlawful use of the postage meter for a private purpose.

(b) A state department, board, commission, or educational institution shall pay for the imprint plate and its installation from the state department's, board's, commission's, or educational institution's appropriation for postage and contingent expenses. (V.A.C.S. Art. 6252-22.)

Sec. 2203.003. STATE PROPERTY UNDER CONTROL OF THE DAUGHTERS OF THE CONFEDERACY, TEXAS DIVISION, AND THE DAUGHTERS OF THE REPUBLIC OF TEXAS. (a) The Daughters of the Confederacy, Texas Division, and the Daughters of the Republic of Texas each may charge admission to state property over which each organization has custody or control. This subsection does not apply to the Alamo.

(b) An organization that charges admission under this section shall set the fee in an amount that it determines serves the best interest of the state and the public.

(c) The organization may maintain and operate, or may contract with another person for the operation of, a concession on state property under its control. The concession may be operated in any manner the organization considers necessary for the best interest of the state and the public.

(d) The organization shall hold separately in trust all admission fees and profits from the operation of concessions at each property. The money may be spent only to maintain and repair the state property and furnishings at the property at which the money is received. (V.A.C.S. Art. 601h.)

## CHAPTER 2204. ACQUISITION OF LAND FOR STATE AND FEDERAL PURPOSES

### SUBCHAPTER A. ACQUISITION OF LAND BY STATE

#### Sec. 2204.001. ACQUISITION OF LAND BY STATE

[Sections 2204.002 to 2204.100 reserved for expansion]

### SUBCHAPTER B. GENERAL PROVISIONS FOR ACQUISITION OF LAND AND JURISDICTION OVER LAND BY UNITED STATES

#### Sec. 2204.101. CONSENT TO UNITED STATES TO ACQUIRE LAND

#### Sec. 2204.102. SALE OF STATE LAND TO UNITED STATES

#### Sec. 2204.103. CESSION OF JURISDICTION TO UNITED STATES

[Sections 2204.104 to 2204.200 reserved for expansion]

### SUBCHAPTER C. CONVEYANCE OF STATE HIGHWAY LAND TO UNITED STATES FOR MILITARY PURPOSES

#### Sec. 2204.201. APPLICATION OF SUBCHAPTER

#### Sec. 2204.202. CONVEYANCE TO UNITED STATES

#### Sec. 2204.203. FEE SIMPLE NOT OWNED BY STATE

[Sections 2204.204 to 2204.300 reserved for expansion]

### SUBCHAPTER D. STATE GRANTS TO UNITED STATES FOR FLOOD CONTROL IN BED AND BANKS OF PECOS AND DEVILS RIVERS AND RIO GRANDE

#### Sec. 2204.301. GRANT TO UNITED STATES

#### Sec. 2204.302. APPLICATION BY UNITED STATES

#### Sec. 2204.303. MINERAL RESERVATION REQUIRED

#### Sec. 2204.304. REVERSION TO STATE ON NONUSE

#### Sec. 2204.305. PRIVATE PROPERTY RIGHTS NOT AFFECTED

[Sections 2204.306 to 2204.400 reserved for expansion]



SUBCHAPTER E. STATE GRANTS TO UNITED STATES IN BED AND BANKS OF RIO GRANDE TO IMPLEMENT BOUNDARY TREATY

- Sec. 2204.401. GRANT TO UNITED STATES
- Sec. 2204.402. APPLICATION BY UNITED STATES
- Sec. 2204.403. MINERAL RESERVATION REQUIRED
- Sec. 2204.404. PRIVATE PROPERTY RIGHTS NOT AFFECTED

[Sections 2204.405 to 2204.500 reserved for expansion]

SUBCHAPTER F. CONSENT TO FEDERAL ACQUISITION OF LAND FOR FLOOD CONTROL IN TRINITY WATERSHED

- Sec. 2204.501. APPLICATION OF SUBCHAPTER.
- Sec. 2204.502. CONSENT OF STATE
- Sec. 2204.503. CERTAIN RESERVATIONS PERMITTED
- Sec. 2204.504. PAYMENTS IN LIEU OF TAXES
- Sec. 2204.505. CONCURRENT JURISDICTION RETAINED FOR CERTAIN PURPOSES

CHAPTER 2204. ACQUISITION OF LAND FOR STATE AND FEDERAL PURPOSES

SUBCHAPTER A. ACQUISITION OF LAND BY STATE

Sec. 2204.001. ACQUISITION OF LAND BY STATE. (a) The governor may purchase land or the right to use land that is required by this state for any type of public use.

(b) If the governor fails to agree with the owner of the land on the price for the land or the use of the land, the land may be condemned for public use in the name of this state. On the direction of the governor, condemnation proceedings shall be instituted against the owner of the land by the attorney general or the district or county attorney acting under the direction of the attorney general.

(c) If the governor determines that the amount of damages awarded in the condemnation proceedings under Subsection (b) is excessive, the state may not pay the damages. In that event, the state shall pay the costs of the proceedings and may not take further action. (V.A.C.S. Art. 5240.)

[Sections 2204.002 to 2204.100 reserved for expansion]

SUBCHAPTER B. GENERAL PROVISIONS FOR ACQUISITION OF LAND AND JURISDICTION OVER LAND BY UNITED STATES

Sec. 2204.101. CONSENT TO UNITED STATES TO ACQUIRE LAND. (a) The legislature consents to the purchase or acquisition by the United States, including acquisition by condemnation, of land in this state made in accordance with this subchapter.

(b) The United States may purchase, acquire, hold, own, occupy, and possess land in this state that it considers expedient and that it seeks to occupy as a site:

(1) on which to erect and maintain a lighthouse, fort, military station, magazine, arsenal, dockyard, customhouse, post office, or other necessary public building; or

(2) for erecting a lock or dam, straightening a stream by making a cutoff, building a levee, or erecting any other structure or improvement that may become necessary for developing or improving a waterway, river, or harbor of this state.

(c) During condemnation proceedings for the acquisition of land by the United States under this section, the United States may occupy the land and construct improvements on the land immediately on the filing of the award of the condemnation commissioners with the

condemnation court, without awaiting the decision of the court, if the United States deposits an amount equal to the amount of the award of the commissioners plus the amount of all costs adjudged against the United States. (V.A.C.S. Arts. 5242, 5243, 5244.)

Sec. 2204.102. SALE OF STATE LAND TO UNITED STATES. (a) The governor may sell to the United States land owned by this state that the United States desires to acquire for a purpose specified by Section 2204.101.

(b) On payment of the purchase money for the land into the state treasury, the land commissioner, on the order of the governor, shall issue a patent for that land to the United States in the same manner that other patents are issued. (V.A.C.S. Art. 5245.)

Sec. 2204.103. CESSION OF JURISDICTION TO UNITED STATES. (a) On written application of the United States to the governor, the governor, in the name and on behalf of this state, may cede to the United States exclusive jurisdiction, subject to Subsection (c), over land acquired by the United States under this subchapter over which the United States desires to acquire constitutional jurisdiction for a purpose provided by Section 2204.101.

(b) An application for cession must be:

- (1) accompanied by proper evidence of the acquisition of the land;
- (2) authenticated and recorded; and

(3) include or have attached an accurate description by metes and bounds of the land for which cession is sought.

(c) A cession of jurisdiction may not be made under this section except on the express condition, which must be included in the instrument of cession, that this state retains concurrent jurisdiction with the United States over every portion of the land ceded so that all civil or criminal process issued under the authority of this state or a court or judicial officer of this state may be executed by the proper officers of this state on any person amenable to service of process within the limits of the land to be ceded, in the same manner and to the same effect as if the cession had not occurred. (V.A.C.S. Art. 5247.)

[Sections 2204.104 to 2204.200 reserved for expansion]

### SUBCHAPTER C. CONVEYANCE OF STATE HIGHWAY LAND TO UNITED STATES FOR MILITARY PURPOSES

Sec. 2204.201. APPLICATION OF SUBCHAPTER. This subchapter applies only to land or an interest in land owned by this state that is under the control of the Texas Department of Transportation. (V.A.C.S. Art. 5248d-1, Sec. 1 (part).)

Sec. 2204.202. CONVEYANCE TO UNITED STATES. (a) The governor, on the recommendation of the Texas Transportation Commission or on the request of the United States supported by the recommendation of the Texas Transportation Commission, may convey to the United States an easement or other interest in land that:

- (1) is located near a federally owned or operated military installation or facility; and
- (2) may be necessary for the construction, operation, and maintenance of the military installation or facility.

(b) The conveyance may be made without monetary consideration or for a consideration determined by the Texas Transportation Commission. (V.A.C.S. Art. 5248d-1, Sec. 1 (part).)

Sec. 2204.203. FEE SIMPLE NOT OWNED BY STATE. For land for which the fee simple title is not vested in this state and for which the owner of the fee executes an easement to the United States for the purposes provided by Section 2204.202(a), the governor on the recommendation of the Texas Transportation Commission may join in and assent to the easement by the same or a separate instrument. (V.A.C.S. Art. 5248d-1, Sec. 2.)

[Sections 2204.204 to 2204.300 reserved for expansion]

SUBCHAPTER D. STATE GRANTS TO UNITED STATES FOR FLOOD CONTROL  
IN BED AND BANKS OF PECOS AND DEVILS RIVERS AND RIO GRANDE

Sec. 2204.301. GRANT TO UNITED STATES. The governor may grant to the United States in accordance with this subchapter those portions of the beds and banks of the Pecos and Devils rivers in Val Verde County and of the Rio Grande in Brewster, Cameron, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, and Zapata counties:

(1) for which title is vested in this state; and

(2) that may be necessary or expedient in the construction and use of the storage and flood control dams and their resultant reservoirs, diversion works, and appurtenances provided for in the Treaty Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, concluded by the United States and the United Mexican States on February 3, 1944. (V.A.C.S. Art. 5248g, Secs. 1, 2 (part).)

Sec. 2204.302. APPLICATION BY UNITED STATES. On application to the governor by the United States Commissioner, International Boundary and Water Commission, United States and Mexico, describing the area necessary or expedient for the purposes described in Section 2204.301, the governor shall issue a grant for and on behalf of this state to the United States conveying to the United States the area described in the application. (V.A.C.S. Art. 5248g, Sec. 2 (part).)

Sec. 2204.303. MINERAL RESERVATION REQUIRED. A grant under this subchapter must reserve to this state all minerals except rock, sand, and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described by Section 2204.301. The reservation must provide that:

(1) the minerals reserved to this state may not be explored for, developed, or produced in a manner that at any time will prevent or interfere with the operation or construction of those works; and

(2) before exploring for or developing reserved minerals, this state must obtain the written consent of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, as to the proposed area sought to be explored or developed by this state, including the location of and production facilities for oil wells, gas wells, or oil and gas wells. (V.A.C.S. Art. 5248g, Sec. 2 (part).)

Sec. 2204.304. REVERSION TO STATE ON NONUSE. A grant under this subchapter must contain a reservation providing that if any part of the property granted ceases to be used for the purposes set out in Section 2204.301 for a continuous period of five years, that part shall immediately and automatically revert to this state at the end of that period. (V.A.C.S. Art. 5248g, Sec. 2 (part).)

Sec. 2204.305. PRIVATE PROPERTY RIGHTS NOT AFFECTED. This subchapter does not divest, limit, or otherwise affect the property rights, including riparian rights, under the laws of this state of the private owners of land abutting a portion of a river to which this subchapter applies. (V.A.C.S. Art. 5248g, Sec. 2 (part).)

[Sections 2204.306 to 2204.400 reserved for expansion]

SUBCHAPTER E. STATE GRANTS TO UNITED STATES IN BED AND  
BANKS OF RIO GRANDE TO IMPLEMENT BOUNDARY TREATY

Sec. 2204.401. GRANT TO UNITED STATES. The governor may grant to the United States in accordance with this subchapter those portions of, or easements on, the beds and banks of the Rio Grande in Brewster, Cameron, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, and Zapata counties:

(1) for which title is vested in this state; and

(2) that may be necessary or expedient to facilitate the accomplishment of projects for the following purposes, as provided for in the Treaty to Resolve Pending Boundary

Differences and Maintain the Rio Grande and Colorado River as the International Boundary between the United States of America and the United Mexican States, entered into force April 18, 1972, and the American-Mexican Boundary Treaty Act of 1972 (22 U.S.C. Sections 277d-34 et seq.):

(A) the relocation and rectification of the Rio Grande and construction of works for flood control in the Presidio-Ojinaga Valley;

(B) the rectification of and channel stabilization on the Rio Grande between Fort Quitman in Hudspeth County and Haciendita in Presidio County;

(C) the relocation and rectification of the Rio Grande upstream from Hidalgo-Reynosa in Hidalgo County;

(D) the preservation of the Rio Grande as the boundary by prohibiting the construction of works that may cause deflection or obstruction of the normal flow or floodflows of the Rio Grande; or

(E) other channel relocations and rectifications or boundary adjustments approved by the governments of the United States and the United Mexican States. (V.A.C.S. Art. 5248g-1, Secs. 1, 4 (part).)

Sec. 2204.402. APPLICATION BY UNITED STATES. On application to the governor by the United States Commissioner, International Boundary and Water Commission, United States and Mexico, describing the area and the interest in that area necessary or expedient for the purposes described in Section 2204.401, the governor shall issue a grant for and on behalf of this state to the United States conveying to the United States the area and interest described in the application. (V.A.C.S. Art. 5248g-1, Sec. 2 (part).)

Sec. 2204.403. MINERAL RESERVATION REQUIRED. (a) A grant under this subchapter must reserve to this state all minerals except rock, sand, and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described by Section 2204.401. The reservation must provide that:

(1) the minerals reserved to this state may not be explored for, developed, or produced in a manner that will at any time prevent or interfere with the operation or construction of those works; and

(2) before exploring for or developing reserved minerals, this state must obtain the written consent of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, as to the proposed area sought to be explored or developed by this state, including the location of and production facilities for oil wells, gas wells, or oil and gas wells or other minerals.

(b) In a grant to the United States of fee title to the bed and banks of the Rio Grande for the relocation and rectification of the existing channel under the treaty that is to cause a portion of the channel to be in the territorial limits of the United Mexican States after its relocation and rectification, the reservation is required only for the portion of the channel that will remain in the territorial limits of the United States on completion of the relocation and rectification project. (V.A.C.S. Art. 5248g-1, Secs. 2 (part), 3.)

Sec. 2204.404. PRIVATE PROPERTY RIGHTS NOT AFFECTED. This subchapter does not divest, limit, or otherwise affect the property rights, including riparian rights, under the laws of this state of the private owners of land abutting a portion of the Rio Grande to which this subchapter applies. (V.A.C.S. Art. 5248g-1, Sec. 4 (part).)

[Sections 2204.405 to 2204.500 reserved for expansion]

#### SUBCHAPTER F. CONSENT TO FEDERAL ACQUISITION OF LAND FOR FLOOD CONTROL IN TRINITY WATERSHED

Sec. 2204.501. APPLICATION OF SUBCHAPTER. This subchapter applies only to land in:

(1) Denton, Jack, Montague, Parker, and Wise counties; and

(2) that portion of the Trinity Watershed located in Collin, Cooke, Dallas, Fannin, Grayson, Hunt, Kaufman, Rockwall, Tarrant, or Van Zandt County. (V.A.C.S. Art. 5248h, Sec. 2 (part); Art. 5248i, Sec. 2 (part).)

Sec. 2204.502. CONSENT OF STATE. (a) This state consents to the acquisition by the United States by purchase, gift, or condemnation with adequate compensation of land or any right or interest in land in this state that the United States determines is needed for programs and works of improvement for runoff and water-flow retardation, soil erosion prevention, or other flood-control purposes in this state.

(b) This state does not consent to the acquisition of land under this subchapter by condemnation unless the apparent owner of the land consents to the acquisition. (V.A.C.S. Art. 5248h, Sec. 1 (part); Art. 5248i, Sec. 1 (part).)

Sec. 2204.503. CERTAIN RESERVATIONS PERMITTED. The United States may acquire land under this subchapter subject to reservations of rights-of-way, timber, minerals, or easements. (V.A.C.S. Art. 5248h, Sec. 1 (part); Art. 5248i, Sec. 1 (part).)

Sec. 2204.504. PAYMENTS IN LIEU OF TAXES. The United States must remit an amount equal to one percent of the purchase price of acquired land each year in lieu of taxes to the counties and school districts in which the land is located. (V.A.C.S. Art. 5248h, Sec. 1 (part); Art. 5248i, Sec. 1 (part).)

Sec. 2204.505. CONCURRENT JURISDICTION RETAINED FOR CERTAIN PURPOSES. This state retains concurrent jurisdiction with the United States in and over acquired land so that civil process in all cases and criminal process issued under the authority of this state against a person charged with the commission of a crime in or outside of the territory of the land may be executed on that land in the same manner as if this subchapter did not exist. (V.A.C.S. Art. 5248h, Sec. 1 (part); Art. 5248i, Sec. 1 (part).)

## CHAPTER 2205. AIRCRAFT POOLING

### SUBCHAPTER A. STATE AIRCRAFT POOLING BOARD; GENERAL PROVISIONS

- Sec. 2205.001. SHORT TITLE
- Sec. 2205.002. DEFINITIONS
- Sec. 2205.003. ESTABLISHMENT
- Sec. 2205.004. COMPOSITION OF BOARD; TERMS
- Sec. 2205.005. APPOINTMENTS
- Sec. 2205.006. ELIGIBILITY
- Sec. 2205.007. CONFLICTS OF INTEREST
- Sec. 2205.0071. TEMPORARY PROVISION
- Sec. 2205.008. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT
- Sec. 2205.009. REMOVAL
- Sec. 2205.010. PRESIDING OFFICER; MEETINGS; QUORUM
- Sec. 2205.011. PUBLIC ACCESS AND TESTIMONY
- Sec. 2205.012. STAFF
- Sec. 2205.013. MERIT PAY
- Sec. 2205.014. CAREER LADDER
- Sec. 2205.015. EQUAL EMPLOYMENT OPPORTUNITY
- Sec. 2205.016. ANNUAL REPORT
- Sec. 2205.017. SUNSET PROVISION

[Sections 2205.018 to 2205.030 reserved for expansion]

### SUBCHAPTER B. STATE AIRCRAFT

- Sec. 2205.031. APPLICABILITY OF CHAPTER TO STATE AIRCRAFT
- Sec. 2205.032. CUSTODY, CONTROL, OPERATION, AND MAINTENANCE
- Sec. 2205.033. TEXAS A&M UNIVERSITY SYSTEM AIRCRAFT
- Sec. 2205.034. FACILITIES
- Sec. 2205.035. AIRCRAFT LEASES
- Sec. 2205.036. PASSENGER TRANSPORTATION
- Sec. 2205.037. USE FOR POLITICAL PURPOSES; CIVIL LIABILITY

- Sec. 2205.038. AIRCRAFT OPERATIONS MANUAL
- Sec. 2205.039. TRAVEL LOG
- Sec. 2205.040. BILLING PROCEDURES
- Sec. 2205.041. AIRCRAFT USE FORM
- Sec. 2205.042. PILOTS
- Sec. 2205.043. AIRCRAFT MARKING
- Sec. 2205.044. FUEL AND MAINTENANCE CONTRACTS
- Sec. 2205.045. INSURANCE

## CHAPTER 2205. AIRCRAFT POOLING

### SUBCHAPTER A. STATE AIRCRAFT POOLING BOARD; GENERAL PROVISIONS

Sec. 2205.001. SHORT TITLE. This chapter may be cited as the State Aircraft Pooling Act. (V.A.C.S. Art. 4413(34b), Sec. 1.)

Sec. 2205.002. DEFINITIONS. In this chapter:

(1) "Board" means the State Aircraft Pooling Board. (V.A.C.S. Art. 4413(34b), Sec. 2.)

(2) "State agency" means an office, department, board, commission, institution, or other agency to which a legislative appropriation is made. (V.A.C.S. Art. 4413(34b), Sec. 2.)

Sec. 2205.003. ESTABLISHMENT. The State Aircraft Pooling Board is an agency of the state. (V.A.C.S. Art. 4413(34b), Sec. 3.)

Sec. 2205.004. COMPOSITION OF BOARD; TERMS. (a) The board is composed of:

(1) a member appointed by the governor;

(2) a member appointed by the lieutenant governor;

(3) a member appointed by the speaker of the house of representatives;

(4) a representative of the General Services Commission, designated from time to time by the presiding officer of the commission; and

(5) a representative of the state auditor's office, designated from time to time by the state auditor.

(b) The three appointed members of the board hold office for staggered terms of six years, with the term of one member expiring on January 31 of each odd-numbered year. The original appointing authority shall fill any vacancy for the unexpired portion of the term.

(c) The representatives of the General Services Commission and the state auditor's office are ex officio, nonvoting members of the board and serve only in an advisory capacity. (V.A.C.S. Art. 4413(34b), Secs. 4(a)–(c).)

Sec. 2205.005. APPOINTMENTS. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. (V.A.C.S. Art. 4413(34b), Sec. 4(e).)

Sec. 2205.006. ELIGIBILITY. Each appointed member of the board must be a representative of the general public. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the board;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses. (V.A.C.S. Art. 4413(34b), Sec. 4(d).)

Sec. 2205.007. CONFLICTS OF INTEREST. (a) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of aircraft sales and leasing may not be a board member or a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of aircraft sales and leasing may not be a board member and may not be a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. (V.A.C.S. Art. 4413(34b), Sec. 4B.)

Sec. 2205.0071. TEMPORARY PROVISION. Sections 2205.006, 2205.007, and 2205.009(a)(1) through (3) apply only to a member of the board appointed on or after September 1, 1991. This section expires January 31, 1997. (Sec. 13(a), Ch. 253, Acts of the 72nd Leg., R.S., 1991.)

Sec. 2205.008. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 4413(34b), Sec. 9(g).)

Sec. 2205.009. REMOVAL. (a) It is a ground for removal of an appointed member from the board if the member:

- (1) does not have at the time of appointment the qualifications required by Section 2205.006;
- (2) does not maintain during service on the board the qualifications required by Section 2205.006;
- (3) violates a prohibition established by Section 2205.007;
- (4) cannot discharge because of illness or disability the member's duties for a substantial part of the term for which the member is appointed; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 4413(34b), Sec. 4A.)

Sec. 2205.010. PRESIDING OFFICER; MEETINGS; QUORUM. (a) The voting members of the board biennially shall elect a voting member of the board as presiding officer.

(b) The board shall adopt rules for calling and holding meetings and conducting business.

(c) Two voting members of the board constitute a quorum. (V.A.C.S. Art. 4413(34b), Sec. 5.)

Sec. 2205.011. PUBLIC ACCESS AND TESTIMONY. (a) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the board's programs.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. (V.A.C.S. Art. 4413(34b), Sec. 16.)

Sec. 2205.012. STAFF. (a) The board may employ and compensate staff as provided by legislative appropriation or may use staff provided by the General Services Commission or the state auditor's office.

(b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff the board uses. (V.A.C.S. Art. 4413(34b), Secs. 6(a), (b).)

Sec. 2205.013. MERIT PAY. The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board staff must be based on the system established under this section. (V.A.C.S. Art. 4413(34b), Sec. 6(c).)

Sec. 2205.014. CAREER LADDER. The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all non-entry-level positions concurrently with any public posting. (V.A.C.S. Art. 4413(34b), Sec. 6(d).)

Sec. 2205.015. EQUAL EMPLOYMENT OPPORTUNITY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature. (V.A.C.S. Art. 4413(34b), Sec. 5A.)

Sec. 2205.016. ANNUAL REPORT. (a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.

(b) The annual report must be in the form and reported in the time provided by the General Appropriations Act. (V.A.C.S. Art. 4413(34b), Sec. 8A.)

Sec. 2205.017. SUNSET PROVISION. The State Aircraft Pooling Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2001. (V.A.C.S. Art. 4413(34b), Sec. 10A.)

[Sections 2205.018 to 2205.030 reserved for expansion]

## SUBCHAPTER B. STATE AIRCRAFT

Sec. 2205.031. APPLICABILITY OF CHAPTER TO STATE AIRCRAFT. This chapter applies to all aircraft owned or leased by the state, except as provided by Section 2205.033. (V.A.C.S. Art. 4413(34b), Sec. 7.)

Sec. 2205.032. CUSTODY, CONTROL, OPERATION, AND MAINTENANCE. (a) The board shall operate a pool for the custody, control, operation, and maintenance of all aircraft owned or leased by the state.

(b) The board may purchase aircraft with funds appropriated for that purpose. (V.A.C.S. Art. 4413(34b), Secs. 8, 9(a).)



Sec. 2205.033. **TEXAS A&M UNIVERSITY SYSTEM AIRCRAFT.** (a) The board of regents of The Texas A&M University System is primarily responsible for scheduling Texas A&M University System aircraft.

(b) The Texas A&M University System shall base Texas A&M University System aircraft in Brazos County.

(c) A pilot of Texas A&M University System aircraft must be an employee of The Texas A&M University System.

(d) In this section, "Texas A&M University System aircraft" means aircraft owned on August 31, 1991, or acquired after that date by The Texas A&M University System or one of its components. (V.A.C.S. Art. 4413(34b), Sec. 7A.)

Sec. 2205.034. **FACILITIES.** (a) The board may acquire appropriate facilities for the accommodation of all aircraft owned or leased by the state. The facilities may be purchased or leased as determined by the board to be most economical for the state and as provided by legislative appropriations. The facilities may include adequate hangar space, an indoor passenger waiting area, a flight-planning area, communications facilities, and other related and necessary facilities.

(b) A state agency that operates an aircraft may not use a facility in Austin other than a facility operated by the board for the storage, parking, fueling, or maintenance of the aircraft, whether or not the aircraft is based in Austin. In a situation the board determines to be an emergency, the board may authorize a state agency to use a facility in Austin other than a board facility for the storage, parking, fueling, or maintenance of an aircraft. (V.A.C.S. Art. 4413(34b), Sec. 10.)

Sec. 2205.035. **AIRCRAFT LEASES.** (a) The board by interagency contract may lease state-owned aircraft to a state agency.

(b) A state agency that is the prior owner or lessee of an aircraft has the first option to lease that aircraft from the board.

(c) The lease may provide for operation or maintenance by the board or the state agency.

(d) A state agency may not expend appropriated funds for the lease of an aircraft unless the board executes the lease or approves the lease by board order. (V.A.C.S. Art. 4413(34b), Secs. 9(b), (c).)

Sec. 2205.036. **PASSENGER TRANSPORTATION.** (a) The board shall provide aircraft transportation, to the extent that its aircraft are available, to:

(1) state officers and employees who are traveling on official business according to the coordinated passenger scheduling system and the priority scheduling system developed as part of the aircraft operations manual under Section 2205.038;

(2) persons in the care or custody of state officers or employees described by Subdivision (1); and

(3) persons whose transportation furthers official state business.

(b) The board may not provide aircraft transportation to a passenger if the passenger is to be transported to or from a place where the passenger:

(1) will make or has made a speech not related to official state business;

(2) will attend or has attended an event sponsored by a political party;

(3) will perform a service or has performed a service for which the passenger is to receive an honorarium, unless the passenger reimburses the board for the cost of transportation;

(4) will attend or has attended an event at which money is raised for private or political purposes; or

(5) will attend or has attended an event at which an audience was charged an admission fee to see or hear the passenger. (V.A.C.S. Art. 4413(34b), Secs. 9(d), (e).)

Sec. 2205.037. **USE FOR POLITICAL PURPOSES; CIVIL LIABILITY.** (a) A person may not use a state-owned aircraft solely for political purposes or spend state funds for the use of an aircraft solely for political purposes.

(b) A person who violates this section is civilly liable to the state for the costs incurred by the state because of the violation. (V.A.C.S. Art. 6252-15.)

Sec. 2205.038. AIRCRAFT OPERATIONS MANUAL. (a) The board shall:

(1) prepare a manual that establishes minimum standards for the operation of aircraft by state agencies; and

(2) adopt procedures for the distribution of the manual to state agencies.

(b) The manual must include provisions for:

(1) pilot certification standards, including medical requirements for pilots

(2) recurring training programs for pilots;

(3) general operating and flight rules;

(4) coordinated passenger scheduling; and

(5) other issues the board determines are necessary to ensure the efficient and safe operation of aircraft by a state agency.

(c) The board shall confer with and solicit the written advice of state agencies the board determines are principal users of aircraft operated by the board and, to the extent practicable, incorporate that advice in the development of the manual and subsequent changes to the manual. (V.A.C.S. Art. 4413(34b), Sec. 12.)

Sec. 2205.039. TRAVEL LOG. (a) The Legislative Budget Board, in cooperation with the board, shall prescribe:

(1) a travel log form for gathering information about the use of state-operated aircraft;

(2) procedures to ensure that individuals who travel as passengers on or operate state-operated aircraft provide in a legible manner the information requested of them by the form; and

(3) procedures for each state agency that operates an aircraft for sending the form to the board and the Legislative Budget Board.

(b) The travel log form must request the following information about a state-operated aircraft each time the aircraft is flown:

(1) a mission statement, which may appear as a selection to be identified from general categories appearing on the form;

(2) the name, state agency represented, and signature of each person who is a passenger or crew member of the aircraft; and

(3) other information determined by the Legislative Budget Board and the board to be necessary to monitor the proper use of the aircraft. (V.A.C.S. Art. 4413(34b), Secs. 13(a), (b).)

Sec. 2205.040. BILLING PROCEDURES. The Legislative Budget Board, in cooperation with the board and the state auditor, shall prescribe a billing procedure for passenger travel on state-operated aircraft. (V.A.C.S. Art. 4413(34b), Sec. 14.)

Sec. 2205.041. AIRCRAFT USE FORM. The Legislative Budget Board, in cooperation with the board, shall prescribe:

(1) an annual aircraft use form for gathering information about the use of state-operated aircraft; and

(2) procedures for each state agency that operates an aircraft for sending the form to the board and the Legislative Budget Board. (V.A.C.S. Art. 4413(34b), Sec. 11(a).)

Sec. 2205.042. PILOTS. An individual who is not a pilot employed by the board may not operate a state-operated aircraft unless the board grants the individual a specific exemption from that requirement. (V.A.C.S. Art. 4413(34b), Sec. 15.)

Sec. 2205.043. AIRCRAFT MARKING. (a) Each aircraft owned or leased by the state, other than an aircraft used for law enforcement purposes, shall be marked:

(1) with the Texas state seal on each side of the aircraft's vertical stabilizer; and

(2) with the words "The State of Texas" on each side of the aircraft's fuselage.

(b) The board shall adopt rules, consistent with federal regulations, governing the color, size, and location of marks of identification required by this section. (V.A.C.S. Art. 4413(34b), Sec. 9A.)

Sec. 2205.044. FUEL AND MAINTENANCE CONTRACTS. The board may contract with a state or federal governmental agency or a political subdivision to provide aircraft fuel or to provide aircraft maintenance services. (V.A.C.S. Art. 4413(34b), Sec. 9(f).)

Sec. 2205.045. INSURANCE. (a) The board may purchase insurance to protect the board from loss caused by damage, loss, theft, or destruction of aircraft owned or leased by the state.

(b) The insurance must be on a form approved by the State Board of Insurance. (V.A.C.S. Art. 4413(34b), Sec. 9(h).)

[Chapters 2206 to 2250 reserved for expansion]

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2251. PAYMENT FOR GOODS AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2251.001. DEFINITIONS
- Sec. 2251.002. EXCEPTIONS
- Sec. 2251.003. RULES

[Sections 2251.004 to 2251.020 reserved for expansion]

SUBCHAPTER B. PAYMENTS AND INTEREST

- Sec. 2251.021. TIME FOR PAYMENT BY GOVERNMENTAL ENTITY
- Sec. 2251.022. TIME FOR PAYMENT BY VENDOR
- Sec. 2251.023. TIME FOR PAYMENT BY SUBCONTRACTOR
- Sec. 2251.024. MAILING OF PAYMENT
- Sec. 2251.025. INTEREST ON OVERDUE PAYMENT
- Sec. 2251.026. PAYMENT OF INTEREST BY STATE AGENCY
- Sec. 2251.027. PAYMENT OF INTEREST BY POLITICAL SUBDIVISION
- Sec. 2251.028. PAYMENT OF INTEREST BY VENDOR OR SUBCONTRACTOR
- Sec. 2251.029. PARTIAL PAYMENT
- Sec. 2251.030. EARLY PAYMENT DISCOUNT

[Sections 2251.031 to 2251.040 reserved for expansion]

SUBCHAPTER C. CLAIMS AND DISPUTES

- Sec. 2251.041. CLAIM FOR INTEREST IMPOSED AGAINST STATE AGENCY
- Sec. 2251.042. DISPUTED PAYMENT
- Sec. 2251.043. ATTORNEY FEES

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2251. PAYMENT FOR GOODS AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2251.001. DEFINITIONS. In this chapter:

- (1) "Goods" includes supplies, materials, or equipment.
- (2) "Governmental entity" means a state agency or political subdivision of this state.

(3) "Payment" means money owed to a vendor.

(4) "Political subdivision" means:

- (A) a county;
- (B) a municipality;
- (C) a public school district; or
- (D) a special-purpose district or authority.

(5) "State agency" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including a river authority and an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, a state judicial agency, or the State Bar of Texas.

(6) "Subcontractor" means a person who contracts with a vendor to work or contribute toward completing work for a governmental entity.

(7) "Vendor" means a person who supplies goods or services to a governmental entity. (New; V.A.C.S. Art. 601f, Sec. 1.)

Sec. 2251.002. EXCEPTIONS. (a) This chapter does not apply to a payment made by a governmental entity, vendor, or subcontractor if:

(1) the terms of a contract specify another time or method of payment or method of resolving a dispute or interest owed on a delinquent payment;

(2) there is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the services performed that causes the payment to be late;

(3) the terms of a federal contract, grant, regulation, or statute prevent the governmental entity from making a timely payment with federal funds; or

(4) the invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment.

(b) This chapter does not affect Chapter 2253. (V.A.C.S. Art. 601f, Sec. 7.)

Sec. 2251.003. RULES. The General Services Commission shall adopt rules to implement this chapter. (V.A.C.S. Art. 601f, Sec. 9.)

[Sections 2251.004 to 2251.020 reserved for expansion]

## SUBCHAPTER B. PAYMENTS AND INTEREST

Sec. 2251.021. TIME FOR PAYMENT BY GOVERNMENTAL ENTITY. (a) A payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

(1) the date the governmental entity receives the goods under the contract;

(2) the date the performance of the service under the contract is completed; or

(3) the date the governmental entity receives an invoice for the goods or services.

(b) For a contract executed on or after July 1, 1986, and before September 1, 1987, a payment by a governmental entity under that contract is overdue on the 46th day after the later event described by Subsections (a)(1) through (3). (V.A.C.S. Art. 601f, Secs. 2(a), (b); 3(a), (b); 5(a) (part).)

Sec. 2251.022. TIME FOR PAYMENT BY VENDOR. (a) A vendor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment.

(b) The appropriate share is overdue on the 11th day after the date the vendor receives the payment. (V.A.C.S. Art. 601f, Secs. 4(a) (part); 5(a) (part).)

Sec. 2251.023. TIME FOR PAYMENT BY SUBCONTRACTOR. (a) A subcontractor who receives a payment from a vendor shall pay a person who supplies goods or a service for which the payment is made the appropriate share of the payment not later than the 10th day after the date the subcontractor receives the payment.

(b) The appropriate share is overdue on the 11th day after the date the subcontractor receives the payment. (V.A.C.S. Art. 601f, Secs. 4(b) (part); 5(a) (part).)

Sec. 2251.024. MAILING OF PAYMENT. A payment is considered to be mailed on the date the payment is postmarked. (V.A.C.S. Art. 601f, Sec. 5(b) (part).)

Sec. 2251.025. INTEREST ON OVERDUE PAYMENT. (a) A payment begins to accrue interest on the date the payment is overdue.

(b) An overdue payment bears interest at the rate of one percent each month.

(c) Interest on an overdue payment stops accruing on the date the governmental entity or vendor mails or electronically transmits the payment. (V.A.C.S. Art. 601f, Secs. 4(a) (part), (b) (part); 5(a) (part), (b).)

Sec. 2251.026. PAYMENT OF INTEREST BY STATE AGENCY. If the warrant for a payment the originating state agency owes is not mailed or electronically transmitted before the payment is overdue, the agency is liable for an interest payment that accrues under this chapter. (V.A.C.S. Art. 601f, Secs. 3(c); 5(b) (part).)

Sec. 2251.027. PAYMENT OF INTEREST BY POLITICAL SUBDIVISION. (a) A political subdivision shall compute interest imposed on the political subdivision under this chapter.

(b) The political subdivision shall pay the interest at the time payment is made on the principal.

(c) The political subdivision shall submit the interest payment with the net amount due for goods and services.

(d) The political subdivision may not require a vendor to petition, bill, or wait an additional day to receive the interest due. (V.A.C.S. Art. 601f, Sec. 2(c).)

Sec. 2251.028. PAYMENT OF INTEREST BY VENDOR OR SUBCONTRACTOR. A vendor or subcontractor shall pay interest as a payment is overdue. (V.A.C.S. Art. 601f, Sec. 4(c).)

Sec. 2251.029. PARTIAL PAYMENT. (a) The unpaid balance of a partial payment made within the period provided by this chapter accrues interest as provided by Section 2251.025 unless the balance is in dispute.

(b) Section 2251.042 applies to a disputed balance. (V.A.C.S. Art. 601f, Sec. 5(c).)

Sec. 2251.030. EARLY PAYMENT DISCOUNT. (a) The intent of the legislature is that a governmental entity should take advantage of an offer for an early payment discount.

(b) A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period.

(c) If a governmental entity takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires. (V.A.C.S. Art. 601f, Sec. 8.)

[Sections 2251.031 to 2251.040 reserved for expansion]

### SUBCHAPTER C. CLAIMS AND DISPUTES

Sec. 2251.041. CLAIM FOR INTEREST IMPOSED AGAINST STATE AGENCY. (a) A vendor must present a claim for interest imposed against an originating state agency to the agency not later than the sixth month after the date the vendor receives payment.

(b) The vendor must accompany the claim with the envelope in which the warrant was received or other proof showing the date the payment was mailed or transmitted by the agency. (V.A.C.S. Art. 601f, Sec. 3(d).)

Sec. 2251.042. DISPUTED PAYMENT. (a) A governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice.

(b) If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor beginning on the date under Section 2251.021 that the payment for the invoice is overdue.

(c) If a dispute is resolved in favor of the governmental entity, the vendor shall submit a corrected invoice that must be paid in accordance with Section 2251.021. The unpaid balance accrues interest as provided by this chapter if the corrected invoice is not paid by the appropriate date. (V.A.C.S. Art. 601f, Sec. 6.)

Sec. 2251.043. ATTORNEY FEES. In a formal administrative or judicial action to collect an invoice payment or interest due under this chapter, the opposing party, which may be the governmental entity or the vendor, shall pay the reasonable attorney fees of the prevailing party. (V.A.C.S. Art. 601f, Sec. 10.)

## CHAPTER 2252. CONTRACTS WITH GOVERNMENTAL ENTITY

### SUBCHAPTER A. NONRESIDENT BIDDERS

- Sec. 2252.001. DEFINITIONS
- Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER
- Sec. 2252.003. PUBLICATION OF OTHER STATES' LAWS ON CONTRACTS
- Sec. 2252.004. CONTRACT INVOLVING FEDERAL FUNDS

[Sections 2252.005 to 2252.030 reserved for expansion]

### SUBCHAPTER B. INTEREST ON RETAINED PUBLIC WORKS CONTRACT PAYMENTS

- Sec. 2252.031. DEFINITIONS
- Sec. 2252.032. RETAINAGE
- Sec. 2252.033. EXEMPTIONS

[Sections 2252.034 to 2252.060 reserved for expansion]

### SUBCHAPTER C. PRIVATE AUXILIARY ENTERPRISE PROVIDING SERVICES TO STATE AGENCIES OR INSTITUTIONS OF HIGHER EDUCATION

- Sec. 2252.061. DEFINITIONS
- Sec. 2252.062. FINANCIAL STATEMENT
- Sec. 2252.063. PAYMENT STATEMENT
- Sec. 2252.064. PERFORMANCE BOND

## CHAPTER 2252. CONTRACTS WITH GOVERNMENTAL ENTITY

### SUBCHAPTER A. NONRESIDENT BIDDERS

Sec. 2252.001. DEFINITIONS. In this subchapter:

(1) "Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

(2) "Governmental entity" means:

(A) the state;

(B) a municipality, county, public school district, or special-purpose district or authority;

(C) a district, county, or justice of the peace court;

(D) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(E) the legislature or a legislative agency; or

(F) the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

(3) "Nonresident bidder" refers to a person who is not a resident.

(4) "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state. (V.A.C.S. Art. 601g, Sec. 1(a).)

Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. (V.A.C.S. Art. 601g, Sec. 1(b) (part).)

Sec. 2252.003. PUBLICATION OF OTHER STATES' LAWS ON CONTRACTS. (a) The General Services Commission annually shall publish in the Texas Register:

(1) a list showing each state that regulates the award of a governmental contract to a bidder whose principal place of business is not located in that state; and

(2) the citation to and a summary of each state's most recent law or regulation relating to the evaluation of a bid from and award of a contract to a bidder whose principal place of business is not located in that state.

(b) A governmental entity shall use the information published under this section to evaluate the bid of a nonresident bidder. A governmental entity may rely on information published under this section to meet the requirements of Section 2252.002. (V.A.C.S. Art. 601g, Sec. 1(b) (part).)

Sec. 2252.004. CONTRACT INVOLVING FEDERAL FUNDS. This chapter does not apply to a contract involving federal funds. (V.A.C.S. Art. 601g, Sec. 1(c).)

[Sections 2252.005 to 2252.030 reserved for expansion]

## SUBCHAPTER B. INTEREST ON RETAINED PUBLIC WORKS CONTRACT PAYMENTS

Sec. 2252.031. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means:

(A) the state, a county, or a municipality;

(B) a department, board, or agency of the state, a county, or a municipality;

(C) a school district or a subdivision of a school district; or

(D) any other governmental or quasi-governmental authority authorized by statute to make a public works contract.

(2) "Prime contractor" means a person or persons, firm, or corporation contracting with a governmental entity for a public work.

(3) "Public works" includes the construction, alteration, or repair of a public building or the construction or completion of a public work.

(4) "Public works contract payment" means a payment by a governmental entity for the value of labor, material, machinery, fixtures, tools, power, water, fuel, or lubricants used or consumed, ordered and delivered for use or consumption, or specially fabricated for use or consumption but not yet delivered, in the direct performance of a public works contract.

(5) "Retainage" means the part of a public works contract payment withheld by a governmental entity to secure performance of the contract. (V.A.C.S. Art. 6252-5b, Sec. 1.)

Sec. 2252.032. RETAINAGE. A governmental entity shall:

(1) deposit in an interest-bearing account the retainage of a public works contract that provides for retainage of more than five percent of the periodic contract payment; and

(2) pay the interest earned on the retainage to the prime contractor on completion of the contract. (V.A.C.S. Art. 6252-5b, Sec. 2.)

Sec. 2252.033. EXEMPTIONS. This chapter does not apply to:

(1) a public works contract executed before August 31, 1981;

(2) a public works contract in which the total contract price estimate at the time of execution of the contract is less than \$400,000; or

(3) a public works contract made by the Texas Department of Transportation under Chapter 186, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6674a et seq., Vernon's Texas Civil Statutes). (V.A.C.S. Art. 6252-5b, Sec. 3 (part).)

[Sections 2252.034 to 2252.060 reserved for expansion]

### SUBCHAPTER C. PRIVATE AUXILIARY ENTERPRISE PROVIDING SERVICES TO STATE AGENCIES OR INSTITUTIONS OF HIGHER EDUCATION

Sec. 2252.061. DEFINITIONS. In this subchapter:

(1) "Auxiliary enterprise" means a business activity that is conducted at a state agency, provides a service to the agency, and is not paid for with appropriated money.

(2) "Contractor" means an individual, association, corporation, or other business entity that operates an auxiliary enterprise or performs a service of the auxiliary enterprise.

(3) "State agency" includes a state-supported institution of higher education. (V.A.C.S. Art. 6252-5c, Sec. 1; New.)

Sec. 2252.062. FINANCIAL STATEMENT. A contractor must present at the time of contracting with a state agency a financial statement prepared by a certified public accountant. (V.A.C.S. Art. 6252-5c, Sec. 2.)

Sec. 2252.063. PAYMENT STATEMENT. (a) A contractor must provide to the contracting state agency payment statements derived from sales tax reports.

(b) The contractor annually must provide the payment statements in accordance with the requirements of the state agency.

(c) A payment statement must be certified by a certified public accountant licensed in this state. (V.A.C.S. Art. 6252-5c, Sec. 3.)

Sec. 2252.064. PERFORMANCE BOND. (a) A contractor shall execute a bond issued by a surety company authorized to do business in this state in an amount determined by the contracting state agency, but not to exceed the contract price.

(b) The bond must be payable to the state and conditioned on the faithful performance of the terms of the contract. (V.A.C.S. Art. 6252-5c, Sec. 4.)

## CHAPTER 2253. PUBLIC WORK PERFORMANCE AND PAYMENT BONDS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2253.001. DEFINITIONS

[Sections 2253.002 to 2253.020 reserved for expansion]

### SUBCHAPTER B. GENERAL REQUIREMENTS; LIABILITY

Sec. 2253.021. PERFORMANCE AND PAYMENT BONDS REQUIRED



- Sec. 2253.022. BOND PROHIBITED FOR CONTRACT OF \$25,000 OR LESS
- Sec. 2253.023. ATTEMPTED COMPLIANCE
- Sec. 2253.024. INFORMATION FROM CONTRACTOR OR SUBCONTRACTOR
- Sec. 2253.025. INFORMATION FROM PAYMENT BOND BENEFICIARY
- Sec. 2253.026. COPY OF PAYMENT BOND AND CONTRACT
- Sec. 2253.027. LIABILITY OF GOVERNMENTAL ENTITY

[Sections 2253.028 to 2253.040 reserved for expansion]

SUBCHAPTER C. NOTICE REQUIREMENTS

- Sec. 2253.041. NOTICE REQUIRED FOR CLAIM FOR PAYMENT FOR LABOR OR MATERIAL
- Sec. 2253.042. COPY OF AGREEMENT AS NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL
- Sec. 2253.043. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL WHEN WRITTEN AGREEMENT DOES NOT EXIST
- Sec. 2253.044. NOTICE OF CLAIM FOR MULTIPLE ITEMS OF LABOR OR MATERIAL
- Sec. 2253.045. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL UNDER WRITTEN UNIT PRICE AGREEMENT
- Sec. 2253.046. NOTICE REQUIRED FOR CLAIM FOR PAYMENT OF RETAINAGE
- Sec. 2253.047. ADDITIONAL NOTICE REQUIRED FOR PAYMENT BOND BENEFICIARY WITHOUT DIRECT CONTRACTUAL RELATIONSHIP WITH PRIME CONTRACTOR
- Sec. 2253.048. MAILING NOTICE

[Sections 2253.049 to 2253.070 reserved for expansion]

SUBCHAPTER D. CLAIMS ON BONDS; ENFORCEMENT

- Sec. 2253.071. TERMINATION OR ABANDONMENT OF CONTRACT; PROCEEDS OF CONTRACT
- Sec. 2253.072. STATE NOT LIABLE FOR COSTS
- Sec. 2253.073. SUIT ON PAYMENT BOND
- Sec. 2253.074. COSTS AND ATTORNEY FEES
- Sec. 2253.075. ASSIGNMENT OF CLAIM
- Sec. 2253.076. LIMITATIONS ON CERTAIN CLAIMS; MAXIMUM RETAINAGE
- Sec. 2253.077. VENUE
- Sec. 2253.078. STATUTE OF LIMITATIONS
- Sec. 2253.079. CRIMINAL OFFENSE FOR FALSE AND FRAUDULENT CLAIM

CHAPTER 2253. PUBLIC WORK PERFORMANCE AND PAYMENT BONDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2253.001. DEFINITIONS. In this chapter:

(1) "Governmental entity" means a governmental or quasi-governmental authority authorized by state law to make a public work contract, including:

- (A) the state, a county, or a municipality;
- (B) a department, board, or agency of the state, a county, or a municipality; and
- (C) a school district or a subdivision of a school district.

(2) "Payment bond beneficiary" means a person for whose protection and use this chapter requires a payment bond.

(3) "Prime contractor" means a person, firm, or corporation that makes a public work contract with a governmental entity.

(4) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

(5) "Public work labor" means labor used directly to carry out a public work.

(6) "Public work material" means:

(A) material used, or ordered and delivered for use, directly to carry out a public work;

(B) specially fabricated material;

(C) reasonable rental and actual running repair costs for construction equipment used, or reasonably required and delivered for use, directly to carry out work at the project site; or

(D) power, water, fuel, and lubricants used, or ordered and delivered for use, directly to carry out a public work.

(7) "Retainage" means the part of the payments under a public work contract that are not required to be paid within the month after the month in which the public work labor is performed or public work material is delivered under the contract.

(8) "Specially fabricated material" means material ordered by a prime contractor or subcontractor that is:

(A) specially fabricated for use in a public work; and

(B) reasonably unsuitable for another use.

(9) "Subcontractor" means a person, firm, or corporation that provides public work labor or material to fulfill an obligation to a prime contractor or to a contractor of the prime contractor for the performance and installation of any of the work required by a public work contract. (V.A.C.S. Art. 5160, Secs. A (part), B (part), C (part); New.)

[Sections 2253.002 to 2253.020 reserved for expansion]

## SUBCHAPTER B. GENERAL REQUIREMENTS; LIABILITY

Sec. 2253.021. PERFORMANCE AND PAYMENT BONDS REQUIRED. (a) A governmental entity that makes a public work contract for more than \$25,000 with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity a performance bond and a payment bond.

(b) The performance bond is:

(1) solely for the protection of the state or governmental entity awarding the public work contract;

(2) in the amount of the contract; and

(3) conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

(c) The payment bond is:

(1) solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material; and

(2) in the amount of the contract.

(d) A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

(e) A bond executed for a public work contract with the state or a department, board, or agency of the state must be payable to the state and its form must be approved by the attorney general. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity. (V.A.C.S. Art. 5160, Secs. A (part), C (part).)

Sec. 2253.022. BOND PROHIBITED FOR CONTRACT OF \$25,000 OR LESS. A governmental entity may not require a bond for a public work contract for \$25,000 or less. (V.A.C.S. Art. 5160, Sec. A (part).)

Sec. 2253.023. ATTEMPTED COMPLIANCE. (a) A bond furnished by a prime contractor in an attempt to comply with this chapter shall be construed to comply with this chapter regarding the rights created, limitations on those rights, and remedies provided.

(b) A provision in a bond furnished by a prime contractor in an attempt to comply with this chapter that expands or restricts a right or liability under this chapter shall be disregarded, and this chapter shall apply to that bond. (V.A.C.S. Art. 5160, Sec. A (part).)

Sec. 2253.024. INFORMATION FROM CONTRACTOR OR SUBCONTRACTOR. (a) A prime contractor, on the written request of a person who provides public work labor or material and when required by Subsection (c), shall provide to the person:

(1) the name and last known address of the governmental entity with whom the prime contractor contracted for the public work; and

(2) a copy of the payment and performance bonds for the public work, including bonds furnished by or to the prime contractor.

(b) A subcontractor, on the written request of a governmental entity, the prime contractor, a surety on a bond that covers the public work contract, or a person providing work under the subcontract and when required by Subsection (c), shall provide to the person requesting the information:

(1) the name and last known address of each person from whom the subcontractor purchased public work labor or material, other than public work material from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor provided public work labor or material;

(3) a statement of whether the subcontractor furnished a bond for the benefit of its subcontractors and materialmen;

(4) the name and last known address of the surety on the bond the subcontractor furnished; and

(5) a copy of that bond.

(c) Information requested shall be provided within a reasonable time but not later than the 10th day after the receipt of the written request for the information.

(d) A person from whom information is requested may require payment of the actual cost, not to exceed \$25, for providing the requested information if the person does not have a direct contractual relationship with the person requesting information that relates to the public work.

(e) A person who fails to provide information required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in getting the requested information. (V.A.C.S. Art. 5160, Secs. I(a), (b), (d), (e).)

Sec. 2253.025. INFORMATION FROM PAYMENT BOND BENEFICIARY. (a) A payment bond beneficiary, not later than the 30th day after the date the beneficiary receives a written request from the prime contractor or a surety on a bond on which a claim is made, shall provide to the contractor or surety:

(1) a copy of any applicable written agreement or purchase order; and

(2) any statement or payment request of the beneficiary that shows the amount claimed and the work performed by the beneficiary for which the claim is made.

(b) If requested, the payment bond beneficiary shall provide the estimated amount due for each calendar month in which the beneficiary performed public work labor or provided public work material. (V.A.C.S. Art. 5160, Sec. I(c).)

Sec. 2253.026. COPY OF PAYMENT BOND AND CONTRACT. (a) A governmental entity shall furnish a certified copy of a payment bond and the public work contract for which the bond was given to any person who applies for the copy and who submits an affidavit that the person:

- (1) has supplied public work labor or material for which the person has not been paid;
- (2) has contracted for specially fabricated material for which the person has not been paid; or
- (3) is being sued on a payment bond.

(b) The copy of the payment bond or public work contract is prima facie evidence of the content, execution, and delivery of the original.

(c) An applicant under this section shall pay any reasonable fee set by the governmental entity for the actual cost of preparation of the copies. (V.A.C.S. Art. 5160, Sec. F.)

**Sec. 2253.027. LIABILITY OF GOVERNMENTAL ENTITY.** If a governmental entity fails to obtain from a prime contractor a payment bond as required by Section 2253.021:

- (1) the entity is subject to the same liability that a surety would have if the surety had issued a payment bond and if the entity had obtained the bond; and
- (2) a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to Subchapter J, Chapter 53, Property Code. (V.A.C.S. Art. 5160, Sec. A (part).)

[Sections 2253.028 to 2253.040 reserved for expansion]

### **SUBCHAPTER C. NOTICE REQUIREMENTS**

**Sec. 2253.041. NOTICE REQUIRED FOR CLAIM FOR PAYMENT FOR LABOR OR MATERIAL.** (a) To recover in a suit under Section 2253.073 on a payment bond for a claim for payment for public work labor performed or public work material delivered, a payment bond beneficiary must mail to the prime contractor and the surety written notice of the claim.

(b) The notice must be mailed on or before the 15th day of the third month after each month in which any of the claimed labor was performed or any of the claimed material was delivered.

(c) The notice must be accompanied by a sworn statement of account that states in substance:

- (1) the amount claimed is just and correct; and
- (2) all just and lawful offsets, payments, and credits known to the affiant have been allowed.

(d) The statement of account shall include the amount of any retainage applicable to the account that has not become due under the terms of the public work contract between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and a subcontractor. (V.A.C.S. Art. 5160, Sec. B (part).)

**Sec. 2253.042. COPY OF AGREEMENT AS NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL.** A payment bond beneficiary has the option to enclose with the sworn statement of account, as the notice for a claim under a written agreement for payment for public work labor performed or public work material delivered, a copy of the written agreement and a statement of the completion or the value of partial completion of the agreement. (V.A.C.S. Art. 5160, Sec. B (part).)

**Sec. 2253.043. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL WHEN WRITTEN AGREEMENT DOES NOT EXIST.** (a) Except as provided by Section 2253.044, if a written agreement does not exist between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and the subcontractor, the notice for a claim for unpaid bills must contain:

- (1) the name of the party for whom the public work labor was performed or to whom the public work material was delivered;
- (2) the approximate date of performance or delivery;
- (3) a description of the public work labor or material for reasonable identification; and
- (4) the amount due.

(b) The payment bond beneficiary must generally itemize the claim and include with it copies of documents, invoices, or orders that reasonably identify:

- (1) the public work labor performed or public work material delivered for which the claim is made;
- (2) the job; and
- (3) the destination of delivery. (V.A.C.S. Art. 5160, Sec. B (part).)

Sec. 2253.044. NOTICE OF CLAIM FOR MULTIPLE ITEMS OF LABOR OR MATERIAL. The notice for a claim for lump-sum payment for multiple items of public work labor or material must:

- (1) describe the labor or material in a manner that reasonably identifies the labor or material;
- (2) state the name of the party for whom the labor was performed or to whom the material was delivered;
- (3) state the approximate date of performance or delivery;
- (4) state whether the contract is written or oral;
- (5) state the amount of the contract; and
- (6) state the amount claimed. (V.A.C.S. Art. 5160, Sec. B (part).)

Sec. 2253.045. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL UNDER WRITTEN UNIT PRICE AGREEMENT. The notice for a claim for public work labor performed or public work material delivered by a payment bond beneficiary who is a subcontractor or materialman to the prime contractor or to a subcontractor and who has a written unit price agreement that is wholly or partially completed is sufficient if the beneficiary attaches to the sworn statement of account:

- (1) a list of units and unit prices set by the contract; and
- (2) a statement of those completed and partially completed units. (V.A.C.S. Art. 5160, Sec. B (part).)

Sec. 2253.046. NOTICE REQUIRED FOR CLAIM FOR PAYMENT OF RETAINAGE. (a) To recover in a suit under Section 2253.073 on a payment bond for a claim for payment of retainage, a payment bond beneficiary whose contract with a prime contractor or subcontractor provides for retainage must mail written notice of the claim to the prime contractor and the surety on or before the 90th day after the date of final completion of the public work contract.

- (b) The notice shall consist of a statement of:
  - (1) the amount of the contract;
  - (2) any amount paid; and
  - (3) the outstanding balance.

(c) Notice of a claim for payment of retainage is not required if the amount claimed is part of a prior claim made under this subchapter. (V.A.C.S. Art. 5160, Sec. B (part).)

Sec. 2253.047. ADDITIONAL NOTICE REQUIRED FOR PAYMENT BOND BENEFICIARY WITHOUT DIRECT CONTRACTUAL RELATIONSHIP WITH PRIME CONTRACTOR. (a) To recover in a suit under Section 2253.073 on a payment bond, a payment bond beneficiary who does not have a direct contractual relationship with the prime contractor for public work labor or material must mail notice as required by this section.

(b) A payment bond beneficiary who contracts with a subcontractor for retainage must mail, on or before the 15th day of the second month after the date of the beginning of the delivery of public work material or the performance of public work labor, written notice to the prime contractor that:

- (1) the contract provides for retainage; and
- (2) generally indicates the nature of the retainage.

(c) The payment bond beneficiary must mail to the prime contractor written notice of a claim for any unpaid public work labor performed or public work material delivered. The notice must be mailed on or before the 15th day of the second month after each month in

which the labor was performed or the material was delivered. A copy of the statement sent to a subcontractor is sufficient as notice under this subsection.

(d) The payment bond beneficiary must mail to the prime contractor, on or before the 15th day of the second month after the receipt and acceptance of an order for specially fabricated material, written notice that the order has been received and accepted.

(e) This section applies only to a payment bond beneficiary who is not an individual mechanic or laborer and who makes a claim for wages. (V.A.C.S. Art. 5160, Sec. B (part).)

Sec. 2253.048. MAILING NOTICE. (a) A notice required by this subchapter to be mailed must be sent by certified or registered mail.

(b) A notice required by this subchapter to be mailed to a prime contractor must be addressed to the prime contractor at the contractor's residence or last known business address. (V.A.C.S. Art. 5160, Sec. B (part).)

[Sections 2253.049 to 2253.070 reserved for expansion]

#### SUBCHAPTER D. CLAIMS ON BONDS; ENFORCEMENT

Sec. 2253.071. TERMINATION OR ABANDONMENT OF CONTRACT; PROCEEDS OF CONTRACT. (a) The proceeds of a public work contract are not payable, until all costs of completion of the contract work are paid by the contractor or the contractor's surety, to a contractor who furnishes a bond required by this chapter if:

(1) the contractor abandons performance of the contract; or

(2) the contractor's right to proceed with performance of the contract is lawfully terminated by the awarding governmental entity because of the contractor's default.

(b) The balance of the public work contract proceeds remaining after the costs of completion are paid shall be paid according to the contractor's and the surety's interests as may be established by agreement or by judgment of a court.

(c) A surety that completes a public work contract or incurs a loss under a performance bond required under this chapter has a claim to the proceeds of the contract prior to all other creditors of the prime contractor to the full extent of the surety's loss. That priority does not excuse the surety from paying an obligation under a payment bond. (V.A.C.S. Art. 5160, Sec. E.)

Sec. 2253.072. STATE NOT LIABLE FOR COSTS. The state is not liable for payment of a cost or expense of a suit brought by any party on a payment bond furnished under this chapter. (V.A.C.S. Art. 5160, Sec. G (part).)

Sec. 2253.073. SUIT ON PAYMENT BOND. (a) A payment bond beneficiary who has provided public work labor or material under a public work contract for which a payment bond is furnished under this chapter may sue the principal or surety, jointly or severally, on the payment bond if the claim is not paid before the 61st day after the date the notice for the claim is mailed.

(b) Suit may be brought under Subsection (a) for:

(1) the unpaid balance of the beneficiary's claim at the time the claim was mailed or the suit is brought; and

(2) reasonable attorney fees. (V.A.C.S. Art. 5160, Sec. B (part).)

Sec. 2253.074. COSTS AND ATTORNEY FEES. A court may award costs and reasonable attorney fees that are equitable in a proceeding to enforce a claim on a payment bond or to declare that any part of a claim is invalid. (V.A.C.S. Art. 5160, Sec. H.)

Sec. 2253.075. ASSIGNMENT OF CLAIM. A third party to whom a claim is assigned is in the same position as a payment bond beneficiary if notice is given as required by this chapter. (V.A.C.S. Art. 5160, Sec. C (part).)

Sec. 2253.076. LIMITATIONS ON CERTAIN CLAIMS; MAXIMUM RETAINAGE. (a) The amount of a subcontractor's claim, including previous payments, may not exceed the proportion of the subcontract price that the work done bears to the total of the work covered by the subcontract.

(b) A claim for specially fabricated material that has not been delivered or incorporated into the public work is limited to material that conforms to and complies with the plans, specifications, and contract documents for the material. The amount of the claim may not exceed the reasonable cost, less the fair salvage value, of the specially fabricated material.

(c) A claim for retainage in a notice under this subchapter is not valid for an amount greater than the amount of retainage specified in the public work contract between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and the subcontractor. A claim for retainage is never valid for an amount greater than 10 percent of the amount of that contract. (V.A.C.S. Art. 5160, Secs. B (part), C (part).)

Sec. 2253.077. VENUE. A suit under this chapter shall be brought in a court in a county in which any part of the public work is located. (V.A.C.S. Art. 5160, Sec. G (part).)

Sec. 2253.078. STATUTE OF LIMITATIONS. (a) A suit on a performance bond may not be brought after the first anniversary of the date of final completion, abandonment, or termination of the public work contract.

(b) A suit on a payment bond may not be brought by a payment bond beneficiary after the first anniversary of the date notice for a claim is mailed under this chapter. (V.A.C.S. Art. 5160, Sec. G (part).)

Sec. 2253.079. CRIMINAL OFFENSE FOR FALSE AND FRAUDULENT CLAIM.

(a) A person commits an offense if the person wilfully files a false and fraudulent claim under this chapter.

(b) An offense under this section is subject to the penalty for false swearing. (V.A.C.S. Art. 5160, Sec. D.)

## CHAPTER 2254. PROFESSIONAL AND CONSULTING SERVICES

### SUBCHAPTER A. PROFESSIONAL SERVICES

- Sec. 2254.001. SHORT TITLE
- Sec. 2254.002. DEFINITIONS
- Sec. 2254.003. SELECTION OF PROVIDER; FEES
- Sec. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT OR ENGINEER
- Sec. 2254.005. VOID CONTRACT

[Sections 2254.006 to 2254.020 reserved for expansion]

### SUBCHAPTER B. CONSULTING SERVICES

- Sec. 2254.021. DEFINITIONS
- Sec. 2254.022. INTERPRETATION OF SUBCHAPTER
- Sec. 2254.023. APPLICABILITY OF SUBCHAPTER
- Sec. 2254.024. EXEMPTIONS
- Sec. 2254.025. EMERGENCY WAIVER
- Sec. 2254.026. CONTRACT WITH PRIVATE CONSULTANT
- Sec. 2254.027. SELECTION OF PRIVATE CONSULTANT
- Sec. 2254.028. NOTICE OF INTENT: MAJOR CONSULTING SERVICES CONTRACT
- Sec. 2254.029. PUBLICATION IN TEXAS REGISTER BEFORE ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT
- Sec. 2254.030. PUBLICATION IN TEXAS REGISTER AFTER ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT
- Sec. 2254.031. RENEWAL; AMENDMENT; EXTENSION
- Sec. 2254.032. CONFLICTS OF INTEREST
- Sec. 2254.033. RESTRICTION ON FORMER EMPLOYEES OF A STATE AGENCY
- Sec. 2254.034. CONTRACT VOID
- Sec. 2254.035. DIVIDING CONTRACTS
- Sec. 2254.036. ARCHIVES

- Sec. 2254.037. REPORTS
- Sec. 2254.038. MIXED CONTRACTS
- Sec. 2254.039. COMPTROLLER'S RULES
- Sec. 2254.040. PROCUREMENT BY GENERAL SERVICES COMMISSION

CHAPTER 2254. PROFESSIONAL AND CONSULTING SERVICES

SUBCHAPTER A. PROFESSIONAL SERVICES

Sec. 2254.001. SHORT TITLE. This subchapter may be cited as the Professional Services Procurement Act. (V.A.C.S. Art. 664-4, Sec. 1.)

Sec. 2254.002. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means:

- (A) a state agency or department;
- (B) a district, authority, county, municipality, or other political subdivision of the state;
- or
- (C) a publicly owned utility.

(2) "Professional services" means services:

- (A) within the scope of the practice, as defined by state law, of:
  - (i) accounting;
  - (ii) architecture;
  - (iii) land surveying;
  - (iv) medicine;
  - (v) optometry; or
  - (vi) professional engineering; or
- (B) provided in connection with the professional employment or practice of a person who is licensed as:
  - (i) a certified public accountant;
  - (ii) an architect;
  - (iii) a land surveyor;
  - (iv) a physician, including a surgeon;
  - (v) an optometrist; or
  - (vi) a professional engineer. (V.A.C.S. Art. 664-4, Sec. 2; New.)

Sec. 2254.003. SELECTION OF PROVIDER; FEES. (a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

(b) The professional fees under the contract:

(1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and

(2) may not exceed any maximum provided by law. (V.A.C.S. Art. 664-4, Sec. 3.)

Sec. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT OR ENGINEER. (a) In procuring architectural or engineering services, a governmental entity shall:

(1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.



(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural or engineering services, the entity shall:

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider; and
- (3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into. (V.A.C.S. Art. 664-4, Sec. 3A.)

Sec. 2254.005. VOID CONTRACT. A contract entered into or an arrangement made in violation of this subchapter is void as against public policy. (V.A.C.S. Art. 664-4, Sec. 4.)

[Sections 2254.006 to 2254.020 reserved for expansion]

## SUBCHAPTER B. CONSULTING SERVICES

Sec. 2254.021. DEFINITIONS. In this subchapter:

(1) "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

(2) "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$10,000.

(3) "Private consultant" means a person that provides or proposes to provide a consulting service.

(4) "State agency" means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education, other than a public junior college, as those terms are defined by Section 61.003, Education Code. (V.A.C.S. Art. 6252-11c, Sec. 1; New.)

Sec. 2254.022. INTERPRETATION OF SUBCHAPTER. (a) This subchapter shall be interpreted to ensure:

(1) the greatest and fairest competition in the selection by state agencies of private consultants; and

(2) the giving of notice to all potential private consultants of the need for and opportunity to provide consulting services.

(b) This subchapter does not:

(1) discourage state agencies from using private consultants if the agencies reasonably foresee that the use of private consultants will produce a more efficient and less costly operation or project;

(2) prohibit the making of a sole-source contract for consulting services if a proposal is not received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after compliance with this subchapter; or

(3) require or prohibit the use of competitive bidding procedures to purchase consulting services. (V.A.C.S. Art. 6252-11c, Sec. 16.)

Sec. 2254.023. APPLICABILITY OF SUBCHAPTER. This subchapter applies to consulting services that a state agency acquires with money:

(1) appropriated by the legislature;

(2) derived from the exercise of the statutory duties of a state agency; or

(3) received from the federal government, unless a federal law or regulation conflicts with the application of this subchapter. (V.A.C.S. Art. 6252-11c, Sec. 2(b).)

Sec. 2254.024. EXEMPTIONS. (a) This subchapter does not apply to or discourage the use of consulting services provided by:

(1) practitioners of professional services described in Subchapter A;

(2) private legal counsel;

(3) investment counselors;

(4) actuaries;

(5) medical or dental services providers; or

(6) other consultants whose services are determined by the governing board of a retirement system trust fund to be necessary for the governing board to perform its constitutional fiduciary duties, except that the governing board shall comply with Section 2254.030.

(b) If the governor, comptroller, and General Services Commission consider it more advantageous to the state to procure a particular consulting service under the procedures of Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), instead of under this subchapter, they may make a memorandum of understanding to that effect and each adopt the memorandum by rule. Procurement of a consulting service described in a memorandum of understanding under this subsection is subject only to Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(c) The comptroller by rule may define circumstances in which a state agency may procure, without complying with this subchapter, certain consulting services that will cost less than a minimum amount established by the comptroller. The comptroller must determine that noncompliance in those circumstances is more cost-effective for the state. (V.A.C.S. Art. 6252-11c, Secs. 2(a), (c), (d).)

Sec. 2254.025. EMERGENCY WAIVER. (a) The governor, after receipt of a request complying with this section, may grant a limited waiver of the provisions of this subchapter for a state agency that requires private consulting services before compliance with this subchapter can be completed because of an unforeseen emergency

(b) A state agency's request for a waiver must include information required by the governor, including:

(1) information about the nature of the emergency;

(2) the reason that the state agency did not foresee the emergency;

(3) the name of the private consultant with whom the agency intends to contract; and

(4) the amount of the intended contract.

(c) As soon as possible after the governor grants a limited waiver, a state agency shall comply with this subchapter to the extent that the requirements of this subchapter are not superfluous or ineffective because of the waiver. The agency shall include with information filed with the secretary of state for publication in the Texas Register a detailed description of the emergency on which the request for waiver was predicated

(d) The governor shall adopt rules to administer this section.

(e) In this section, "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a private consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.

(f) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts. (V.A.C.S. Art. 6252-11c, Sec. 10.)

Sec. 2254.026. CONTRACT WITH PRIVATE CONSULTANT. A state agency may contract with a private consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with another state agency. (V.A.C.S. Art. 6252-11c, Sec. 3(a).)

Sec. 2254.027. SELECTION OF PRIVATE CONSULTANT. In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(2) if other considerations are equal, give preference to a private consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state. (V.A.C.S. Art. 6252-11c, Sec. 3(b).)

Sec. 2254.028. NOTICE OF INTENT: MAJOR CONSULTING SERVICES CONTRACT. (a) Before entering into a major consulting services contract, a state agency shall:

(1) notify the Legislative Budget Board and the governor's Budget and Planning Office that the agency intends to contract with a private consultant;

(2) give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Sections 2254.026 and 2254.027; and

(3) obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary.

(b) A major consulting services contract that a state agency enters into without first obtaining the finding required by Subsection (a)(3) is void. (V.A.C.S. Art. 6252-11c, Sec. 4.)

Sec. 2254.029. PUBLICATION IN TEXAS REGISTER BEFORE ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT. (a) Not later than the 30th day before the date it enters into a major consulting services contract, a state agency shall file with the secretary of state for publication in the Texas Register:

(1) an invitation for private consultants to provide offers of consulting services;

(2) the name of the individual who should be contacted by a private consultant that intends to make an offer;

(3) the closing date for the receipt of offers; and

(4) the procedure by which the state agency will award the contract.

(b) If the consulting services sought by a state agency relate to services previously provided by a private consultant, the agency shall disclose that fact in the invitation required by Subsection (a). If the state agency intends to award the contract for the consulting services to a private consultant that previously provided the services, unless a better offer is received, the agency shall disclose its intention in the invitation required by Subsection (a). (V.A.C.S. Art. 6252-11c, Sec. 5.)

Sec. 2254.030. PUBLICATION IN TEXAS REGISTER AFTER ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT. Not later than the 10th day after the date of entering into a major consulting services contract, the state agency shall file with the secretary of state for publication in the Texas Register:

(1) a description of the activities that the private consultant will conduct;

(2) the name and business address of the private consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the dates on which documents, films, recordings, or reports that the private consultant is required to present to the agency are due. (V.A.C.S. Art. 6252-11c, Sec. 6.)

Sec. 2254.031. RENEWAL; AMENDMENT; EXTENSION. (a) A state agency that intends to renew a major consulting services contract shall:

(1) file with the secretary of state for publication in the Texas Register the information required by Section 2254.030 not later than the 10th day after the date the contract is renewed if the renewal contract is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the renewal contract is a major consulting services contract.

(b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$10,000.

(c) A state agency that intends to amend or extend a major consulting services contract shall:

(1) not later than the 10th day after the date the contract is amended or extended, file the information required by Section 2254.030 with the secretary of state for publication in

the Texas Register if the contract after the amendment or extension is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the contract after the amendment or extension is a major consulting services contract.

(d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$10,000. (V.A.C.S. Art. 6252-11c, Sec. 7.)

Sec. 2254.032. CONFLICTS OF INTEREST. (a) An officer or employee of a state agency shall report to the chief executive of the agency, not later than the 10th day after the date on which a private consultant submits an offer to provide consulting services to the agency, any financial interest that:

(1) the officer or employee has in the private consultant who submitted the offer; or

(2) an individual who is related to the officer or employee within the second degree by consanguinity or affinity, as determined under Chapter 573, has in the private consultant who submitted the offer.

(b) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts. (V.A.C.S. Art. 6252-11c, Sec. 8.)

Sec. 2254.033. RESTRICTION ON FORMER EMPLOYEES OF A STATE AGENCY.

(a) An individual who offers to provide consulting services to a state agency and who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer:

(1) the nature of the previous employment with the agency or the other agency;

(2) the date the employment was terminated; and

(3) the annual rate of compensation for the employment at the time of its termination.

(b) A state agency that accepts an offer from an individual described in Subsection (a) shall include in the information filed under Section 2254.030 a statement about the individual's previous employment and the nature of the employment. (V.A.C.S. Art. 6252-11c, Sec. 9.)

Sec. 2254.034. CONTRACT VOID. (a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void.

(b) A contract entered into with a private consultant who did not comply with Section 2254.033 is void.

(c) If a contract is void under this section:

(1) the comptroller may not draw a warrant or transmit money to satisfy an obligation under the contract; and

(2) a state agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury until the agency has complied with Sections 2254.029 through 2254.031.

(d) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts. (V.A.C.S. Art. 6252-11c, Sec. 11.)

Sec. 2254.035. DIVIDING CONTRACTS. (a) A state agency may not divide a consulting services contract into more than one contract to avoid the requirements of this subchapter.

(b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts. (V.A.C.S. Art. 6252-11c, Sec. 12.)

Sec. 2254.036. ARCHIVES. (a) On request, a state agency shall, after the agency's contract with a private consultant has ended, supply the Legislative Budget Board and the governor's Budget and Planning Office with copies of all documents, films, recordings, or reports compiled by the consultant under the contract.

(b) Copies of all documents, films, recordings, or reports compiled by the private consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years.

(c) The Texas State Library shall list each document, film, recording, and report given to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register. (V.A.C.S. Art. 6252-11c, Sec. 13.)

Sec. 2254.037. REPORTS. As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall report to the Legislative Budget Board and the governor's Budget and Planning Office on any actions taken in response to the recommendations of any private consultant with whom the state agency contracts during the previous biennium. (V.A.C.S. Art. 6252-11c, Sec. 14.)

Sec. 2254.038. MIXED CONTRACTS. This subchapter applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services. (V.A.C.S. Art. 6252-11c, Sec. 15.)

Sec. 2254.039. COMPTROLLER'S RULES. (a) The comptroller shall adopt rules to implement and administer this subchapter. The comptroller's rules may not conflict with or cover a matter on which this subchapter authorizes the governor to adopt rules.

(b) The comptroller shall give proposed rules to the governor and the General Services Commission for review and comment before adopting the rules. (V.A.C.S. Art. 6252-11c, Sec. 17.)

Sec. 2254.040. PROCUREMENT BY GENERAL SERVICES COMMISSION. (a) The General Services Commission shall, on request of a state agency, procure for the agency consulting services that are covered by this subchapter.

(b) The commission may require reimbursement for the costs it incurs in procuring the services. (V.A.C.S. Art. 6252-11c, Sec. 18.)

#### CHAPTER 2255. PRIVATE DONORS OR ORGANIZATIONS

##### Sec. 2255.001. RULES

#### CHAPTER 2255. PRIVATE DONORS OR ORGANIZATIONS

Sec. 2255.001. RULES. (a) A state agency which is authorized by statute to accept money from a private donor or for which a private organization exists that is designed to further the purposes and duties of the agency shall adopt rules governing the relationship between:

- (1) the donor or organization; and
- (2) the agency and its employees.

(b) Rules adopted under this section shall govern all aspects of conduct of the agency and its employees in the relationship, including:

- (1) administration and investment of funds received by the organization for the benefit of the agency;
- (2) use of an employee or property of the agency by the donor or organization;
- (3) service by an officer or employee of the agency as an officer or director of the donor or organization; and
- (4) monetary enrichment of an officer or employee of the agency by the donor or organization.

(c) A rule adopted under this section may not conflict with or supersede a requirement of a statute regulating:

- (1) the conduct of an employee of a state agency; or
- (2) the procedures of a state agency.

(d) A newly created state agency shall adopt rules under this section as soon as possible after its creation.

(e) In this section, "state agency" means a department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of

this state, including a university system or an institution of higher education as defined by Section 61.003, Education Code. (V.A.C.S. Art. 6252--11f, Secs. 1, 2, 3 (part).)

CHAPTER 2256. PUBLIC FUNDS INVESTMENT

SUBCHAPTER A. AUTHORIZED INVESTMENTS  
FOR GOVERNMENTAL ENTITIES

- Sec. 2256.001. SHORT TITLE
- Sec. 2256.002. DEFINITIONS
- Sec. 2256.003. AUTHORITY TO INVEST FUNDS
- Sec. 2256.004. INVESTMENT POLICIES
- Sec. 2256.005. STANDARD OF CARE
- Sec. 2256.006. AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY, GOVERNMENTAL ENTITIES
- Sec. 2256.007. AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT
- Sec. 2256.008. AUTHORIZED INVESTMENTS: REPURCHASE AGREEMENTS
- Sec. 2256.009. AUTHORIZED INVESTMENTS: BANKERS' ACCEPTANCES
- Sec. 2256.010. AUTHORIZED INVESTMENTS: COMMERCIAL PAPER
- Sec. 2256.011. AUTHORIZED INVESTMENTS: MUTUAL FUNDS
- Sec. 2256.012. AUTHORIZED INVESTMENTS: COMMON TRUST FUNDS
- Sec. 2256.013. BIDS FOR COMMON TRUST FUND INVESTMENTS
- Sec. 2256.014. BANK UNWILLING TO BID; PRESUMPTION
- Sec. 2256.015. SUBCHAPTER CUMULATIVE
- Sec. 2256.016. SUBCHAPTER NOT APPLICABLE TO RETIREMENT SYSTEMS

[Sections 2256.017 to 2256.050 reserved for expansion]

SUBCHAPTER B. INVESTMENT OF LOCAL FUNDS

- Sec. 2256.051. DEFINITIONS
- Sec. 2256.052. RULES GOVERNING INVESTMENT
- Sec. 2256.053. INVESTMENT RATE OF RETURN
- Sec. 2256.054. DESIGNATION OF INVESTMENT OFFICER
- Sec. 2256.055. EXPRESS AUTHORITY REQUIRED
- Sec. 2256.056. LEGAL TITLE IN INVESTMENT POOL
- Sec. 2256.057. INTERNAL MANAGEMENT REPORTS
- Sec. 2256.058. PRIVATE AUDITOR
- Sec. 2256.059. EFFECT OF OTHER LAW

[Sections 2256.060 to 2256.100 reserved for expansion]

SUBCHAPTER C. PAYMENT FOR AND DELIVERY AND  
DEPOSIT OF SECURITIES PURCHASED BY STATE

- Sec. 2256.101. AUTHORIZED INVESTMENTS; APPLICATION OF INCOME
- Sec. 2256.102. PAYMENT FOR SECURITIES PURCHASED BY STATE
- Sec. 2256.103. DELIVERY OF SECURITIES PURCHASED BY STATE
- Sec. 2256.104. DEPOSIT OF SECURITIES PURCHASED BY STATE

CHAPTER 2256. PUBLIC FUNDS INVESTMENT

SUBCHAPTER A. AUTHORIZED INVESTMENTS  
FOR GOVERNMENTAL ENTITIES

- Sec. 2256.001. SHORT TITLE. This subchapter may be cited as the Public Funds Investment Act. (V.A.C.S. Art. 842a-2, Sec. 1.)

Sec. 2256.002. DEFINITIONS. In this subchapter:

(1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2) "School district" means a public school district. (V.A.C.S. Art. 842a-2, Sec. 2(a) (part); New.)

Sec. 2256.003. AUTHORITY TO INVEST FUNDS. Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.005:

- (1) a municipality;
- (2) a county;
- (3) a school district;
- (4) a district or authority created under:
  - (A) Article III, Section 52(b)(1) or (2), of the Texas Constitution; or
  - (B) Article XVI, Section 59, of the Texas Constitution;
- (5) an institution of higher education;
- (6) a hospital district;
- (7) a nonprofit corporation acting on behalf of an entity listed in Subdivisions (1) through (6); or
- (8) a public funds investment pool created under Chapter 791 acting on behalf of a combination of entities listed in Subdivisions (1) through (6). (V.A.C.S. Art. 842a-2, Sec. 2(a) (part) (as amended by Chaps. 39, 628, 693, and 750, Acts 71st Leg., R.S., 1989); Sec. 5(a) (part).)

Sec. 2256.004. INVESTMENT POLICIES. (a) The investment policies must:

- (1) be written;
  - (2) primarily emphasize safety of principal and liquidity; and
  - (3) address investment diversification, yield, and maturity and the quality and capability of investment management.
- (b) The investment policies may provide that bids for certificates of deposit be solicited:
- (1) orally;
  - (2) in writing;
  - (3) electronically; or
  - (4) in any combination of those methods. (V.A.C.S. Art. 842a-2, Secs. 5(a) (part), (b).)

Sec. 2256.005. STANDARD OF CARE. Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. (V.A.C.S. Art. 842a-2, Sec. 4.)

Sec. 2256.006. AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY, GOVERNMENTAL ENTITIES. The following are authorized investments under this subchapter:

- (1) obligations of the United States or its instrumentalities;
- (2) direct obligations of this state or its agencies;
- (3) other obligations, the principal and interest of which are unconditionally guaranteed or insured by this state or the United States or its instrumentalities; and
- (4) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent. (V.A.C.S. Art. 842a-2, Sec. 2(a) (part) (as amended by Chaps. 39, 628, 693, and 750, Acts 71st Leg., R.S., 1989).)

Sec. 2256.007. **AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT.** A certificate of deposit is an authorized investment under this subchapter if the certificate of deposit is issued by a state or national bank domiciled in this state or a savings and loan association domiciled in this state and is:

(1) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor;

(2) secured by obligations that are described by Section 2256.006, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates; or

(3) secured in any other manner and amount provided by law for deposits of the investing entity. (V.A.C.S. Art. 842a-2, Sec. 2(a) (part) (as amended by Chaps. 39, 628, 693, and 750, Acts 71st Leg., R.S., 1989).)

Sec. 2256.008. **AUTHORIZED INVESTMENTS: REPURCHASE AGREEMENTS.** (a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:

(1) has a defined termination date;

(2) is secured by obligations described by Section 2256.006(1);

(3) is pledged with a third party selected or approved by the entity; and

(4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in this state.

(b) In this section, "repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.006(1), the principal and interest of which are guaranteed by the United States in market value of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. (V.A.C.S. Art. 842a-2, Secs. 2(a) (part) (as amended by Chaps. 39, 628, 693, and 750, Acts 71st Leg., R.S., 1989), (c) (part).)

Sec. 2256.009. **AUTHORIZED INVESTMENTS: BANKERS' ACCEPTANCES.** A bankers' acceptance is an authorized investment under this subchapter if the bankers' acceptance:

(1) has a stated maturity of 270 days or fewer from the date of its issuance;

(2) will be, in accordance with its terms, liquidated in full at maturity;

(3) is eligible for collateral for borrowing from a Federal Reserve Bank; and

(4) is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency. (V.A.C.S. Art. 842a-2, Secs. 2(a) (part) (as amended by Chaps. 39, 628, 693, and 750, Acts 71st Leg., R.S., 1989), (c) (part).)

Sec. 2256.010. **AUTHORIZED INVESTMENTS: COMMERCIAL PAPER.** Commercial paper is an authorized investment under this subchapter if the commercial paper:

(1) has a stated maturity of 270 days or fewer from the date of its issuance; and

(2) is rated not less than A-1 or P-1 or an equivalent rating by at least:

(A) two nationally recognized credit rating agencies; or

(B) one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state. (V.A.C.S. Art. 842a-2, Sec. 2(a) (part) (as amended by Chaps. 39, 628, 693, and 750, Acts 71st Leg., R.S., 1989).)

Sec. 2256.011. **AUTHORIZED INVESTMENTS: MUTUAL FUNDS.** (a) A no-load money market mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is registered with the Securities and Exchange Commission;

(2) has a dollar-weighted average portfolio maturity of 120 days or fewer;



(3) is invested exclusively in obligations described by Sections 2256.006 through 2256.010; and

(4) includes in its investment objectives the maintenance of a stable net asset value of \$1 for each share.

(b) An entity is not authorized by this section to:

(1) invest in the aggregate more than 80 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in money market mutual funds described in Subsection (a); or

(2) invest its funds or funds under its control, excluding bond proceeds and reserves and other funds held for debt service, in any one money market mutual fund in an amount that exceeds 10 percent of the total assets of the money market mutual fund. (V.A.C.S. Art. 842a-2, Secs. 2(c) (part), (d).)

Sec. 2256.012. **AUTHORIZED INVESTMENTS: COMMON TRUST FUNDS.** (a) A qualified common trust fund is an authorized investment for the local funds of an institution of higher education and for the bond proceeds and reserves and other funds held for debt service of a municipality, county, school district, or navigation district if the common trust fund:

(1) is owned or administered by a bank domiciled in this state;

(2) consists exclusively of assets that are obligations described by Sections 2256.006 through 2256.010;

(3) complies with the Internal Revenue Code of 1986 and applicable federal regulations governing the investment of bond proceeds and reserves and other funds held for debt service; and

(4) meets the cash flow requirements and the investment needs of the political subdivision or institution.

(b) In this section, "common trust fund" includes a comparable investment device. (V.A.C.S. Art. 842a-2, Sec. 2(b).)

Sec. 2256.013. **BIDS FOR COMMON TRUST FUND INVESTMENTS.** (a) An institution of higher education or a municipality, county, school district, or navigation district may invest in a common trust fund under Section 2256.012 only after soliciting orally or in another manner competitive bids from at least three banks.

(b) The solicitations for bids required by Subsection (a) for a county shall be made only to banks located in the county unless there are fewer than three banks available for the investment located in the county; in which case, the solicitations shall be made to each bank in the county and, as necessary to complete the solicitations, to banks located in this state.

(c) The solicitations for bids required by Subsection (a) for a municipality or a school district shall be made only to banks located in the municipality or school district unless there are fewer than three banks available for the investments located in the municipality or school district; in which case, the solicitations shall be made to each bank in the municipality or school district and, as necessary to complete the solicitations, to banks in a county in which the municipality or school district is located. If there are fewer than three banks available for investments in the municipality or school district and in the counties in which the municipality or school district is located, the solicitations shall be made to each bank in the municipality or school district and in the counties in which the municipality or school district is located, and, as necessary to complete the solicitations, to banks located in this state.

(d) This section applies to a nonprofit corporation acting on behalf of a municipality, county, or school district as it applies to the municipality, county, or school district. (V.A.C.S. Art. 842a-2, Secs. 3(a)-(c), (e) (part).)

Sec. 2256.014. **BANK UNWILLING TO BID; PRESUMPTION.** A governmental entity or nonprofit corporation that is notified by a bank that the bank is unable or unwilling to bid for investments under Section 2256.012 may presume that the bank continues to be unable or unwilling to bid for investments until the bank in writing notifies the entity otherwise. (V.A.C.S. Art. 842a-2, Sec. 3(f).)

Sec. 2256.015. SUBCHAPTER CUMULATIVE. The authority granted by this subchapter is in addition to that granted by other law. (V.A.C.S. Art. 842a-2, Sec. 7.)

Sec. 2256.016. SUBCHAPTER NOT APPLICABLE TO RETIREMENT SYSTEMS. This subchapter does not apply to a public retirement system as defined by Section 802.001. (V.A.C.S. Art. 842a-2, Sec. 6.)

[Sections 2256.017 to 2256.050 reserved for expansion]

## SUBCHAPTER B. INVESTMENT OF LOCAL FUNDS

Sec. 2256.051. DEFINITIONS. In this subchapter:

(1) "Investment pool" means an entity created under Chapter 791 to invest public funds of two or more local governments.

(2) "Local funds" means public funds in the custody of a state agency or political subdivision that:

(A) are not required by law to be deposited in the state treasury; and

(B) the agency or subdivision has authority to invest.

(3) "Political subdivision" means a county, municipality, or special purpose district.

(4) "State agency" means an office, department, commission, board, other agency, institution of higher education, or river authority that is part of any branch of state government. (V.A.C.S. Art. 4413(34c), Sec. 1; New.)

Sec. 2256.052. RULES GOVERNING INVESTMENT. Each state agency or political subdivision shall adopt rules governing the investment of its local funds, including rules specifying the scope of authority of officers and employees designated to invest local funds. (V.A.C.S. Art. 4413(34c), Sec. 2(a).)

Sec. 2256.053. INVESTMENT RATE OF RETURN. A state agency, political subdivision, or investment pool shall invest its local funds in investments that:

(1) yield the highest possible rate of return;

(2) protect the principal; and

(3) are consistent with the operating requirements of the agency, subdivision, or pool as determined by the governing body. (V.A.C.S. Art. 4413(34c), Sec. 6(a).)

Sec. 2256.054. DESIGNATION OF INVESTMENT OFFICER. (a) Each state agency or political subdivision shall designate, by rule, order, ordinance, or resolution, one or more officers or employees of the agency, subdivision, or investment pool to be responsible for the investment of its local funds.

(b) Subsection (a) does not apply if an officer of the agency or subdivision is assigned by law the function of investing its local funds.

(c) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (a). (V.A.C.S. Art. 4413(34c), Secs. 2(b), 3(a).)

Sec. 2256.055. EXPRESS AUTHORITY REQUIRED. A person may not deposit, withdraw, invest, transfer, or manage in any other manner local funds of a state agency or political subdivision without express, written authority of the governing body or chief executive officer of the agency or subdivision. (V.A.C.S. Art. 4413(34c), Sec. 3(b).)

Sec. 2256.056. LEGAL TITLE IN INVESTMENT POOL. A political subdivision by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds. (V.A.C.S. Art. 4413(34c), Sec. 6(b).)

Sec. 2256.057. INTERNAL MANAGEMENT REPORTS. (a) At least annually, the investment officer of a state agency or political subdivision shall prepare a written report of the agency's or subdivision's local funds investment transactions for the preceding year.

(b) The report must:

(1) describe in detail the investment position of the agency or subdivision on the date of the report;

- (2) be prepared jointly by all investment officers of the agency or subdivision; and
- (3) be signed by each investment officer of the agency or subdivision.

(c) The report shall be delivered to the governing body and the chief executive officer of the agency or subdivision. (V.A.C.S. Art. 4413(34c), Sec. 4.)

Sec. 2256.058. PRIVATE AUDITOR. Notwithstanding any other law, a state agency shall employ a private auditor if authorized by the legislative audit committee on the committee's initiative or on request of the governing body of the agency. (V.A.C.S. Art. 4413(34c), Sec. 5.)

Sec. 2256.059. EFFECT OF OTHER LAW. This subchapter does not:

- (1) prohibit an investment specifically authorized by other law; or
- (2) authorize an investment specifically prohibited by other law. (V.A.C.S. Art. 4413(34c), Sec. 7.)

[Sections 2256.060 to 2256.100 reserved for expansion]

### SUBCHAPTER C. PAYMENT FOR AND DELIVERY AND DEPOSIT OF SECURITIES PURCHASED BY STATE

Sec. 2256.101. AUTHORIZED INVESTMENTS; APPLICATION OF INCOME. (a) A board or agency of the state that may direct the investment of funds of the board or agency may invest those funds in:

- (1) direct obligations of the United States;
- (2) obligations the principal and interest of which are guaranteed by the United States;
- (3) direct obligations of or participation certificates guaranteed by:
  - (A) a farm credit bank;
  - (B) the Federal National Mortgage Association;
  - (C) a federal home loan bank; or
  - (D) a bank for cooperatives;
- (4) certificates of deposit of a bank or trust company, the deposits of which are fully secured by a pledge of securities described by Subdivisions (1) through (3);
- (5) other securities made eligible for investment by other law or the constitution; or
- (6) a combination of securities described by Subdivisions (1) through (5).

(b) The board or agency shall direct the application of income from investments under this section. (V.A.C.S. Art. 6252-5a, Sec. 1.)

Sec. 2256.102. PAYMENT FOR SECURITIES PURCHASED BY STATE. The comptroller, the state treasurer, or the disbursing officer of an agency that has the power to invest assets directly may pay for authorized securities purchased from or through a member in good standing of the National Association of Securities Dealers or from or through a national or state bank on receiving an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid for the securities is just, due, and unpaid. (V.A.C.S. Art. 6252-5a, Sec. 2 (part).)

Sec. 2256.103. DELIVERY OF SECURITIES PURCHASED BY STATE. A security purchased under Section 2256.102 may be delivered to the state treasurer, a bank, or the board or agency investing its funds. The delivery shall be made under normal and recognized practices in the securities and banking industries, including the book entry procedure of the Federal Reserve Bank. (V.A.C.S. Art. 6252-5a, Sec. 2 (part).)

Sec. 2256.104. DEPOSIT OF SECURITIES PURCHASED BY STATE. At the direction of the state treasurer or the agency, a security purchased under Section 2256.102 may be deposited in trust with a bank or federal reserve bank or branch designated by the treasurer, whether in or outside the state. The deposit shall be evidenced by a trust receipt of the bank with which the securities are deposited. (V.A.C.S. Art. 6252-5a, Sec. 3.)

CHAPTER 2257 COLLATERAL FOR PUBLIC FUNDS

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2257.001. SHORT TITLE
- Sec. 2257.002. DEFINITIONS
- Sec. 2257.003. CHAPTER NOT APPLICABLE TO DEFERRED COMPENSATION PLANS
- Sec. 2257.004. CONFLICT WITH OTHER LAW
- Sec. 2257.005. CONTRACT GOVERNS LEGAL ACTION

[Sections 2257.006 to 2257.020 reserved for expansion]

SUBCHAPTER B. DEPOSITORY; SECURITY FOR DEPOSIT OF PUBLIC FUNDS

- Sec. 2257.021. COLLATERAL REQUIRED
- Sec. 2257.022. AMOUNT OF COLLATERAL
- Sec. 2257.023. COLLATERAL POLICY
- Sec. 2257.024. CONTRACT FOR SECURING DEPOSIT OF PUBLIC FUNDS
- Sec. 2257.025. RECORDS OF DEPOSITORY
- Sec. 2257.026. CHANGE IN AMOUNT OR ACTIVITY OF DEPOSITS OF PUBLIC FUNDS

[Sections 2257.027 to 2257.040 reserved for expansion]

SUBCHAPTER C. CUSTODIAN; PERMITTED INSTITUTION

- Sec. 2257.041. DEPOSIT OF SECURITIES WITH CUSTODIAN
- Sec. 2257.042. DEPOSIT OF SECURITIES WITH PERMITTED INSTITUTION
- Sec. 2257.043. DEPOSITORY AS CUSTODIAN OR PERMITTED INSTITUTION
- Sec. 2257.044. CUSTODIAN AS BAILEE
- Sec. 2257.045. RECEIPT OF SECURITY BY CUSTODIAN
- Sec. 2257.046. BOOKS AND RECORDS OF CUSTODIAN; INSPECTION
- Sec. 2257.047. BOOKS AND RECORDS OF PERMITTED INSTITUTION
- Sec. 2257.048. ATTACHMENT AND PERFECTION OF SECURITY INTEREST

[Sections 2257.049 to 2257.060 reserved for expansion]

SUBCHAPTER D. AUDITS AND EXAMINATIONS; PENALTIES

- Sec. 2257.061. AUDITS AND EXAMINATIONS
- Sec. 2257.062. PENALTIES
- Sec. 2257.063. MITIGATING CIRCUMSTANCES
- Sec. 2257.064. REINSTATEMENT

[Sections 2257.065 to 2257.080 reserved for expansion]

SUBCHAPTER E. EXEMPT INSTITUTIONS

- Sec. 2257.081. DEFINITION
- Sec. 2257.082. FUNDS OF EXEMPT INSTITUTION
- Sec. 2257.083. INVESTMENT; SELECTION OF DEPOSITORY

## CHAPTER 2257. COLLATERAL FOR PUBLIC FUNDS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2257.001. **SHORT TITLE.** This chapter may be cited as the Public Funds Collateral Act. (V.A.C.S. Art. 2529d, Sec. 1.)

Sec. 2257.002. **DEFINITIONS.** In this chapter:

(1) "Bank holding company" has the meaning assigned by Article 2, Chapter I, The Texas Banking Code (Article 342-102, Vernon's Texas Civil Statutes).

(2) "Board" means the State Depository Board.

(3) "Control" has the meaning assigned by Article 2, Chapter I, The Texas Banking Code (Article 342-102, Vernon's Texas Civil Statutes).

(4) "Deposit of public funds" means public funds of a public entity that:

(A) the state treasurer does not manage under Chapter 404; and

(B) are held as a demand or time deposit by a depository institution expressly authorized by law to accept a public entity's demand or time deposit.

(5) "Eligible security" means:

(A) a surety bond;

(B) an investment security; or

(C) an ownership or beneficial interest in an investment security, other than an option contract to purchase or sell an investment security.

(6) "Investment security" means:

(A) an obligation that in the opinion of the attorney general of the United States is a general obligation of the United States and backed by its full faith and credit;

(B) a general or special obligation issued by a public agency that:

(i) is payable from taxes, revenues, or a combination of taxes and revenues;

(ii) is rated as to investment quality by a nationally recognized rating agency; and

(iii) has a current rating of not less than A or its equivalent; or

(C) a security in which a public entity may invest under Subchapter A, Chapter 2256.

(7) "Permitted institution" means:

(A) a Federal Reserve Bank;

(B) a clearing corporation, as defined by Section 8.102(c), Business & Commerce Code;

(C) a bank eligible to be a custodian under Section 2257.041; or

(D) a state or nationally chartered bank that is controlled by a bank holding company that controls a bank eligible to be a custodian under Section 2257.041.

(8) "Public agency" means a state or a political or governmental entity, agency, instrumentality, or subdivision of a state, including a municipality, an institution of higher education, as defined by Section 61.003, Education Code, a junior college, a district created under Article XVI, Section 59, of the Texas Constitution, and a public hospital.

(9) "Public entity" means a public agency in this state, but does not include an institution of higher education, as defined by Section 61.003, Education Code.

(10) "State agency" means a public entity that:

(A) has authority that is not limited to a geographic portion of the state; and

(B) was created by the constitution or a statute.

(11) "Trust receipt" means evidence of receipt, identification, and recording, including:

(A) a physical controlled trust receipt; or

(B) a written or electronically transmitted advice of transaction. (V.A.C.S. Art. 2529d, Secs. 2(1), (2), (3), (4), (6) (part), (7), (8), (9), (10), (11).)

Sec. 2257.003. CHAPTER NOT APPLICABLE TO DEFERRED COMPENSATION PLANS. This chapter does not apply to funds that a public entity maintains or administers under a deferred compensation plan, the federal income tax treatment of which is governed by Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Sections 401(k) and 457). (V.A.C.S. Art. 2529d, Sec. 11(c).)

Sec. 2257.004. CONFLICT WITH OTHER LAW. This chapter prevails over any other law relating to security for a deposit of public funds to the extent of any conflict. (V.A.C.S. Art. 2529d, Sec. 11(a).)

Sec. 2257.005. CONTRACT GOVERNS LEGAL ACTION. A legal action brought by or against a public entity that arises out of or in connection with the duties of a depository, custodian, or permitted institution under this chapter must be brought and maintained as provided by the contract with the public entity. (V.A.C.S. Art. 2529d, Sec. 7.)

[Sections 2257.006 to 2257.020 reserved for expansion]

#### SUBCHAPTER B. DEPOSITORY; SECURITY FOR DEPOSIT OF PUBLIC FUNDS

Sec. 2257.021. COLLATERAL REQUIRED. A deposit of public funds shall be secured by eligible security to the extent and in the manner required by this chapter. (V.A.C.S. Art. 2529d, Sec. 3.)

Sec. 2257.022. AMOUNT OF COLLATERAL. (a) The total value of eligible security to secure a deposit of public funds must be in an amount not less than the amount of the deposit of public funds:

- (1) increased by the amount of any accrued interest; and
  - (2) reduced to the extent that the United States or an instrumentality of the United States insures the deposit.
- (b) The value of a surety bond is its face value.
- (c) The value of an investment security is its market value. (V.A.C.S. Art. 2529d, Sec. 4.)

Sec. 2257.023. COLLATERAL POLICY. (a) In accordance with a written policy approved by the governing body of the public entity, a public entity shall determine if an investment security is eligible to secure deposits of public funds.

(b) The written policy may include:

- (1) the security of the institution that obtains or holds an investment security;
- (2) the substitution or release of an investment security; and
- (3) the method by which an investment security used to secure a deposit of public funds is valued. (V.A.C.S. Art. 2529d, Sec. 5(a).)

Sec. 2257.024. CONTRACT FOR SECURING DEPOSIT OF PUBLIC FUNDS. (a) A public entity may contract with a bank domiciled in this state to secure a deposit of public funds.

(b) The contract may contain a term or condition relating to an investment security used as security for a deposit of public funds, including a term or condition relating to the:

- (1) possession of the collateral;
- (2) substitution or release of an investment security;
- (3) ownership of the investment securities of the bank used to secure a deposit of public funds; and
- (4) method by which an investment security used to secure a deposit of public funds is valued. (V.A.C.S. Art. 2529d, Sec. 5(b).)

Sec. 2257.025. RECORDS OF DEPOSITORY. (a) A public entity's depository shall maintain a separate, accurate, and complete record relating to a pledged investment security, a deposit of public funds, and a transaction related to a pledged investment security.

(b) The board or the public entity may examine and verify at any reasonable time a pledged investment security or a record a depository maintains under this section. (V.A.C.S. Art. 2529d, Secs. 9(a), (c) (part).)

Sec. 2257.026. CHANGE IN AMOUNT OR ACTIVITY OF DEPOSITS OF PUBLIC FUNDS. A public entity shall inform the depository for the public entity's deposit of public funds of a significant change in the amount or activity of those deposits within a reasonable time before the change occurs. (V.A.C.S. Art. 2529d, Sec. 5(c).)

[Sections 2257.027 to 2257.040 reserved for expansion]

### SUBCHAPTER C. CUSTODIAN; PERMITTED INSTITUTION

Sec. 2257.041. DEPOSIT OF SECURITIES WITH CUSTODIAN. (a) In addition to other authority granted by law, a depository for a public entity other than a state agency may deposit with a custodian a security pledged to secure a deposit of public funds.

(b) At the request of the public entity, a depository for a public entity other than a state agency shall deposit with a custodian a security pledged to secure a deposit of public funds.

(c) A depository for a state agency shall deposit with a custodian a security pledged to secure a deposit of public funds. The custodian and the state agency shall agree in writing on the terms and conditions for securing a deposit of public funds.

(d) A custodian must be approved by the public entity and be:

(1) a state or national bank that:

(A) is designated by the board as a state depository;

(B) is domiciled in this state; and

(C) has a capital stock and permanent surplus of \$5 million or more;

(2) the Texas Treasury Safekeeping Trust Company; or

(3) a Federal Reserve Bank or a branch of a Federal Reserve Bank.

(e) A custodian holds in trust the securities to secure the deposit of public funds of the public entity in the depository pledging the securities. (V.A.C.S. Art. 2529d, Secs. 6(a) (part), (b) (part), (c).)

Sec. 2257.042. DEPOSIT OF SECURITIES WITH PERMITTED INSTITUTION. (a) A custodian may deposit with a permitted institution an investment security the custodian holds under Section 2257.041.

(b) If a deposit is made under Subsection (a):

(1) the permitted institution shall hold the investment security to secure funds the public entity deposits in the depository that pledges the investment security;

(2) the trust receipt the custodian issues under Section 2257.045 shall show that the custodian has deposited the security in a permitted institution; and

(3) the permitted institution, on receipt of the investment security, shall immediately issue to the custodian an advice of transaction or other document that is evidence that the custodian deposited the security in the permitted institution. (V.A.C.S. Art. 2529d, Sec. 6(e) (part).)

Sec. 2257.043. DEPOSITORY AS CUSTODIAN OR PERMITTED INSTITUTION. (a) A public entity other than a state agency may prohibit a depository or an entity of which the depository is a branch from being the custodian of or permitted institution for a security the depository pledges to secure a deposit of public funds.

(b) A depository or an entity of which the depository is a branch may not be the custodian of or permitted institution for a security the depository pledges to secure a deposit of public funds by a state agency. (V.A.C.S. Art. 2529d, Secs. 6(a) (part), (b) (part).)

Sec. 2257.044. CUSTODIAN AS BAILEE. (a) A custodian under this chapter or a custodian of a security pledged to an institution of higher education, as defined by Section 61.003, Education Code, whether acting alone or through a permitted institution, is for all purposes the bailee or agent of the public entity or institution depositing the public funds with the depository.

(b) To the extent of any conflict, Subsection (a) prevails over Chapter 8 or 9, Business & Commerce Code. (V.A.C.S. Art. 2529d, Sec. 8 (part).)

Sec. 2257.045. RECEIPT OF SECURITY BY CUSTODIAN. On receipt of an investment security, a custodian shall:

(1) immediately identify on its books and records, by book entry or another method, the pledge of the security to the public entity; and

(2) promptly issue and deliver to the appropriate public entity officer a trust receipt for the pledged security. (V.A.C.S. Art. 2529d, Sec. 6(d) (part).)

Sec. 2257.046. BOOKS AND RECORDS OF CUSTODIAN; INSPECTION. (a) A public entity's custodian shall maintain a separate, accurate, and complete record relating to each pledged investment security and each transaction relating to a pledged investment security.

(b) The board or the public entity may examine and verify at any reasonable time a pledged investment security or a record a custodian maintains under this section. The public entity or its agent may inspect at any time an investment security evidenced by a trust receipt.

(c) The public entity's custodian shall file a collateral report with the board in the manner and on the dates prescribed by the board. (V.A.C.S. Art. 2529d, Secs. 6(d) (part), 9(b), (c) (part), (e).)

Sec. 2257.047. BOOKS AND RECORDS OF PERMITTED INSTITUTION. (a) A permitted institution may apply book entry procedures when an investment security held by a custodian is deposited under Section 2257.042.

(b) A permitted institution's records must at all times state the name of the custodian that deposits an investment security in the permitted institution. (V.A.C.S. Art. 2529d, Sec. 6(e) (part).)

Sec. 2257.048. ATTACHMENT AND PERFECTION OF SECURITY INTEREST. (a) A security interest that arises out of a depository's pledge of a security to secure a deposit of public funds by a public entity or an institution of higher education, as defined by Section 61.003, Education Code, is created, attaches, and is perfected for all purposes under state law from the time that the custodian identifies the pledge of the security on the custodian's books and records and issues the trust receipt.

(b) A security interest in a pledged security remains perfected in the hands of a subsequent custodian or permitted institution. (V.A.C.S. Art. 2529d, Sec. 8 (part).)

[Sections 2257.049 to 2257.060 reserved for expansion]

#### SUBCHAPTER D. AUDITS AND EXAMINATIONS; PENALTIES

Sec. 2257.061. AUDITS AND EXAMINATIONS. As part of an audit or regulatory examination of a public entity's depository or custodian, the auditor or examiner shall:

(1) examine and verify pledged investment securities and records maintained under Section 2257.025 or 2257.046; and

(2) report any significant or material noncompliance with this chapter to the board. (V.A.C.S. Art. 2529d, Sec. 9(d).)

Sec. 2257.062. PENALTIES. (a) The board may revoke a depository's designation as a state depository for one year if, after notice and a hearing, the board makes a written finding that the depository, while acting as either a depository or a custodian:

(1) did not maintain reasonable compliance with this chapter; and

(2) failed to remedy a violation of this chapter within a reasonable time after receiving written notice of the violation.

(b) The board may permanently revoke a depository's designation as a state depository if the board makes a written finding that the depository:

(1) has not maintained reasonable compliance with this chapter; and

(2) has acted in bad faith by not remedying a violation of this chapter. (V.A.C.S. Art. 2529d, Secs. 10(a), (b).)



Sec. 2257.063. MITIGATING CIRCUMSTANCES. (a) The board shall consider the total circumstances relating to the performance of a depository or custodian when the board makes a finding required by Section 2257.062, including the extent to which the noncompliance is minor, isolated, temporary, or nonrecurrent.

(b) The board may not find that a depository or custodian did not maintain reasonable compliance with this chapter if the noncompliance results from the public entity's failure to comply with Section 2257.026.

(c) This section does not relieve a depository or custodian of the obligation to secure a deposit of public funds with eligible security in the amount and manner required by this chapter within a reasonable time after the public entity deposits the deposit of public funds with the depository. (V.A.C.S. Art. 2529d, Secs. 10(d), (e).)

Sec. 2257.064. REINSTATEMENT. The board may reinstate a depository's designation as a state depository if:

- (1) the board determines that the depository has remedied all violations of this chapter; and
- (2) the depository assures the board to the board's satisfaction that the depository will maintain reasonable compliance with this chapter. (V.A.C.S. Art. 2529d, Sec. 10(c).)

[Sections 2257.065 to 2257.080 reserved for expansion]

SUBCHAPTER E. EXEMPT INSTITUTIONS

Sec. 2257.081. DEFINITION. In this subchapter, "exempt institution" means:

- (1) a public retirement system, as defined by Section 802.001; or
- (2) the permanent school fund, as defined by Section 15.01, Education Code. (V.A.C.S. Art. 2529d, Sec. 2(5).)

Sec. 2257.082. FUNDS OF EXEMPT INSTITUTION. An exempt institution is not required to have its funds fully insured or collateralized at all times if:

- (1) the funds are held by:
  - (A) a custodian of the institution's assets under a trust agreement; or
  - (B) a person in connection with a transaction related to an investment; and
- (2) the governing body of the institution, in exercising its fiduciary responsibility, determines that the institution is adequately protected by using a trust agreement, special deposit, surety bond, substantial deposit insurance, or other method an exempt institution commonly uses to protect itself from liability. (V.A.C.S. Art. 2529d, Sec. 11(b) (part).)

Sec. 2257.083. INVESTMENT; SELECTION OF DEPOSITORY. This chapter does not:

- (1) prohibit an exempt institution from prudently investing in a certificate of deposit; or
- (2) restrict the selection of a depository by the governing body of an exempt institution in accordance with its fiduciary duty. (V.A.C.S. Art. 2529d, Sec. 11(b) (part).)

[Chapters 2258 to 2300 reserved for expansion]

SUBTITLE G. ECONOMIC DEVELOPMENT PROGRAMS INVOLVING BOTH STATE AND LOCAL GOVERNMENTS

CHAPTER 2301. SUPERCONDUCTING SUPER COLLIDER FACILITY RESEARCH AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2301.001. DEFINITIONS
- Sec. 2301.002. ESTABLISHMENT OF AUTHORITY

- Sec. 2301.003. BOARD OF DIRECTORS
- Sec. 2301.004. PAYMENT FROM AD VALOREM TAXES
- Sec. 2301.005. WRITTEN CONTRACT REQUIREMENTS
- Sec. 2301.006. TAX EXEMPTION
- Sec. 2301.007. LOANS AND GRANTS

[Sections 2301.008 to 2301.030 reserved for expansion]

**SUBCHAPTER B. POWERS OF AN AUTHORITY**

- Sec. 2301.031. DESCRIPTION OF AUTHORITY
- Sec. 2301.032. AUTHORITY TO BRING SUIT
- Sec. 2301.033. AGREEMENTS
- Sec. 2301.034. ACQUISITION OF PROPERTY
- Sec. 2301.035. FUNDS
- Sec. 2301.036. ELIGIBLE PROJECTS
- Sec. 2301.037. EXERCISE OF OTHER POWERS

[Sections 2301.038 to 2301.060 reserved for expansion]

**SUBCHAPTER C. POWERS OF STATE AGENCIES AND PUBLIC ENTITIES**

- Sec. 2301.061. POWERS OF STATE AGENCIES AND PUBLIC ENTITIES TO ACT
- Sec. 2301.062. AGREEMENTS
- Sec. 2301.063. ACQUISITION OF PROPERTY
- Sec. 2301.064. USE OF FUNDS
- Sec. 2301.065. ELIGIBLE PROJECTS
- Sec. 2301.066. EFFECT ON OTHER LAWS
- Sec. 2301.067. ENFORCEMENT OF REGULATIONS
- Sec. 2301.068. ELECTIONS

[Sections 2301.069 to 2301.090 reserved for expansion]

**SUBCHAPTER D. BONDS AND OTHER FUNDS**

- Sec. 2301.091. BONDS
- Sec. 2301.092. ISSUANCE OF BONDS
- Sec. 2301.093. USE OF PROCEEDS
- Sec. 2301.094. USE OF FUNDS

**SUBTITLE G. ECONOMIC DEVELOPMENT PROGRAMS INVOLVING  
BOTH STATE AND LOCAL GOVERNMENTS**

**CHAPTER 2301. SUPERCONDUCTING SUPER COLLIDER  
FACILITY RESEARCH AUTHORITY**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2301.001. DEFINITIONS. In this chapter:

- (1) "Agreement" includes a contract or lease.
- (2) "Authority" means a research authority created under this chapter.
- (3) "Board" means the board of directors of an authority.
- (4) "Bond" means any type of obligation issued by an authority under this chapter, including any bond, note, draft, bill, warrant, debenture, interim certificate, revenue or bond anticipation note, any form of contract the authority considers appropriate for the

purchase of property including an installment purchase, conditional purchase, or lease with option to purchase, or other evidence of indebtedness.

(5) "Eligible project" means a project necessary or incidental to the super collider facility and its neighboring communities, including the acquisition, construction, operation, maintenance, or enhancement of:

(A) roads, bridges, and rights of way;

(B) housing;

(C) real and personal property;

(D) police, fire, medical, cultural, educational, and research services, equipment, institutions, and resources;

(E) other community support services;

(F) flood control, water, and wastewater treatment facilities;

(G) other infrastructure improvements; and

(H) rights useful in connection with the super collider facility and its neighboring communities.

(6) "Public entity" means any county, municipality, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or other political or corporate body of the state.

(7) "Super collider facility" means any superconducting super collider high-energy research facility that is or is proposed to be sponsored, authorized, and funded in part by the United States government. (V.A.C.S. Art. 4413(47e), Sec. 2.)

Sec. 2301.002. ESTABLISHMENT OF AUTHORITY. (a) Two or more public entities, by adopting substantially identical resolutions, orders, or ordinances, may establish a research authority and specify the authority's powers consistent with this chapter.

(b) The name of an authority must include the name or description of the area of the state in which the super collider facility is located or proposed to be located.

(c) An additional public entity may join an authority:

(1) by adopting a resolution, order, or ordinance substantially identical to those by which the authority is established; and

(2) on attaining the consent of the public entities that established the authority or that are subsequently added.

(d) Subject to the terms of an agreement entered into by an authority, public entities comprising the authority may amend their resolutions, orders, or ordinances establishing an authority by the adoption of substantially identical amending resolutions, orders, or ordinances. (V.A.C.S. Art. 4413(47e), Sec. 3(a).)

Sec. 2301.003. BOARD OF DIRECTORS. (a) An authority is governed by a board of directors composed of the number of directors determined by the resolutions, orders, or ordinances governing the authority. Directors serve two-year terms expiring June 1 of each odd-numbered year.

(b) The board shall elect a presiding officer from among its members.

(c) An employee, officer, or member of the governing body of a participating public entity may serve as a director.

(d) A director, officer, or employee of an authority may not have a personal interest, other than in the individual's official capacity, in an agreement executed by the authority. (V.A.C.S. Art. 4413(47e), Sec. 3(b).)

Sec. 2301.004. PAYMENT FROM AD VALOREM TAXES. (a) An agreement that is between one or more public entities and an authority and includes payments in whole or in part from ad valorem taxes levied by the public entity may provide that the authority shall establish a uniform tax rate that each participating public entity is obligated to levy and collect for the authority and pay to the authority as provided by the agreement. The rate established by the authority may not exceed any maximum rate in the agreement.

(b) A payment under an agreement under this section that is made in whole or in part from ad valorem taxes is payment of principal and interest on an evidence of indebtedness of the public entity for the purposes of Section 26.04, Tax Code, regardless of whether the agreement constitutes "debt" within the meaning of that section or pays the principal and interest on bonds of the authority. (V.A.C.S. Art. 4413(47e), Sec. 5(d).)

Sec. 2301.005. **WRITTEN CONTRACT REQUIREMENTS.** (a) A county may not contract with an authority providing for periodic payments to be made by the county for longer than one year unless the authority also contracts as provided by Subsection (b) with at least two other counties.

(b) Each contract executed under this section must:

(1) be in writing;

(2) be in substantially the same form, except as to the source and timing of funds to be paid under the contract;

(3) provide that funds or any amounts earned from the investment of those funds received by the authority under the contract may not be used for payment of salary to an employee of the authority; and

(4) provide that funds received by the authority under the contract may be used only to pay or reimburse the costs of the acquisition of land or an interest in land or to pay expenses or other costs incidental to that acquisition.

(c) The requirement that payments to be made under a contract are determined according to a uniform amount for each motor vehicle registered in the county does not make the contracts have a different form. (V.A.C.S. Art. 4413(47e), Sec. 5A.)

Sec. 2301.006. **TAX EXEMPTION.** An authority and its property, income, and operations are exempt from taxes imposed by the state, an agency or instrumentality of this state, or a public entity of the state. (V.A.C.S. Art. 4413(47e), Sec. 8.)

Sec. 2301.007. **LOANS AND GRANTS.** A public entity may make loans and grants of public money or property for eligible projects that contribute to the public purposes of development and diversification of the economy of the state, the elimination of underemployment and unemployment in the state, or the development or expansion of transportation or commerce in the state. (V.A.C.S. Art. 4413(47e), Sec. 9.)

[Sections 2301.008 to 2301.030 reserved for expansion]

## SUBCHAPTER B. POWERS OF AN AUTHORITY

Sec. 2301.031. **DESCRIPTION OF AUTHORITY.** An authority is a political and corporate body and a political subdivision of this state. (V.A.C.S. Art. 4413(47e), Sec. 4(a) (part).)

Sec. 2301.032. **AUTHORITY TO BRING SUIT.** An authority may sue and be sued. (V.A.C.S. Art. 4413(47e), Sec. 4(a) (part).)

Sec. 2301.033. **AGREEMENTS.** An authority may make agreements with and accept donations, grants, and loans from any person, including the United States, this state, a department or agency of this state, a public entity, and a public or private corporation, including those public entities creating the authority. (V.A.C.S. Art. 4413(47e), Sec. 4(a) (part).)

Sec. 2301.034. **ACQUISITION OF PROPERTY.** An authority may:

(1) without taking competitive bids, acquire, convey, grant, loan, pledge, mortgage, grant a security interest in, or otherwise dispose of any land, easement, road, bridge, infrastructure improvement, other property or improvement, service or cash, or interest in any of the items described by this subdivision that will permit or aid in the accomplishment of the purposes of this chapter; and

(2) exercise the power of eminent domain to acquire land, easements, and property interests as determined to be necessary by the board for eligible projects, including the power to acquire fee title in land condemned. (V.A.C.S. Art. 4413(47e), Sec. 4(a) (part).)

Sec. 2301.035. **FUNDS.** An authority may:

- (1) make loans to public or private entities to fund eligible projects;
- (2) issue bonds to fund eligible projects; and
- (3) encumber its property, pledge its revenues, and enter credit agreements, as defined by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), to secure its bonds. (V.A.C.S. Art. 4413(47e), Sec. 4(a) (part).)

Sec. 2301.036. ELIGIBLE PROJECTS. An authority may:

- (1) undertake eligible projects;
- (2) adopt and enforce reasonable rules to carry out the authority's purposes, to secure and maintain safe, efficient, and normal operation and maintenance of the super collider facility and its eligible projects, and to regulate privileges on any land, easement, or property interest adjoining the site of the super collider facility to prevent activities on the adjoining land, easement, or property interest that could adversely affect the safe, efficient, and normal operation and maintenance of the super collider facility or its eligible projects; and
- (3) exercise any power necessary or useful to an eligible project. (V.A.C.S. Art. 4413(47e), Sec. 4(a) (part).)

Sec. 2301.037. EXERCISE OF OTHER POWERS. An authority may:

- (1) adopt bylaws and exercise any power consistent with this chapter and the resolutions, orders, or ordinances creating the authority; and
- (2) perform any act necessary for the full exercise of the powers vested in the authority and exercise any power, right, or duty that will permit accomplishment of the purposes of the authority. (V.A.C.S. Art. 4413(47e), Sec. 4(a) (part).)

[Sections 2301.038 to 2301.060 reserved for expansion]

## SUBCHAPTER C. POWERS OF STATE AGENCIES AND PUBLIC ENTITIES

Sec. 2301.061. POWERS OF STATE AGENCIES AND PUBLIC ENTITIES TO ACT. A public entity or state agency may carry out the purposes of this chapter without any further authorization. (V.A.C.S. Art. 4413(47e), Sec. 5(a) (part).)

Sec. 2301.062. AGREEMENTS. A public entity or state agency may make agreements with and accept donations, grants, and loans from any person, including the United States, this state, a department or agency of this state, a public entity, and a public or private corporation, including any authority and the Texas National Research Laboratory Commission. (V.A.C.S. Art. 4413(47e), Sec. 5(a) (part).)

Sec. 2301.063. ACQUISITION OF PROPERTY. A public entity or state agency may without taking competitive bids, acquire, convey, grant, loan, pledge, mortgage, grant a security interest in, or otherwise dispose of any land, easement, road, bridge, infrastructure improvement, or other property or improvement, service or cash, or interest in any item described by this subdivision that will permit or aid in the accomplishment of the purposes of this chapter. (V.A.C.S. Art. 4413(47e), Sec. 5(a) (part).)

Sec. 2301.064. USE OF FUNDS. A public entity or state agency may:

- (1) use its funds, including tax revenues, to plan, acquire, construct, own, operate, maintain, or enhance eligible projects, including, in the case of a public entity, eligible projects located outside the jurisdiction or boundaries of the public entity if the governing body of the public entity determines that the project will contribute to the development and diversification of the economy, the elimination of unemployment or underemployment, or the development or expansion of commerce within the public entity;
- (2) levy taxes to provide for payment of amounts required under agreements with any person, including the United States, the state, a department and agency of this state, a public entity, and a public or private corporation, including any authority and the Texas National Research Laboratory Commission; and
- (3) pledge tax revenue to the payment of agreements. (V.A.C.S. Art. 4413(47e), Sec. 5(a) (part).)

Sec. 2301.065. ELIGIBLE PROJECTS. (a) A public entity or state agency may:

- (1) participate in or undertake eligible projects; and
- (2) adopt and enforce reasonable rules:

(A) to secure and maintain safe, efficient, and normal operation and maintenance of the super collider facility and its eligible projects;

(B) in the case of a public entity, to regulate privileges on any land, easement, or property interest that is located within the jurisdiction or boundaries of the public entity and that adjoins the super collider facility site; and

(C) in the case of a public entity, to prevent activities on adjoining land, easement, or property interest that would adversely affect the safe, efficient, and normal operation and maintenance of the super collider facility or its eligible projects.

(b) A state agency may not exercise any rule-making powers under Subsection (a). (V.A.C.S. Art. 4413(47e), Sec. 5(a) (part).)

Sec. 2301.066. EFFECT ON OTHER LAWS. This subchapter does not change the power of the state or any state agency to levy, collect, or set rates of taxes. (V.A.C.S. Art. 4413(47e), Sec. 5(a) (part).)

Sec. 2301.067. ENFORCEMENT OF REGULATIONS. (a) A person who violates a rule adopted under Sections 2301.036 and 2301.065 commits an offense. An offense under this subsection is a Class C misdemeanor.

(b) Public entities and an authority are encouraged to cooperate in the adoption and enforcement of rules to achieve a uniformity of standards applicable to the regulation of privileges and activities on any land, easement, or property interest adjoining the super collider facility site. (V.A.C.S. Art. 4413(47e), Secs. 4(b); 5(a) (part), (b).)

Sec. 2301.068. ELECTIONS. (a) A public entity may enter an agreement payable by taxes or otherwise without authorization through an election, if the transaction is not a bond or obligation of a public entity issued for making loans or grants payable from ad valorem taxes, within the meaning of Article III, Section 52-a, of the Texas Constitution.

(b) An election required by the Texas Constitution to be held by the public entity to authorize an agreement proposed to be made under this chapter shall be held under the applicable law governing bond elections for the public entity. (V.A.C.S. Art. 4413(47e), Sec. 5(c).)

[Sections 2301.069 to 2301.090 reserved for expansion]

#### SUBCHAPTER D. BONDS AND OTHER FUNDS

Sec. 2301.091. BONDS. (a) By resolution, an authority may authorize the issuance, sale, and delivery of bonds for the accomplishment of its purposes.

(b) Any bonds that are payable from ad valorem taxes levied by a public entity to pay principal and interest on bonds of an authority may be issued only after an affirmative vote of the qualified voters of the public entities that comprise the authority.

(c) To accomplish the purposes of this chapter, an authority has the powers granted to industrial development corporations by Section 23, except the limitations provided by Subsection (a)(11) of that section, and Sections 25(e), 26, 27, and 29, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), but is otherwise governed by this chapter.

(d) In issuing bonds, an authority may exercise the powers granted to the governing body of an issuer relating to the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(e) The bonds may not be a debt or pledge of the faith and credit of the state, the authority, or a public entity, but may be payable solely from revenues arising under this chapter, from grants provided by the United States, the state, a department or agency of this state, public or private entities, or from agreements with public or private entities.

(f) As determined by the board, an authority may pledge to the payment of any bond the revenues of all or part of the eligible projects acquired or undertaken by the authority.

(g) A bond issued by an authority shall contain on its face a statement of the limitation in Subsections (e) and (f). (V.A.C.S. Art. 4413(47e), Secs. 6(a) (part), (b) (part).)

Sec. 2301.092. ISSUANCE OF BONDS. (a) Bonds authorized under Section 2301.091 may be executed and delivered as a single issue or as several issues and may be in any denomination and form, including registered uncertified obligations not represented by written instruments and commonly known as book-entry obligations, for which the registration of ownership and transfer shall be provided by the authority under a system of books and records maintained by a financial institution domiciled inside or outside the state and serving as trustee, paying agent, or bond registrar.

(b) The bonds of an authority must be signed by the presiding officer or assistant presiding officer of the authority, be attested by the secretary, and bear the seal of the authority. The signatures may be printed or lithographed on the bonds if authorized by the authority, and the seal may be impressed, lithographed, or printed on the bonds.

(c) The authority may adopt or use for any purpose the signature of an individual who has been an officer of the authority, regardless of whether the individual has ceased to be an officer at the time the bonds are delivered to a purchaser.

(d) The bonds must mature serially or otherwise not to exceed 40 years after their respective dates of issuance and may be sold at a public or private sale at a price or under terms determined by the authority to be the most advantageous reasonably obtainable.

(e) The bonds may bear no interest or a rate of interest determined by the authority or, by a contractual agreement approved by the authority, but may not exceed the maximum net effective interest rate allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

(f) The bonds may be subject to redemption before maturity at times and prices approved by the authority.

(g) The bonds are subject to review and approval by the attorney general in the same manner and with the same effect as is provided by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(h) The bonds are legal and authorized investments for a bank, trust company, savings and loan association, insurance company, fiduciary, trustee, or guardian or a sinking fund of a municipality, county, school district, or other political subdivision of this state.

(i) The bonds may be used to secure deposits of public funds of this state and municipalities, counties, school districts, or other political subdivisions of this state. The bonds are lawful and sufficient security for deposits to the extent of the principal amount of the bonds or their value on the market, whichever is less, when accompanied by all attached unmatured coupons.

(j) An authority may issue bonds to refund all or part of its outstanding bonds, including unpaid interest, in the manner provided by law.

(k) The bonds, any interest on the bonds, any transaction relating to the bonds, and any profit made in the sale of the bonds are exempt from taxation by the state, an agency or instrumentality of the state, or any political subdivision of the state. (V.A.C.S. Art. 4413(47e), Secs. 6(d), (e), (f), (g), (h), (i).)

Sec. 2301.093. USE OF PROCEEDS. (a) The proceeds of bonds issued under this chapter may be used only to finance eligible projects, pay professional and consulting fees and related expenses, and pay the costs of issuance of the bonds.

(b) An authority may set aside from the proceeds of the sale of bonds amounts for payments into the interest and sinking fund and reserve fund, and for interest and operating expenses during construction and development, as specified in the proceedings authorizing the bonds.

(c) Bond proceeds may be invested, pending their use, in securities, interest-bearing certificates, and time deposits as specified in the authorizing proceedings. (V.A.C.S. Art. 4413(47e), Secs. 6(c), 7 (part).)

Sec. 2301.094. USE OF FUNDS. The authority may use funds, including tax revenues or other money received by the authority from a public entity, to finance eligible projects located outside the jurisdiction or boundary of the public entity, if the governing body of the public entity determines that the eligible projects will contribute to the development and diversification of the economy, the elimination of unemployment or underemployment, or the development or expansion of commerce within the public entity. (V.A.C.S. Art. 4413(47e), Sec. 7 (part).)

## CHAPTER 2302. COGENERATION

### SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2302.001. DEFINITIONS
- Sec. 2302.002. COMPOSITION OF COUNCIL
- Sec. 2302.003. PRESIDING OFFICER
- Sec. 2302.004. COMPENSATION
- Sec. 2302.005. COUNCIL EXPENSES
- Sec. 2302.006. EXPERTS
- Sec. 2302.007. DUTIES OF COUNCIL

[Sections 2302.008 to 2302.020 reserved for expansion]

### SUBCHAPTER B. COGENERATION

- Sec. 2302.021. STATE AGENCY COGENERATION PROJECTS
- Sec. 2302.022. APPLICATION
- Sec. 2302.023. JOINT COGENERATION PROJECTS
- Sec. 2302.024. AUTHORITY TO SELL POWER
- Sec. 2302.025. MONEY FROM POWER SALES

[Sections 2302.026 to 2302.040 reserved for expansion]

### SUBCHAPTER C. ENFORCEMENT

- Sec. 2302.041. COOPERATION WITH COGENERATING STATE AGENCIES
- Sec. 2302.042. PETITION FOR ENFORCEMENT
- Sec. 2302.043. ORDER OR RULING
- Sec. 2302.044. JURISDICTION

## CHAPTER 2302. COGENERATION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2302.001. DEFINITIONS. In this chapter:

- (1) "Cogenerating state agency" means a state agency that has constructed or operates a state agency cogeneration facility.
- (2) "Commission" means the Public Utility Commission of Texas.
- (3) "Council" means the State Cogeneration Council.
- (4) "Firm power" means power or power-producing capacity that, under an enforceable obligation, is available to the purchasing party according to a schedule over a specified term.
- (5) "Nonfirm power" means power provided under an arrangement that does not guarantee that power will be available according to a schedule but provides instead for delivery of power as it is available.
- (6) "Qualifying facility" means a qualifying small power production facility or a qualifying cogeneration facility as defined by Sections 3(17)(C) and 3(18)(B) of the Federal Power Act (16 U.S.C. Sections 796(17)(C) and 796(18)(B)).



(7) "State agency" means an office, department, commission, or board of any branch of state government or an institution of higher education as defined by Section 61.003, Education Code.

(8) "State agency cogeneration facility" means a qualifying facility constructed or operated by a state agency for the benefit of a state agency facility that is located adjacent to or on property contiguous with the site of the qualifying facility. (V.A.C.S. Art. 4413(55), Sec. 1 (part).)

Sec. 2302.002. COMPOSITION OF COUNCIL. The council is composed of:

(1) one representative with knowledge of cogeneration from each of the following agencies, appointed by and serving at the pleasure of the agency's presiding officer:

- (A) the commission;
- (B) the Railroad Commission of Texas;
- (C) the General Services Commission; and
- (D) the Texas Natural Resource Conservation Commission;

(2) one representative of the office of the attorney general, appointed by the attorney general; and

(3) one representative of higher education, appointed by the governor. (V.A.C.S. Art. 4413(55), Sec. 2(a).)

Sec. 2302.003. PRESIDING OFFICER. (a) The council shall elect one of its members presiding officer at the first council meeting after the appointment of a new member.

(b) The presiding officer may vote only to break a tie. (V.A.C.S. Art. 4413(55), Sec. 2(b).)

Sec. 2302.004. COMPENSATION. A council member serves without compensation but is entitled to reimbursement for expenses as provided by the General Appropriations Act. (V.A.C.S. Art. 4413(55), Sec. 2(c).)

Sec. 2302.005. COUNCIL EXPENSES. (a) The state agencies represented on the council shall pay the council's incidental expenses.

(b) The state agencies represented on the council may spend money to assist the council in performing its duties.

(c) The council may not require a state agency represented on the council to spend money without the agency's consent. (V.A.C.S. Art. 4413(55), Sec. 2(d).)

Sec. 2302.006. EXPERTS. (a) The council may contract for the services of experts to assist in performing its duties.

(b) The expenses of an expert may be paid for by:

- (1) the state agencies represented on the council;
- (2) general appropriation of the legislature;
- (3) a specific appropriation of oil overcharge funds received by the state; or
- (4) other receipt of oil overcharge funds received by the state. (V.A.C.S. Art. 4413(55), Sec. 3(b).)

Sec. 2302.007. DUTIES OF COUNCIL. The council shall:

(1) assist, inform, and advise a state agency concerning legal, technical, economic, and contractual issues related to cogeneration;

(2) approve or disapprove, solely on economic and technical grounds, an application for a state agency cogeneration facility; and

(3) adopt rules and procedures necessary for exercising council duties. (V.A.C.S. Art. 4413(55), Secs. 3(a), (c).)

[Sections 2302.008 to 2302.020 reserved for expansion]

## SUBCHAPTER B. COGENERATION

Sec. 2302.021. STATE AGENCY COGENERATION PROJECTS. (a) A state agency may not construct or operate a state agency cogeneration facility unless the council has approved the size and design of the facility.

(b) A state agency cogeneration facility's size and design is limited to the size and design that is necessary to supply economically the cogenerating state agency, considering the optimum balance of annual thermal and electrical energy requirements and any expansions anticipated in the near future.

(c) This section does not apply to a state agency cogeneration facility if, before September 1, 1987:

- (1) the facility was in operation;
- (2) the facility's final engineering design had been completed; or
- (3) construction of the facility had begun. (V.A.C.S. Art. 4413(55), Secs. 4(b), (c), (e).)

Sec. 2302.022. APPLICATION. (a) A state agency shall file with the council for approval an application prescribed by the council to construct or operate a state agency cogeneration facility.

(b) The council shall approve or disapprove a state agency's application to construct or operate a state agency cogeneration facility within six months of the date the application is filed. (V.A.C.S. Art. 4413(55), Secs. 4(a), (d).)

Sec. 2302.023. JOINT COGENERATION PROJECTS. Subject to this chapter, two or more state agencies may jointly construct or operate a state agency cogeneration facility. (V.A.C.S. Art. 4413(55), Sec. 4(f).)

Sec. 2302.024. AUTHORITY TO SELL POWER. (a) After the council has approved the application to construct or operate a cogeneration facility, a cogenerating state agency may contract in the same manner as a qualifying facility for the sale to an electric utility of firm or nonfirm power produced by the state agency cogeneration facility that exceeds the agency's power requirements.

(b) A cogenerating state agency may consult with the council about the price or other terms of a contract entered under this section. (V.A.C.S. Art. 4413(55), Secs. 5(a), (b).)

Sec. 2302.025. MONEY FROM POWER SALES. (a) A state agency shall first apply money it collects from the sale of firm or nonfirm power to retire any outstanding debt and pay operating expenses that result from constructing and maintaining the state agency cogeneration facility.

(b) A state agency shall deposit to the credit of the general revenue fund any money it collects under this chapter that exceeds the amount needed to service the debt and pay the operating expenses of the state agency cogeneration facility. (V.A.C.S. Art. 4413(55), Sec. 5(c).)

[Sections 2302.026 to 2302.040 reserved for expansion]

### SUBCHAPTER C. ENFORCEMENT

Sec. 2302.041. COOPERATION WITH COGENERATING STATE AGENCIES. A political subdivision, municipality, or agency of the state that operates, maintains, or controls a facility that provides retail electric utility service:

(1) shall cooperate with a cogenerating state agency that attempts to sell firm or nonfirm power; and

(2) may not adopt rates, pricing policies, access restrictions, or other rules inconsistent with the intent of this chapter. (V.A.C.S. Art. 4413(55), Sec. 6(a).)

Sec. 2302.042. PETITION FOR ENFORCEMENT. (a) A state agency may file a petition with the commission to enforce Section 2302.041.

(b) Notwithstanding any other law, if a state agency files a petition under this section, the commission may determine issues relating to rates, pricing policies, access restrictions, and other matters regarding a state agency cogeneration facility as necessary to enforce Section 2302.041.

(c) The commission retains jurisdiction until the commission by final order resolves the issues raised in the petition. (V.A.C.S. Art. 4413(55), Sec. 6(b).)

Sec. 2302.043. ORDER OR RULING. (a) A commission order or ruling entered under this chapter is considered to have been entered or adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

(b) A commission order or ruling entered under this chapter is enforced under Sections 71 through 77 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4413(55), Sec. 6(c).)

Sec. 2302.044. JURISDICTION. This chapter does not enlarge or modify the commission's jurisdiction over a political subdivision, municipality, or agency of the state. (V.A.C.S. Art. 4413(55), Sec. 6(d).)

## CHAPTER 2303. ENTERPRISE ZONES

### SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2303.001. SHORT TITLE
- Sec. 2303.002. PURPOSES
- Sec. 2303.003. DEFINITIONS
- Sec. 2303.004. JURISDICTION OF MUNICIPALITY

[Sections 2303.005 to 2303.050 reserved for expansion]

### SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES RELATING TO ZONES

- Sec. 2303.051. GENERAL POWERS AND DUTIES
- Sec. 2303.052. EVALUATION; REPORT
- Sec. 2303.053. ASSISTANCE
- Sec. 2303.054. COORDINATION WITH OTHER GOVERNMENTAL ENTITIES

[Sections 2303.055 to 2303.100 reserved for expansion]

### SUBCHAPTER C. DESIGNATION OF ENTERPRISE ZONE

- Sec. 2303.101. CRITERIA FOR ENTERPRISE ZONE DESIGNATION
- Sec. 2303.102. AREA OF PERVASIVE POVERTY, UNEMPLOYMENT, AND ECONOMIC DISTRESS
- Sec. 2303.103. NOMINATION OF ENTERPRISE ZONE
- Sec. 2303.104. NOMINATING ORDINANCE OR ORDER
- Sec. 2303.105. APPLICATION FOR DESIGNATION
- Sec. 2303.106. REVIEW OF APPLICATION
- Sec. 2303.107. DESIGNATION AGREEMENT
- Sec. 2303.108. DENIAL OF APPLICATION; NOTICE
- Sec. 2303.109. PERIOD OF DESIGNATION
- Sec. 2303.110. AMENDING BOUNDARIES
- Sec. 2303.111. REMOVAL OF DESIGNATION

[Sections 2303.112 to 2303.200 reserved for expansion]

### SUBCHAPTER D. ADMINISTRATION OF ENTERPRISE ZONE

- Sec. 2303.201. ADMINISTRATION BY GOVERNING BODY
- Sec. 2303.202. ADMINISTRATION BY ADMINISTRATIVE AUTHORITY
- Sec. 2303.203. PARTICIPATION BY NEIGHBORHOOD ENTERPRISE ASSOCIATIONS
- Sec. 2303.204. LIAISON
- Sec. 2303.205. ANNUAL REPORT

[Sections 2303.206 to 2303.300 reserved for expansion]

SUBCHAPTER E. NEIGHBORHOOD ENTERPRISE ASSOCIATIONS

- Sec. 2303.301. ORGANIZATION OF NEIGHBORHOOD ENTERPRISE ASSOCIATION
- Sec. 2303.302. CERTIFICATION OF ASSOCIATION
- Sec. 2303.303. MEMBERSHIP; VOTING
- Sec. 2303.304. POWERS OF NEIGHBORHOOD ENTERPRISE ASSOCIATIONS
- Sec. 2303.305. APPROVED PROJECTS

[Sections 2303.306 to 2303.400 reserved for expansion]

SUBCHAPTER F. QUALIFIED BUSINESSES AND ENTERPRISE PROJECTS

- Sec. 2303.401. QUALIFIED BUSINESS
- Sec. 2303.402. PROHIBITION ON QUALIFIED BUSINESS CERTIFICATION
- Sec. 2303.403. ENTERPRISE PROJECT DESIGNATION

[Sections 2303.404 to 2303.500 reserved for expansion]

SUBCHAPTER G. ENTERPRISE ZONE BENEFITS

- Sec. 2303.501. EXEMPTIONS FROM STATE REGULATION; SUSPENSION OF LOCAL REGULATION
- Sec. 2303.502. REVIEW OF STATE AGENCY RULES; REPORT
- Sec. 2303.503. STATE PREFERENCES
- Sec. 2303.504. STATE TAX REFUNDS AND DEDUCTION; REPORT
- Sec. 2303.505. LOCAL SALES AND USE TAX REFUNDS
- Sec. 2303.506. REDUCTION OR ELIMINATION OF LOCAL FEES OR TAXES
- Sec. 2303.507. TAX INCREMENT FINANCING AND ABATEMENT
- Sec. 2303.508. TAX EXEMPTION FOR NEIGHBORHOOD ENTERPRISE ASSOCIATION
- Sec. 2303.509. DEVELOPMENT BONDS
- Sec. 2303.510. INDUSTRIAL DEVELOPMENT CORPORATION
- Sec. 2303.511. OTHER LOCAL INCENTIVES
- Sec. 2303.512. LEASE OF PUBLIC PROPERTY TO NEIGHBORHOOD ENTERPRISE ASSOCIATION
- Sec. 2303.513. DISPOSITION OF PUBLIC PROPERTY IN ENTERPRISE ZONE
- Sec. 2303.514. WAIVER OF PERFORMANCE BOND
- Sec. 2303.515. LIABILITY OF CONTRACTOR OR ARCHITECT

CHAPTER 2303. ENTERPRISE ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2303.001. SHORT TITLE. This chapter may be cited as the Texas Enterprise Zone Act. (V.A.C.S. Art. 5190.7, Sec. 1.)

Sec. 2303.002. PURPOSES. The purposes of this chapter are to establish a process that clearly identifies severely distressed areas of the state and provides incentives by state and local government to induce private investment in those areas by removing unnecessary governmental regulatory barriers to economic growth and to provide tax incentives and economic development program benefits. (V.A.C.S. Art. 5190.7, Sec. 2(c).)

Sec. 2303.003. DEFINITIONS. In this chapter:

(1) "Day" means the period between 8 a.m. and 5 p.m. of a day other than a Saturday, Sunday, or state or federal holiday.

(2) "Department" means the Texas Department of Commerce.

(3) "Enterprise zone" means an area designated as an enterprise zone under this chapter.

(4) "Neighborhood enterprise association" means an association certified as a neighborhood enterprise association under Section 2303.302.

(5) "Nominating body" means the governing body of a municipality or county, or a combination of the governing bodies of municipalities or counties, that nominates and applies for designation of an area as an enterprise zone.

(6) "Qualified business" means a person certified as a qualified business under Section 2303.401.

(7) "Qualified employee" means a person who:

(A) works for a qualified business; and

(B) performs at least 50 percent of the person's service for the business in the enterprise zone. (V.A.C.S. Art. 5190.7, Secs. 3(a)(2), (3), (7), (9), (12).)

Sec. 2303.004. JURISDICTION OF MUNICIPALITY. For the purposes of this chapter, territory in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality. (V.A.C.S. Art. 5190.7, Sec. 3(b).)

[Sections 2303.005 to 2303.050 reserved for expansion]

## SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES RELATING TO ZONES

Sec. 2303.051. GENERAL POWERS AND DUTIES. (a) The department shall administer and monitor the implementation of this chapter.

(b) The department shall establish criteria and procedures for designating a qualified area as an enterprise zone and for designating an enterprise project.

(c) The department shall adopt rules necessary to carry out the purposes of this chapter. (V.A.C.S. Art. 5190.7, Sec. 8(a) (part).)

Sec. 2303.052. EVALUATION; REPORT. (a) The department shall conduct a continuing evaluation of the programs of enterprise zones.

(b) The department shall develop data from available information demonstrating the relationship between the incentives provided under this chapter and the economy.

(c) The department biennially shall review local incentives.

(d) On or before December 1 of each year the department shall submit to the governor, the legislature, and the Legislative Budget Board a report that:

(1) evaluates the effectiveness of the enterprise zone program;

(2) describes the use of state and local incentives under this chapter and their effect on revenue; and

(3) suggests legislation. (V.A.C.S. Art. 5190.7, Secs. 8(a) (part), (g).)

Sec. 2303.053. ASSISTANCE. (a) The department shall assist:

(1) a qualified business in obtaining the benefits of any incentive or inducement program provided by law;

(2) a unit of local government in obtaining status as a federal enterprise zone;

(3) the governing body of an enterprise zone in obtaining assistance from another state agency, including training and technical assistance to qualified businesses in a zone; and

(4) the governing body of an enterprise zone in developing small business incubators.

(b) The department shall provide to persons desiring to locate and engage in business in an enterprise zone information and appropriate assistance relating to the required legal authorization, including a state license, permit, certificate, approval, registration, or charter, to engage in business in this state.

(c) The department shall publicize existing tax incentives and economic development programs in enterprise zones.

(d) On request the department shall offer to a unit of local government having an enterprise zone within its jurisdiction technical assistance relating to tax abatement and the

development of alternative revenue sources. (V.A.C.S. Art. 5190.7, Secs. 8(a) (part), (b), (d), (f).)

Sec. 2303.054. COORDINATION WITH OTHER GOVERNMENTAL ENTITIES. (a) In cooperation with the appropriate units of local government and other state agencies, the department shall coordinate and streamline state business assistance programs and permit or license application procedures for businesses in enterprise zones.

(b) The department shall:

(1) work with the responsible state and federal agencies to coordinate enterprise zone programs with other programs carried out in an enterprise zone, including housing, community and economic development, small business, banking, financial assistance, transportation, and employment training programs;

(2) work to expedite, to the greatest extent possible, the consideration of applications for those programs by consolidating forms or by other means; and

(3) work, when possible, for the consolidation of periodic reports required under those programs into one summary report.

(c) The department shall encourage other state agencies in awarding grants, loans, or services to give priority to businesses in enterprise zones. (V.A.C.S. Art. 5190.7, Secs. 8(c), (e), 24.)

[Sections 2303.055 to 2303.100 reserved for expansion]

### SUBCHAPTER C. DESIGNATION OF ENTERPRISE ZONE

Sec. 2303.101. CRITERIA FOR ENTERPRISE ZONE DESIGNATION. (a) To be designated as an enterprise zone an area must:

(1) have a continuous boundary;

(2) be at least one square mile but not larger than the greater of:

(A) 10 square miles, excluding lakes, waterways, and transportation arteries; or

(B) an area, not to exceed 20 square miles, that is equal to five percent of the area, excluding lakes, waterways, and transportation arteries, of the municipality, county, or combination of municipalities or counties nominating the area as an enterprise zone;

(3) be an area of pervasive poverty, unemployment, and economic distress; and

(4) be nominated as an enterprise zone by an ordinance or order adopted by the nominating body.

(b) The department may not designate an area as an enterprise zone if three enterprise zones are located in the jurisdiction of and were nominated as enterprise zones by the governing body of the municipality or county nominating the area as an enterprise zone. (V.A.C.S. Art. 5190.7, Secs. 4(a), 9(d).)

Sec. 2303.102. AREA OF PERVASIVE POVERTY, UNEMPLOYMENT, AND ECONOMIC DISTRESS. An area is an area of pervasive poverty, unemployment, and economic distress for the purposes of Section 2303.101 if:

(1) the average rate of unemployment in the area during the most recent 12-month period for which data are available was at least one and one-half times the local, state, or national average for that period; or

(2) the area had a population loss of at least nine percent during the most recent six-year period or at least three percent during the most recent three-year period; and

(A) the area is a low-income poverty area;

(B) the area is in a jurisdiction or pocket of poverty eligible for urban development action grants under federal law, according to the most recent certification available from the United States Department of Housing and Urban Development;

(C) at least 70 percent of the residents or households of the area have an income that is less than 80 percent of the median income of the residents or households of the locality or state, whichever is less; or

(D) the nominating body establishes to the satisfaction of the department that:

- (i) chronic abandonment or demolition of commercial or residential structures exists in the area;
- (ii) substantial tax arrearages for commercial or residential structures exist in the area;
- (iii) substantial losses of businesses or jobs have occurred in the area; or
- (iv) the area is part of a disaster area declared by the state or federal government during the preceding 18 months. (V.A.C.S. Art. 5190.7, Sec. 4(b).)

Sec. 2303.103. **NOMINATION OF ENTERPRISE ZONE.** (a) The governing body of a municipality or county, individually or in combination with other municipalities or counties, by ordinance or order, as appropriate, may nominate as an enterprise zone an area within its jurisdiction that meets the criteria under Section 2303.101.

(b) Unless the nominating body holds a public hearing before adopting an ordinance or order under this section, the ordinance or order is not valid.

(c) The governing body of a county may not nominate territory in a municipality, including extraterritorial jurisdiction of a municipality, to be included in a proposed enterprise zone unless the governing body of the municipality also nominates the territory and together with the county files a joint application under Section 2303.105.

(d) The governing bodies of a combination of municipalities or counties may not jointly nominate an area as an enterprise zone unless the governing bodies have entered into a binding agreement to administer the zone jointly.

(e) Notwithstanding Subsections (c) and (d), the governing body of a county with a population of 750,000 or more may nominate territory in that county that is in the extraterritorial jurisdiction of a municipality to be included in one or more of the county's enterprise zones, and the county shall administer a zone that is established as the result of the nomination. (V.A.C.S. Art. 5190.7, Secs. 5(a) (part), (b), (c), (d), (e).)

Sec. 2303.104. **NOMINATING ORDINANCE OR ORDER.** (a) An ordinance or order nominating an area as an enterprise zone must:

- (1) describe precisely the area to be included in the zone by a legal description or reference to roadways, lakes, waterways, or municipal or county boundaries;
- (2) state a finding that the area meets the requirements of this chapter;
- (3) summarize briefly the incentives, including tax incentives, that, at the election of the nominating body, apply to business enterprises in the area; and
- (4) nominate the area as an enterprise zone.

(b) At least one of the incentives summarized under Subsection (a)(3) must not apply throughout the governmental entity or entities nominating the area as an enterprise zone.

(c) This section does not prohibit a municipality or county from extending additional incentives, including tax incentives, for business enterprises in an enterprise zone by a separate ordinance or order. (V.A.C.S. Art. 5190.7, Sec. 6.)

Sec. 2303.105. **APPLICATION FOR DESIGNATION.** (a) For an area to be designated as an enterprise zone, the nominating body, after nominating the area as an enterprise zone, must send to the department a written application for designation of the area as an enterprise zone.

(b) The application must include:

- (1) a certified copy of the ordinance or order, as appropriate, nominating the area as an enterprise zone;
- (2) a map of the area showing existing streets and highways;
- (3) an analysis and appropriate supporting documents and statistics demonstrating that the area qualifies for designation as an enterprise zone;
- (4) a statement that specifies each tax incentive, grant, other financial incentive or benefit, or program to be provided by the nominating body to business enterprises in the

area that is not to be provided throughout the governmental entity or entities nominating the area as an enterprise zone;

(5) a statement of the economic development and planning objectives for the area;

(6) a description of the functions, programs, and services to be performed by a neighborhood enterprise association in the area;

(7) an estimate of the economic impact of the designation of the area as an enterprise zone on the revenues of the governmental entity or entities nominating the area as an enterprise zone, considering all the financial incentives and benefits and the programs contemplated;

(8) a transcript or tape recording of all public hearings on the proposed zone;

(9) if the application is a joint application, a description and copy of the agreement between the applicants;

(10) the procedures for negotiating with residents, community groups, and other entities affected by the designation of the area as an enterprise zone and with qualified businesses in the area;

(11) a description of the administrative authority, if one is to be appointed for the enterprise zone under Section 2303.202; and

(12) any additional information the department requires.

(c) Information required by Subsection (b) is for evaluation purposes only. (V.A.C.S. Art. 5190.7, Secs. 5(a) (part), 7(a), (b), (c) (part).)

Sec. 2303.106. REVIEW OF APPLICATION. (a) On receipt of an application for the designation of an enterprise zone, the department shall review the application to determine if the nominated area qualifies for designation as an enterprise zone under this chapter.

(b) The department shall allow an applicant to correct any omission or clerical error in the application and to return the application to the department on or before the 10th day after the day on which the department receives the application. (V.A.C.S. Art. 5190.7, Sec. 9(a) (part).)

Sec. 2303.107. DESIGNATION AGREEMENT. (a) If the department determines that a nominated area for which a designation application has been received satisfies the criteria under Section 2303.101, the department shall negotiate with the nominating body for a designation agreement.

(b) A designation agreement must:

(1) designate the nominated area as an enterprise zone; and

(2) designate the administrative authority, if one is to be appointed for the zone under Section 2303.202, and describe its functions and duties, which should include decision-making authority and the authority to negotiate with affected entities.

(c) The department shall complete the negotiations and sign the agreement not later than the 60th day after the day on which the application is received unless the department extends that period to the 90th day after the day on which the application was received.

(d) If an agreement is not completed within the 60-day period provided by Subsection (c), the department shall provide to the nominating body the specific areas of concern and a final proposal for the agreement.

(e) If the agreement is not executed before the 91st day after the day on which the application was received, the application is considered to be denied. (V.A.C.S. Art. 5190.7, Secs. 9(c) (part); 22(b).)

Sec. 2303.108. DENIAL OF APPLICATION; NOTICE. (a) The department may deny an application for the designation of an enterprise zone only if the department determines that the nominated area does not satisfy the criteria under Section 2303.101.

(b) The department shall inform the nominating body of the specific reasons for denial of an application, including denial under Section 2303.107(e). (V.A.C.S. Art. 5190.7, Secs. 7(c) (part), 9(c) (part).)



Sec. 2303.109. PERIOD OF DESIGNATION. (a) An area may be designated as an enterprise zone for a maximum of seven years. A designation remains in effect until September 1 of the final year of the designation.

(b) Notwithstanding Subsection (a), an area designated as a federal enterprise zone may be designated as an enterprise zone for longer than seven years but not longer than the period permitted by federal law. (V.A.C.S. Art. 5190.7, Sec. 4(c).)

Sec. 2303.110. AMENDING BOUNDARIES. (a) The nominating body may amend the boundary of an enterprise zone by ordinance or order, as appropriate, adopted after a public hearing on the issue.

(b) The amended boundary:

(1) must be continuous;

(2) may not exceed the original size requirement of Section 2303.101; and

(3) may not exclude any area originally included within the boundary of the zone as designated.

(c) The entire enterprise zone with the amended boundary must continue to meet the unemployment and economic distress requirements of Section 2303.101.

(d) A nominating body may not make more than one boundary amendment annually for an enterprise zone.

(e) For each amendment of an enterprise zone boundary, the nominating body shall pay the department a reasonable fee, in an amount specified by the department, not to exceed \$500. The department may use fees collected under this subsection to administer this chapter and for other purposes to advance this chapter. (V.A.C.S. Art. 5190.7, Secs. 4(d), (f).)

Sec. 2303.111. REMOVAL OF DESIGNATION. (a) The department may remove the designation of an area as an enterprise zone if:

(1) the area no longer meets the criteria for designation under this chapter or by department rule adopted under this chapter; or

(2) the department determines that the governing body of the enterprise zone has not complied with commitments made in the ordinance or order nominating the area as an enterprise zone.

(b) The removal of a designation does not affect the validity of:

(1) a tax incentive or regulatory relief granted or accrued before the removal; or

(2) bonds issued under this chapter. (V.A.C.S. Art. 5190.7, Sec. 4(e).)

[Sections 2303.112 to 2303.200 reserved for expansion]

#### SUBCHAPTER D. ADMINISTRATION OF ENTERPRISE ZONE

Sec. 2303.201. ADMINISTRATION BY GOVERNING BODY. The governing body of an enterprise zone is the governing body of the municipality or county, or the governing bodies of the combination of municipalities or counties, that applied to have the area designated as an enterprise zone. (V.A.C.S. Art. 5190.7, Secs. 3(a)(8), 22(a) (part).)

Sec. 2303.202. ADMINISTRATION BY ADMINISTRATIVE AUTHORITY. (a) The governing body of an enterprise zone may delegate its administrative duties to an administrative authority appointed by the governing body.

(b) An administrative authority must:

(1) be composed of 3, 5, 7, 9, 11, or 15 members;

(2) be a viable and responsive body generally representative of all public or private entities that have a stake in the development of the zone; and

(3) include enterprise zone residents and representatives of the governing body of the zone and of local businesses. (V.A.C.S. Art. 5190.7, Secs. 3(a)(1), 22(a) (part).)

Sec. 2303.203. PARTICIPATION BY NEIGHBORHOOD ENTERPRISE ASSOCIATIONS. Each neighborhood enterprise association organized under Subchapter E should:

(1) actively participate in the administration of the enterprise zone for which the association was organized; and

(2) be encouraged to participate in planning and carrying out activities in the enterprise zone. (V.A.C.S. Art. 5190.7, Sec. 22(c).)

Sec. 2303.204. LIAISON. The governing body of an enterprise zone shall designate a liaison to communicate and negotiate with:

(1) the department;

(2) the administrative authority, if one exists;

(3) an enterprise project; and

(4) other entities in or affected by the enterprise zone. (V.A.C.S. Art. 5190.7, Sec. 22(d).)

Sec. 2303.205. ANNUAL REPORT. (a) Not later than October 1 of each year, the governing body of an enterprise zone shall submit to the department a report in the form required by the department.

(b) The report must be approved by the enterprise zone's administrative authority, if one exists.

(c) The report must include:

(1) for the year preceding the date of the report:

(A) a list of local incentives for community development available in the zone;

(B) the use of local incentives for which the governing body provided in the ordinance or order nominating the enterprise zone and the effect of those incentives on revenue;

(C) the number of businesses located in the zone;

(D) a copy of the report required under Section 103, Internal Revenue Code of 1986 (26 U.S.C. Section 103), for all industrial revenue bonds issued to finance projects located in the zone; and

(E) a statement on the attainment of revitalization goals for the zone; and

(2) for the year preceding the date on which the area was designated as an enterprise zone, the number of businesses located in the zone. (V.A.C.S. Art. 5190.7; Sec. 23.)

[Sections 2303.206 to 2303.300 reserved for expansion]

## SUBCHAPTER E. NEIGHBORHOOD ENTERPRISE ASSOCIATIONS

Sec. 2303.301. ORGANIZATION OF NEIGHBORHOOD ENTERPRISE ASSOCIATION. (a) Individuals residing in an enterprise zone may organize a neighborhood enterprise association.

(b) Only one association may exist for a geographic neighborhood area.

(c) The association must:

(1) be a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and

(2) be eligible for federal tax exemption under Section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)).

(d) The articles of incorporation must:

(1) describe the geographic neighborhood area of the association; and

(2) authorize the association to engage in business only in the enterprise zone in which the neighborhood area is located.

(e) The incorporators shall publish in a newspaper of general circulation in the governmental entity or entities that applied to have the area designated as an enterprise zone an explanation of the proposed association and the incorporators' rights in the association.

(f) A copy of the association's articles of incorporation and bylaws shall be available for public inspection at:

(1) the office of the city manager or comparable municipal officer if the entity is a municipality; or

(2) the county judge's office if the entity is a county. (V.A.C.S. Art. 5190.7, Secs. 21(a), (b) (part), (c), (d).)

Sec. 2303.302. CERTIFICATION OF ASSOCIATION. (a) After a neighborhood enterprise association is organized, the association's board of directors must apply to the governing body of the enterprise zone or to the department for certification as a neighborhood enterprise association.

(b) The governing body of the enterprise zone or the department may not grant certification unless the association has hired or appointed a suitable chief executive officer. (V.A.C.S. Art. 5190.7, Secs. 21(f), (g).)

Sec. 2303.303. MEMBERSHIP; VOTING. (a) The membership of a neighborhood enterprise association may be composed only of residents of the enterprise zone.

(b) An individual is entitled to be a member of a neighborhood enterprise association if the individual is:

- (1) a resident of the association's geographic neighborhood area; and
- (2) of voting age.

(c) To be entitled to vote, a member of the association must have been a resident of the association's neighborhood area for at least one year. (V.A.C.S. Art. 5190.7, Secs. 21(b) (part), (e).)

Sec. 2303.304. POWERS OF NEIGHBORHOOD ENTERPRISE ASSOCIATIONS. (a) A neighborhood enterprise association may purchase or lease publicly or privately owned real property.

(b) A neighborhood enterprise association with the approval of and in coordination with the responsible state or local governmental entity may:

- (1) establish crime watch patrols in the association's geographic neighborhood area;
- (2) establish volunteer day-care centers;
- (3) organize recreational activities for the association's geographic neighborhood area youth;
- (4) provide garbage collection;
- (5) maintain and improve streets, bridges, and water and sewer lines;
- (6) provide energy conservation projects;
- (7) provide health and clinic services;
- (8) provide drug abuse programs;
- (9) provide senior citizen assistance programs;
- (10) maintain parks;
- (11) rehabilitate, renovate, operate, or maintain low or moderate income housing; and
- (12) provide other types of public services as authorized by law or rule.

(c) A service may be provided under Subsection (b) by the association or, if feasible and prudent and after agreement with the appropriate state or local governmental entity, by a private firm or organization.

(d) The governmental entity responsible for providing a service may contract with a neighborhood enterprise association to provide services in an amount equal to the amount saved by the entity by the provision of the service under the contract.

(e) A neighborhood enterprise association has powers established by other law or rule, including powers available to similar corporations under state law. (V.A.C.S. Art. 5190.7, Secs. 21(i), (j), (n), (o).)

Sec. 2303.305. APPROVED PROJECTS. (a) On approval of the governing body of an enterprise zone, a neighborhood enterprise association may carry out projects other than those under Section 2303.304(b). The association must submit to the governing body an application that describes the nature and benefit of the project and that specifically states:

(1) how the project will contribute to the self-help efforts of the residents of the association's geographic neighborhood area;

(2) how the residents of the geographic neighborhood area will be involved in the planning and implementation of the project;

(3) whether there are sufficient resources to complete the project and whether the association will be fiscally responsible for the project; and

(4) whether the project will enhance the enterprise zone by:

- (A) creating permanent jobs;
- (B) physically improving the housing stock;
- (C) stimulating neighborhood business activity; or
- (D) preventing crime.

(b) If the governing body of an enterprise zone does not disapprove an application submitted under Subsection (a) before the 45th day after the day of receipt of the application, the application is considered to be approved.

(c) If the governing body of an enterprise zone disapproves an application submitted under Subsection (a), the governing body shall notify the association of the specific reasons for the decision and shall allow the association to amend the application on or before the 60th day after the date of the notification.

(d) The association shall furnish to the governing body of the enterprise zone:

(1) an annual statement of the programmatic and financial status of each approved project; and

(2) an audited financial statement of the project. (V.A.C.S. Art. 5190.7, Secs. 21(k), (l), (m).)

[Sections 2303.306 to 2303.400 reserved for expansion]

## SUBCHAPTER F. QUALIFIED BUSINESSES AND ENTERPRISE PROJECTS

Sec. 2303.401. QUALIFIED BUSINESS. (a) A person is a qualified business if the department, for the purpose of state benefits under this chapter, or the governing body of an enterprise zone, for the purpose of local benefits, certifies that:

(1) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the enterprise zone; and

(2) at least 25 percent of the person's new employees in the enterprise zone are:

(A) residents of any enterprise zone in the jurisdiction of the governing body of the enterprise zone; or

(B) economically disadvantaged individuals.

(b) The governing body of an enterprise zone may certify a franchise or subsidiary of a new or existing business as a qualified business if the franchise or subsidiary:

(1) is located entirely in the enterprise zone; and

(2) maintains separate books and records of the business activity conducted in the zone.

(c) For the purposes of this section, an economically disadvantaged individual is an individual who:

(1) was unemployed for at least three months before obtaining employment with the qualified business;

(2) receives public assistance benefits, including welfare payments or food stamps, based on need and intended to alleviate poverty;

(3) is an economically disadvantaged individual, as defined by Section 4(8), Job Training Partnership Act (29 U.S.C. Section 1503(8));

(4) is an individual with handicaps, as defined by 29 U.S.C. Section 706(8);

(5) is an inmate, as defined by Section 498.001;

(6) is entering the workplace after being confined in a unit of the institutional division of the Texas Department of Criminal Justice or a correctional facility authorized by Chapter 495; or

(7) meets the current low income or moderate income limits developed under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f et seq.). (V.A.C.S. Art. 5190.7, Secs. 3(a)(5) and (11), (c).)

Sec. 2303.402. **PROHIBITION ON QUALIFIED BUSINESS CERTIFICATION.** If the department determines that the governing body of an enterprise zone is not complying with this chapter, the department shall prohibit the certification of a qualified business in the zone until the department determines that the governing body is complying with this chapter. (V.A.C.S. Art. 5190.7, Sec. 8(h).)

Sec. 2303.403. **ENTERPRISE PROJECT DESIGNATION.** (a) After August 31, 1993, the department may not designate a business as an enterprise project. The department's designation of a qualified business as an enterprise project before that date is effective until the fifth anniversary of the date on which the designation is made.

(b) The department may remove an enterprise project designation if it determines that the business is not complying with a requirement for its designation. (V.A.C.S. Art. 5190.7, Secs. 3(a)(6), 10(e), (g), (k) (part).)

[Sections 2303.404 to 2303.500 reserved for expansion]

#### SUBCHAPTER G. ENTERPRISE ZONE BENEFITS

Sec. 2303.501. **EXEMPTIONS FROM STATE REGULATION; SUSPENSION OF LOCAL REGULATION.** (a) A state agency may exempt from its regulation a qualified business, qualified employee, qualified property, or neighborhood enterprise association in an enterprise zone if the exemption is consistent with:

- (1) the purposes of this chapter; and
- (2) the protection and promotion of the general health and welfare.

(b) A local government may suspend local regulation, including an ordinance, rule, or standard, relating to zoning, licensing, or building codes in an enterprise zone.

(c) An exemption from or suspension of regulation under this section must be adopted in the same manner that the regulation was adopted.

(d) The authorization provided by Subsection (a) or (b) does not apply to regulation:

- (1) that relates to:
  - (A) civil rights;
  - (B) equal employment;
  - (C) equal opportunity;
  - (D) fair housing rights; or
  - (E) preservation of historical sites or historical artifacts;

(2) the relaxation of which is likely to harm the public safety or public health, including environmental health; or

(3) that is specifically imposed by law.

(e) For the purposes of this section, property is classified as qualified property if the property is:

- (1) tangible personal property located in the enterprise zone that was:
  - (A) acquired by a taxpayer not earlier than the 90th day before the date on which the area was designated as an enterprise zone; and
  - (B) used predominately by the taxpayer in the active conduct of a trade or business;
- (2) real property located in the enterprise zone that was:

(A) acquired by a taxpayer not earlier than the 90th day before the date on which the area was designated as an enterprise zone and was used predominately by the taxpayer in the active conduct of a trade or business; or

(B) the principal residence of the taxpayer on the date of the sale or exchange; or

(3) an interest in an entity that was certified as a qualified business under Section 2303.401 for the entity's most recent tax year ending before the date of the sale or exchange. (V.A.C.S. Art. 5190.7, Secs. 3(a)(13), 15(a), (c), (d).)

Sec. 2303.502. REVIEW OF STATE AGENCY RULES; REPORT. (a) A state agency rule adopted after September 1, 1987, may provide, when applicable, encouragements and incentives to increase:

(1) the renovation, improvement, or new construction of housing in enterprise zones; and

(2) the economic viability and profitability of business and commerce in enterprise zones.

(b) Annually each state agency shall:

(1) review the rules it administers that:

(A) may adversely affect:

(i) the renovation, improvement, or new construction of housing in enterprise zones; or

(ii) the economic viability and profitability of business and commerce in enterprise zones; or

(B) may otherwise affect the implementation of this chapter; and

(2) report the results of the review to the department.

(c) The department shall disseminate the reports to the governing bodies of enterprise zones and others as necessary to advance the purposes of this chapter.

(d) To contribute to the implementation of this chapter, an agency may waive, modify, provide exemptions to, or otherwise minimize the adverse effects of the rules it administers on the renovation, improvement, or new construction of housing in enterprise zones or on the economic viability and profitability of business and commerce in enterprise zones. (V.A.C.S. Art. 5190.7, Sec. 15(e).)

Sec. 2303.503. STATE PREFERENCES. (a) A state agency shall give preference to the governing body of an enterprise zone or a qualified business or qualified employee located in an enterprise zone over other eligible applicants for grants or loans that are administered by the state agency if:

(1) at least 50 percent of the grant or loan will be spent for the direct benefit of the enterprise zone; and

(2) the purpose of the grant or loan is to:

(A) promote economic development in the community; or

(B) construct, improve, extend, repair, or maintain public facilities in the community.

(b) The state treasurer may and is encouraged to deposit state money in financial institutions located or doing business in enterprise zones.

(c) A state agency may and is encouraged to contract with businesses located in enterprise zones.

(d) The department may give preference to enterprise zones in granting economic development money or other benefits. (V.A.C.S. Art. 5190.7, Sec. 18.)

Sec. 2303.504. STATE TAX REFUNDS AND DEDUCTION; REPORT. (a) An enterprise project is entitled to:

(1) a refund of state taxes under Section 151.429, Tax Code; and

(2) a deduction from taxable capital under Section 171.1015, Tax Code.

(b) A qualified business is entitled to a refund of state taxes under Sections 151.431 and 171.501, Tax Code.

(c) Not later than the 60th day after the last day of each fiscal year, the comptroller shall report to the department the statewide total of the tax refunds made under this section during that fiscal year. (V.A.C.S. Art. 5190.7, Secs. 9(b), 17.)

Sec. 2303.505. LOCAL SALES AND USE TAX REFUNDS. (a) To encourage the development of areas designated as enterprise zones, the governing body of a municipality through a program may refund its local sales and use taxes paid by a qualified business on:

(1) the purchase, lease, or rental of equipment or machinery for use in an enterprise zone; or

(2) the purchase of material for use in remodeling, rehabilitating, or constructing a structure in an enterprise zone.

(b) To promote the public health, safety, or welfare, the governing body of a municipality or county through a program may refund its local sales and use taxes paid by a qualified business or qualified employee.

(c) The governing body of a municipality or county that is the governing body of an enterprise zone may provide for the partial or total refund of its local sales and use taxes paid by a person making a taxable purchase, lease, or rental for development or revitalization in the zone.

(d) A person entitled to a refund of local sales and use taxes under this section shall pay the entire amount of state and local sales and use taxes at the time the taxes would be due if an agreement for the refund did not exist.

(e) An agreement to refund local sales and use taxes under this section must:

(1) be written;

(2) contain an expiration date; and

(3) require that the person entitled to the refund provide to the municipality or county making the refund the documentation necessary to support a refund claim.

(f) The municipality or county shall make the refund directly to the person entitled to the refund in the manner provided by the agreement. (V.A.C.S. Art. 5190.7, Sec. 12.)

Sec. 2303.506. REDUCTION OR ELIMINATION OF LOCAL FEES OR TAXES. (a) To promote the public health, safety, or welfare, the governing body of a municipality or county through a program may reduce or eliminate fees or taxes that it imposes on a qualified business or qualified employee.

(b) This section does not apply to sales and use taxes or property taxes. (V.A.C.S. Art. 5190.7, Sec. 13 (part).)

Sec. 2303.507. TAX INCREMENT FINANCING AND ABATEMENT. Designation of an area as an enterprise zone is also designation of the area as a reinvestment zone for:

(1) tax increment financing under Chapter 311, Tax Code; and

(2) tax abatement under Chapter 312, Tax Code. (V.A.C.S. Art. 5190.7, Sec. 11.)

Sec. 2303.508. TAX EXEMPTION FOR NEIGHBORHOOD ENTERPRISE ASSOCIATION. A neighborhood enterprise association is exempt from state and local taxes during the period of the designation of the enterprise zone in which it is located. The exemption applies to tax arrearages and other back assessments on property leased under Section 2303.512. (V.A.C.S. Art. 5190.7, Sec. 21(q).)

Sec. 2303.509. DEVELOPMENT BONDS. To finance a project in an enterprise zone, bonds may be issued under:

(1) the Act for Development of Employment, Industrial and Health Resources of 1971 (Article 5190.1, Vernon's Texas Civil Statutes); or

(2) the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 5190.7, Sec. 19.)

Sec. 2303.510. INDUSTRIAL DEVELOPMENT CORPORATION. (a) The governing body of a municipality that is the governing body of an enterprise zone may create, in accordance with the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), an industrial development corporation for use by the enterprise zone.

(b) A corporation created under this section has the powers and is subject to the limitations of a corporation created under the Development Corporation Act of 1979. To the extent of a conflict between this section and that Act, that Act prevails.

(c) The articles of incorporation of a corporation created under this section must state that the corporation is governed by this section.

(d) The governing body of the municipality that creates an industrial development corporation shall appoint the board of directors of the corporation. (V.A.C.S. Art. 5190.7, Sec. 25.)

Sec. 2303.511. OTHER LOCAL INCENTIVES. (a) The governing body of a municipality or county that is the governing body of an enterprise zone may:

(1) defer compliance in the zone with the subdivision and development ordinances or rules, other than those relating to streets and roads or sewer or water services, of the municipality or county, as appropriate;

(2) give priority to the zone for the receipt of:

(A) urban development action grant money;

(B) community development block grant money;

(C) industrial revenue bonds; or

(D) funds received under the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes);

(3) adopt and implement a plan for police protection in the zone;

(4) amend the zoning ordinances of the municipality or county, as appropriate, to promote economic development in the zone;

(5) establish permitting preferences for businesses in the zone;

(6) establish simplified, accelerated, or other special permit procedures for businesses in the zone;

(7) waive development fees for projects in the zone;

(8) create a local enterprise zone fund for funding bonds or other programs or activities to develop or revitalize the zone;

(9) for qualified businesses in the zone, reduce rates charged by:

(A) a utility owned by the municipality or county, as appropriate; or

(B) a cooperative corporation or utility owned by private investors, subject to the requirements of Subsection (b);

(10) in issuing housing finance bonds, give priority to persons or projects in the zone;

(11) in providing services, give priority to local economic development, educational, job training, or transportation programs that benefit the zone; or

(12) sell real property owned by the municipality or county, as appropriate, and located in the enterprise zone in accordance with Section 2303.513.

(b) A reduction in utility rates under Subsection (a)(9)(B) is subject to the agreement of the affected utility and the approval of the appropriate regulatory authority under Sections 16 and 17, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). The rates may not be reduced more than five percent. In setting the rates of the utility the appropriate regulatory authority shall allow the utility to recover the amount of the reduction. (V.A.C.S. Art. 5190.7, Sec. 14.)

Sec. 2303.512. LEASE OF PUBLIC PROPERTY TO NEIGHBORHOOD ENTERPRISE ASSOCIATION. (a) The state or a local government may lease to a neighborhood enterprise association real property located in the association's geographical neighborhood area that is owned by the governmental entity and that is not being used by the entity.

(b) The lease must be for a term of not less than 20 years and the full amount of the rental fees under the lease may not exceed \$1 a year.

(c) The state or local government shall renew the lease on its expiration if the association has continuously complied with Subchapter E during the lease term. (V.A.C.S. Art. 5190.7, Sec. 21(p).)



Sec. 2303.513. **DISPOSITION OF PUBLIC PROPERTY IN ENTERPRISE ZONE.** (a) After an area is designated as an enterprise zone, the state, a municipality, or a county that owns a surplus building or vacant land in the zone may dispose of the building or land by:

- (1) selling the building or land at a public auction;
- (2) selling the land to a neighborhood enterprise association; or
- (3) establishing an urban homestead program described by Subsection (c).

(b) A municipality or county may sell a surplus building or vacant land in the enterprise zone at less than fair market value if the governing body of the municipality or county by ordinance or order, as appropriate, adopts criteria that specify the conditions and circumstances under which the sale may occur and the public purpose to be achieved by the sale. The building or land may be sold to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order are satisfied. A copy of the ordinance or order must be filed with the department not later than the day on which the sale occurs.

(c) An urban homestead program must provide that:

(1) the state, municipality, or county is to sell to an individual a residence or part of a residence that it owns for an amount not to exceed \$100;

(2) as a condition of the sale, the individual must agree to live in the residence for at least seven years and to renovate or remodel the residence to meet the level of maintenance stated in an agreement between the individual and the governmental entity; and

(3) after the individual satisfies the seven-year residency and property improvement requirements of the agreement, the governmental entity shall assign the residence to the individual. (V.A.C.S. Art. 5190.7, Sec. 20.)

Sec. 2303.514. **WAIVER OF PERFORMANCE BOND.** A prime contractor is not required to execute a performance bond under Chapter 2253 if:

(1) the construction, alteration, repair, or other public work to be performed under the contract is entirely in an enterprise zone; and

(2) the amount of the contract does not exceed \$200,000. (V.A.C.S. Art. 5190.7, Sec. 16.)

Sec. 2303.515. **LIABILITY OF CONTRACTOR OR ARCHITECT.** A contractor or architect who constructs or rehabilitates a building in an enterprise zone is liable for any structural defect in the building only for the period ending on the 10th anniversary of the date on which beneficial occupancy of the building begins after the construction or rehabilitation, notwithstanding a statute of limitations to the contrary. (V.A.C.S. Art. 5190.7, Sec. 15(b).)

## CHAPTER 2304. HOUSING REHABILITATION

### SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2304.001. **SHORT TITLE**
- Sec. 2304.002. **PURPOSES**
- Sec. 2304.003. **DEFINITIONS**
- Sec. 2304.004. **GENERAL POWERS OF DEPARTMENT**
- Sec. 2304.005. **AUTHORITY OF DEPARTMENT TO ADOPT MINIMUM HOUSING CODE STANDARDS**
- Sec. 2304.006. **LIMITATION ON CONSTRUCTION OF HOUSING OR ACQUISITION OF PROPERTY BY DEPARTMENT**
- Sec. 2304.007. **PROHIBITION ON BORROWING, INCURRING OBLIGATIONS, OR PLEDGING CREDIT**
- Sec. 2304.008. **ALLOCATION OF AVAILABLE LOAN FUNDS**
- Sec. 2304.009. **RELATIONSHIP OF DEPARTMENT AND LOCAL GOVERNMENTS**
- Sec. 2304.010. **DESIGNATION OF LOCAL AGENCY BY LOCAL GOVERNMENT**
- Sec. 2304.011. **EDUCATION PROGRAM CONDUCTED BY LOCAL GOVERNMENT**

[Sections 2304.012 to 2304.020 reserved for expansion]

SUBCHAPTER B. HOUSING REHABILITATION LOAN FUND

- Sec. 2304.021. FUND
- Sec. 2304.022. DEPOSITS TO FUND
- Sec. 2304.023. PURPOSES OF FUND
- Sec. 2304.024. INVESTMENT AND DISBURSEMENT OF FUND

[Sections 2304.025 to 2304.040 reserved for expansion]

SUBCHAPTER C. HOUSING REHABILITATION AREA PLAN

- Sec. 2304.041. DESIGNATION OF AREA AND PREPARATION OF PLAN
- Sec. 2304.042. CONTENTS OF AREA PLAN
- Sec. 2304.043. APPROVAL OF AREA PLAN
- Sec. 2304.044. REJECTION OF AREA PLAN

[Sections 2304.045 to 2304.060 reserved for expansion]

SUBCHAPTER D. HOUSING REHABILITATION LOANS

- Sec. 2304.061. PRIMARY USE FOR LOAN
- Sec. 2304.062. DEPARTMENT LOAN RULES
- Sec. 2304.063. LOAN APPLICATION
- Sec. 2304.064. LOCAL GOVERNMENT APPROVAL OF LOAN
- Sec. 2304.065. DEPARTMENT APPROVAL
- Sec. 2304.066. DISBURSEMENT OF LOAN FUNDS
- Sec. 2304.067. LIMIT ON AMOUNT OF LOAN
- Sec. 2304.068. ADMINISTRATIVE CHARGE IMPOSED BY LOCAL GOVERNMENT
- Sec. 2304.069. INTEREST RATE
- Sec. 2304.070. TERM OF LOAN
- Sec. 2304.071. INSTALLMENT PAYMENTS
- Sec. 2304.072. LOAN TO BE SECURED
- Sec. 2304.073. OTHER LOAN CONDITIONS
- Sec. 2304.074. ADJUSTMENTS IF BORROWER UNABLE TO REPAY LOAN
- Sec. 2304.075. DISPOSITION OR ENCUMBRANCE OF PROPERTY BY BORROWER
- Sec. 2304.076. CONDITIONS UNDER WHICH LOAN BECOMES IMMEDIATELY DUE
- Sec. 2304.077. ACQUISITION OF PROPERTY TO PROTECT LOAN
- Sec. 2304.078. ACQUISITION OF PROPERTY TO ENFORCE LIEN
- Sec. 2304.079. PUBLIC SALE OR AUCTION OF ACQUIRED PROPERTY
- Sec. 2304.080. PRIVATE SALE
- Sec. 2304.081. CONTRACT FOR SERVICING LOAN
- Sec. 2304.082. AUDIT OF LOANS

[Sections 2304.083 to 2304.100 reserved for expansion]

SUBCHAPTER E. HOUSING REHABILITATION CONTRACTS

- Sec. 2304.101. STANDARDS FOR CONTRACTORS AND CONTRACTS
- Sec. 2304.102. LOCAL GOVERNMENT APPROVAL AND SUPERVISION OF CONTRACTS
- Sec. 2304.103. ADVERTISING REQUIREMENT FOR CERTAIN CONTRACTS
- Sec. 2304.104. PERFORMANCE AND PAYMENT BONDS

## CHAPTER 2304. HOUSING REHABILITATION

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2304.001. **SHORT TITLE.** This chapter may be cited as the Texas Housing Rehabilitation Act. (V.A.C.S. Art. 1269L-5, Sec. 1.)

Sec. 2304.002. **PURPOSES.** (a) The purposes of this chapter are to provide a means by which the deterioration of housing and the decline of residential areas throughout the state can be arrested and prevented.

(b) The purposes of this chapter are public purposes for which money may be borrowed, loaned, and spent. (V.A.C.S. Art. 1269L-5, Sec. 3.)

Sec. 2304.003. **DEFINITIONS.** In this chapter:

(1) "Borrower" means a household whose application for a housing rehabilitation loan is approved under this chapter by a local government.

(2) "Department" means the Texas Department of Housing and Community Affairs.

(3) "Fund" means the Texas housing rehabilitation loan fund.

(4) "Household" means one or more persons owning housing.

(5) "Housing" means a structure that is on a permanent foundation and that consists of one to four family units used only for residential purposes.

(6) "Housing rehabilitation" means the repair, renovation, or other improvement of housing to make the housing decent, safe, sanitary, and more habitable.

(7) "Housing rehabilitation loan" means a loan made under this chapter.

(8) "Local agency" means a:

(A) nonprofit organization whose principal purpose is to improve housing conditions; or

(B) local housing authority, urban renewal agency, or other public entity.

(9) "Local government" means a county or municipality. (V.A.C.S. Art. 1269L-5, Secs. 4(1), (2), (4), (5) (part), and (6)-(9).)

Sec. 2304.004. **GENERAL POWERS OF DEPARTMENT.** (a) The department has the powers necessary or appropriate to carry out the purposes of this chapter.

(b) The department may:

(1) make an agreement with any other person in carrying out its powers or duties under this chapter;

(2) spend funds appropriated to it by the legislature to pay for staff, travel expenses, supplies or equipment, or contracts for services necessary to carry out its powers or duties under this chapter; or

(3) seek and accept funds from any source. (V.A.C.S. Art. 1269L-5, Sec. 7 (part).)

Sec. 2304.005. **AUTHORITY OF DEPARTMENT TO ADOPT MINIMUM HOUSING CODE STANDARDS.** The department shall adopt the minimum housing, building, fire, and related code standards that apply in designated areas for which a housing rehabilitation plan is approved by the department and for which local government standards are not in effect. (V.A.C.S. Art. 1269L-5, Sec. 9(d).)

Sec. 2304.006. **LIMITATION ON CONSTRUCTION OF HOUSING OR ACQUISITION OF PROPERTY BY DEPARTMENT.** (a) The department may not construct housing.

(b) The department may not acquire housing except to enforce a lien under Subchapter D. (V.A.C.S. Art. 1269L-5, Sec. 8(a) (part).)

Sec. 2304.007. **PROHIBITION ON BORROWING, INCURRING OBLIGATIONS, OR PLEDGING CREDIT.** The department may not borrow money, incur monetary obligations, or pledge in any manner the credit or taxing power of the state or a political subdivision of the state. (V.A.C.S. Art. 1269L-5, Sec. 15.)

Sec. 2304.008. ALLOCATION OF AVAILABLE LOAN FUNDS. If the amount of housing rehabilitation loans anticipated to be made in a fiscal year exceeds the estimated available funds for that year, the department shall allocate the estimated available funds for that year among the local governments that have filed housing rehabilitation area plans with the department. In allocating the available funds, the department shall take into account the probable amount of housing rehabilitation loans to be made by each local government. (V.A.C.S. Art. 1269L-5, Sec. 10(b).)

Sec. 2304.009. RELATIONSHIP OF DEPARTMENT AND LOCAL GOVERNMENTS. (a) The department shall adopt standards and procedures for the administration of this chapter by a local government or local agency.

(b) The department may provide technical assistance to a local government. (V.A.C.S. Art. 1269L-5, Secs. 7 (part), 9(b) (part).)

Sec. 2304.010. DESIGNATION OF LOCAL AGENCY BY LOCAL GOVERNMENT. The governing body of a local government may designate one or more local agencies to exercise a power or duty of the local government under this chapter. The governing body may withdraw the delegated power or duty at any time. (V.A.C.S. Art. 1269L-5, Sec. 12(e).)

Sec. 2304.011. EDUCATION PROGRAM CONDUCTED BY LOCAL GOVERNMENT. A local government engaged in housing rehabilitation under this chapter shall conduct a general education program to inform residents in designated areas of methods for maintaining their housing and of the availability of housing rehabilitation loans. (V.A.C.S. Art. 1269L-5, Sec. 12(f).)

[Sections 2304.012 to 2304.020 reserved for expansion]

#### SUBCHAPTER B. HOUSING REHABILITATION LOAN FUND

Sec. 2304.021. FUND. (a) The Texas housing rehabilitation loan fund is in the state treasury.

(b) The department may designate separate accounts in the fund and the purposes of the accounts. (V.A.C.S. Art. 1269L-5, Secs. 5(a) (part), (b) (part).)

Sec. 2304.022. DEPOSITS TO FUND. The following money shall be credited to the fund:

- (1) money appropriated by the legislature for housing rehabilitation loans;
- (2) money received from other sources for the purpose of making housing rehabilitation loans;
- (3) money received from borrowers as payments on their housing rehabilitation loans;
- (4) income from the transfer of interests in property acquired in connection with housing rehabilitation loans; and
- (5) interest earned on deposits and investments of the fund. (V.A.C.S. Art. 1269L-5, Sec. 5(a) (part).)

Sec. 2304.023. PURPOSES OF FUND. The fund may be used only for:

- (1) financing housing rehabilitation loans, including the administrative charge imposed under Section 2304.068 by a local government; and
- (2) paying the expenses incurred by the department in connection with the acquisition or disposition of real property under this chapter. (V.A.C.S. Art. 1269L-5, Sec. 5(c).)

Sec. 2304.024. INVESTMENT AND DISBURSEMENT OF FUND. The state treasurer shall invest and disburse the money credited to the fund on the written authorization of the executive director of the department. (V.A.C.S. Art. 1269L-5, Sec. 5(b) (part).)

[Sections 2304.025 to 2304.040 reserved for expansion]

#### SUBCHAPTER C. HOUSING REHABILITATION AREA PLAN

Sec. 2304.041. DESIGNATION OF AREA AND PREPARATION OF PLAN. (a) A local government may allow households in a specific area within its boundaries to apply for housing rehabilitation loans by:

- (1) designating the specific area; and
- (2) preparing a housing rehabilitation plan for the designated area.
- (b) A local government may designate more than one area within its boundaries.
- (c) The designation of an area must be made in accordance with the standards established by the department. The area plan must be in the form prescribed by the department. (V.A.C.S. Art. 1269l-5, Secs. 4(5) (part), 6(a).)

Sec. 2304.042. CONTENTS OF AREA PLAN. A housing rehabilitation area plan must contain relevant information about the area, including:

- (1) a description of the physical, social, and economic characteristics of the area;
- (2) a description of the housing conditions in the area;
- (3) an assessment of the need for housing rehabilitation loans in the area, including:
  - (A) the number and characteristics of households in the area; and
  - (B) the average and total loan amounts needed;
- (4) a description of the methods by which the local government preparing the plan will determine whether the rehabilitation of housing in the area is economically feasible;
- (5) a description of the methods by which:
  - (A) rehabilitation work will be supervised; and
  - (B) compliance with departmental regulations governing materials, fixtures, and rehabilitation contracts will be ensured;
- (6) a description of the methods and procedures that will be used to enforce:
  - (A) local housing, building, fire, and related codes; or
  - (B) the standards adopted by the department under Section 2304.005, if codes of those types have not been enacted;
- (7) an assessment of the need for additional public improvements and public services in the area and a description of the specific means by which the improvements and services will be provided; and
- (8) a description of the methods by which private investment to improve conditions in the area will be encouraged. (V.A.C.S. Art. 1269l-5, Sec. 6(b).)

Sec. 2304.043. APPROVAL OF AREA PLAN. (a) A local government's area plan must be approved by resolution or order of the governing body of the local government and must be submitted to the department for review.

(b) The department shall approve the plan if the area meets the standards established by the department and if the plan contains the required information. (V.A.C.S. Art. 1269l-5, Sec. 6(c) (part).)

Sec. 2304.044. REJECTION OF AREA PLAN. (a) The department shall return a housing rehabilitation area plan to the local government submitting it if the area for which the plan is prepared does not meet the department's standards or if the plan does not contain the required information. The department shall include with the returned plan a list of deficiencies.

(b) An area plan may be corrected and resubmitted for approval by the department. (V.A.C.S. Art. 1269l-5, Sec. 6(c) (part).)

[Sections 2304.045 to 2304.060 reserved for expansion]

#### SUBCHAPTER D. HOUSING REHABILITATION LOANS

Sec. 2304.061. PRIMARY USE FOR LOAN. A housing rehabilitation loan must be used primarily to make housing comply with applicable state, county, or municipal housing codes or standards, including building, fire, health, housing maintenance, or similar codes. (V.A.C.S. Art. 1269l-5, Sec. 13(a).)

Sec. 2304.062. DEPARTMENT LOAN RULES. (a) The department shall adopt rules governing the making and servicing of a housing rehabilitation loan and the foreclosure of a loan in default. The rules must include:

(1) the requirement that a housing rehabilitation loan be evidenced by a promissory note payable to the state and be secured by a lien on real property in the state; and

(2) the standards under which a household in an area designated by a local government may qualify for a housing rehabilitation loan.

(b) In adopting the standards under Subsection (a)(2), the department shall take into account:

(1) household gross income;

(2) household income available for housing needs;

(3) household size;

(4) the value and condition of the housing to be rehabilitated; and

(5) the ability of households to compete successfully in the private housing market and to pay for sanitary, decent, and safe housing in that market. (V.A.C.S. Art. 1269l-5, Secs. 9(a), (b) (part); 11(a) (part).)

Sec. 2304.063. LOAN APPLICATION. A household may apply to the local government in which the household's housing is located for a housing rehabilitation loan if the housing is located in a designated area for which an area plan has been approved by the department. (V.A.C.S. Art. 1269l-5, Sec. 6(c) (part).)

Sec. 2304.064. LOCAL GOVERNMENT APPROVAL OF LOAN. (a) A local government may approve or disapprove a housing rehabilitation loan application authorized by Section 2304.063. The approval or disapproval must be given in accordance with the rules adopted by the department under Section 2304.062.

(b) The local government shall notify the department of the approval of a loan application and the amount of the approved loan. (V.A.C.S. Art. 1269l-5, Secs. 11(a) (part), 12(a).)

Sec. 2304.065. DEPARTMENT APPROVAL. The department may not approve a housing rehabilitation loan unless it finds that:

(1) the benefit to an area designated under Section 2304.041 will exceed the financial commitment of the department; and

(2) the approval of the loan will be of benefit to the state and its taxpayers. (V.A.C.S. Art. 1269l-5, Sec. 11(b).)

Sec. 2304.066. DISBURSEMENT OF LOAN FUNDS. (a) The executive director of the department shall authorize the state treasurer to disburse to a local government from the housing rehabilitation loan fund the amount of a housing rehabilitation loan approved by the local government under this chapter if the department receives from the local government a notice of the local government's approval of the loan.

(b) The executive director may not authorize the disbursement of funds for a housing rehabilitation loan if:

(1) the department finds that the local government that approved the loan is not making a good faith effort to substantially comply with the applicable housing rehabilitation area plan or the rules adopted by the department; or

(2) the remaining part of the fund allocated to the local government under Section 2304.008 is insufficient to allow the payment of the approved amount. (V.A.C.S. Art. 1269l-5, Sec. 10(c).)

Sec. 2304.067. LIMIT ON AMOUNT OF LOAN. The amount of a housing rehabilitation loan may not exceed:

(1) the amount determined by subtracting the amount of all other outstanding indebtedness secured by the property covered by the loan from the market value of the rehabilitated property as determined by the local government approving the loan; or

(2) the amount determined by adding the amount of the housing rehabilitation contract made and approved under Subchapter E for the property to the amount of the administrative charge imposed under Section 2304.068 in connection with the loan. (V.A.C.S. Art. 1269l-5, Secs. 4(3), 13(b).)

**Sec. 2304.068. ADMINISTRATIVE CHARGE IMPOSED BY LOCAL GOVERNMENT.**

(a) A local government may impose a charge to cover its administrative expenses incurred in connection with a housing rehabilitation loan made by the local government.

(b) The local government may deduct the charge from the amount loaned.

(c) The charge may not exceed three percent of the amount of the contract for housing rehabilitation the borrower makes with a contractor. (V.A.C.S. Art. 1269l-5, Secs. 4(3), 12(c).)

**Sec. 2304.069. INTEREST RATE.** (a) The department shall set the minimum and maximum interest rates for housing rehabilitation loans.

(b) A local government shall set the interest rate for a housing rehabilitation loan it approves under this chapter. The rate must be within the minimum and maximum rates set by the department. (V.A.C.S. Art. 1269l-5, Secs. 9(c), 12(b) (part).)

**Sec. 2304.070. TERM OF LOAN.** A local government shall set the term of a housing rehabilitation loan it approves under this chapter. The term may not exceed 20 years. (V.A.C.S. Art. 1269l-5, Secs. 12(b) (part), 13(c) (part).)

**Sec. 2304.071. INSTALLMENT PAYMENTS.** A housing rehabilitation loan must be repaid in installments. (V.A.C.S. Art. 1269l-5, Sec. 13(c) (part).)

**Sec. 2304.072. LOAN TO BE SECURED.** A housing rehabilitation loan must be secured as required by this chapter and the rules adopted under this chapter. (V.A.C.S. Art. 1269l-5, Sec. 13(c) (part).)

**Sec. 2304.073. OTHER LOAN CONDITIONS.** For a housing rehabilitation loan a local government approves under this chapter, the local government shall establish other necessary conditions relating to the repayment of the loan according to this chapter and the regulations of the department. (V.A.C.S. Art. 1269l-5, Sec. 12(b) (part).)

**Sec. 2304.074. ADJUSTMENTS IF BORROWER UNABLE TO REPAY LOAN.** A local government may allow for the deferment of payments or may adjust the interest rate or term of a housing rehabilitation loan approved by the local government if the borrower is unable to make the required payments. (V.A.C.S. Art. 1269l-5, Sec. 13(c) (part).)

**Sec. 2304.075. DISPOSITION OR ENCUMBRANCE OF PROPERTY BY BORROWER.** The department may adopt regulations governing the disposition or further encumbrance by the borrower of property subject to a lien that secures a housing rehabilitation loan. (V.A.C.S. Art. 1269l-5, Sec. 7 (part).)

**Sec. 2304.076. CONDITIONS UNDER WHICH LOAN BECOMES IMMEDIATELY DUE.** (a) A borrower must agree that if the borrower voluntarily destroys, moves from, or relinquishes ownership of the rehabilitated housing on or before the first anniversary of the date the rehabilitation is completed:

(1) the borrower's housing rehabilitation loan becomes immediately due and payable; and

(2) an interest surcharge is added sufficient to make the total interest paid equal an amount determined by the prevailing interest rates for rehabilitation loans from private sources at the time of the sale.

(b) The local government that approved the loan may waive the interest surcharge if:

(1) the local government finds that the borrower must sell the housing because of financial hardship or similar circumstances; and

(2) the department consents to the waiver.

(c) A local government that approved a housing rehabilitation loan may, with the consent of the department, take the following action if the borrower dies or the borrower sells or gives away property encumbered by the loan:

(1) declare all or part of any deferred payments due and payable;

(2) declare the balance of the loan due and payable; or

(3) allow a buyer, donee, or other successor in title who qualifies under Section 2304.062 to assume the loan. (V.A.C.S. Art. 1269l-5, Secs. 13(d), 16.)

**Sec. 2304.077. ACQUISITION OF PROPERTY TO PROTECT LOAN.** The department may acquire title to any project by foreclosure if necessary to protect a housing rehabilitation

loan made for the project by the department and to pay the costs arising from the foreclosure. (V.A.C.S. Art. 1269l-5, Sec. 13(e).)

Sec. 2304.078. ACQUISITION OF PROPERTY TO ENFORCE LIEN. To enforce a lien under this chapter, the department may acquire housing by:

- (1) foreclosure of a mortgage;
- (2) a sale under a deed of trust; or
- (3) a voluntary conveyance from a borrower in full or partial settlement of a housing rehabilitation loan. (V.A.C.S. Art. 1269l-5, Secs. 7 (part), 8(a) (part).)

Sec. 2304.079. PUBLIC SALE OR AUCTION OF ACQUIRED PROPERTY. (a) If the department acquires housing in the enforcement of a lien under this chapter, it shall within six months after the acquisition offer the housing for public sale or auction.

(b) The department must provide notice of the public sale or auction by having a notice published in a newspaper of general circulation in the county in which the property is located. The notice must be published once a week for three consecutive weeks before the date of the sale or auction and must contain:

- (1) a description of the property;
- (2) a description of the procedures for submitting competitive bids for the property; and
- (3) a statement of the time and location of the sale or auction.

(c) The department may reject any or all bids submitted for the property. (V.A.C.S. Art. 1269l-5, Sec. 8(b).)

Sec. 2304.080. PRIVATE SALE. (a) If a sale of property cannot be made by a public sale or auction as provided by Section 2304.079, the department may negotiate with a party for the expeditious sale of the property. In the negotiations, the department shall give priority to selling the property to a purchaser who will be required to pay ad valorem taxes on the property.

(b) If a sale to that kind of purchaser is not practicable, the department shall attempt to sell the property to a purchaser who is exempt from ad valorem taxes but who will make payments in lieu of taxes on the property.

(c) If neither type of purchaser is available, the department may sell the property to any purchaser. (V.A.C.S. Art. 1269l-5, Sec. 8(c).)

Sec. 2304.081. CONTRACT FOR SERVICING LOAN. A local government may contract with any entity for the servicing of a housing rehabilitation loan approved by the local government. (V.A.C.S. Art. 1269l-5, Sec. 12(d).)

Sec. 2304.082. AUDIT OF LOANS. The department shall audit the local administration of housing rehabilitation loans to determine if a good faith effort is being made to comply with the applicable housing rehabilitation plan and the rules adopted by the department. (V.A.C.S. Art. 1269l-5, Sec. 10(a).)

[Sections 2304.083 to 2304.100 reserved for expansion]

#### SUBCHAPTER E. HOUSING REHABILITATION CONTRACTS

Sec. 2304.101. STANDARDS FOR CONTRACTORS AND CONTRACTS. The department shall adopt standards for:

- (1) the selection of contractors to perform housing rehabilitation under this chapter;
- (2) housing rehabilitation contracts between borrowers and contractors; and
- (3) materials and fixtures used in performing housing rehabilitation under this chapter. (V.A.C.S. Art. 1269l-5, Sec. 9(b) (part).)

Sec. 2304.102. LOCAL GOVERNMENT APPROVAL AND SUPERVISION OF CONTRACTS. (a) A borrower and a contractor may not contract for housing rehabilitation that is to be financed by a housing rehabilitation loan unless the local government responsible for approving the loan approves the proposed contract in accordance with the standards adopted by the department.



(b) The local government shall supervise all work performed under the contract. The contractor is not entitled to payment until the work has been approved by the local government, and the borrower is not liable to the contractor for any work not approved by the local government. (V.A.C.S. Art. 1269/–5, Sec. 14(a).)

Sec. 2304.103. ADVERTISING REQUIREMENT FOR CERTAIN CONTRACTS. A contract for housing rehabilitation that involves the expenditure of more than \$3,000 and that is to be financed by loan funds applied by the department may not be made unless advertised in the same way as a contract under Chapter 252, Local Government Code. (V.A.C.S. Art. 1269/–5, Sec. 14(b) (part).)

Sec. 2304.104. PERFORMANCE AND PAYMENT BONDS. The provisions of Chapter 2253 relating to performance and payment bonds apply to a construction contract governed by this subchapter. (V.A.C.S. Art. 1269/–5, Sec. 14(b) (part).)

CHAPTER 2305. RESTITUTION FOR OIL OVERCHARGES

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2305.001. SHORT TITLE
- Sec. 2305.002. DEFINITIONS

[Sections 2305.003 to 2305.010 reserved for expansion]

SUBCHAPTER B. PROGRAM ADMINISTRATION

- Sec. 2305.011. ADMINISTRATION BY GOVERNOR
- Sec. 2305.012. STAFF; ASSISTANCE
- Sec. 2305.013. REVIEW COMMITTEE

[Sections 2305.014 to 2305.020 reserved for expansion]

SUBCHAPTER C. FINANCIAL PROVISIONS

- Sec. 2305.021. OIL OVERCHARGE ACCOUNT
- Sec. 2305.022. USE OF ACCOUNT
- Sec. 2305.023. ACCOUNT RECORDS
- Sec. 2305.024. INVESTMENT OF MONEY AND DEPOSIT OF INTEREST
- Sec. 2305.025. SUBMISSION OF VOUCHER
- Sec. 2305.026. EFFECT OF RESTRICTION ON USE OR RECEIPT OF MONEY

[Sections 2305.027 to 2305.030 reserved for expansion]

SUBCHAPTER D. DIRECT GRANT PROGRAMS

- Sec. 2305.031. DIRECT GRANT PROGRAM
- Sec. 2305.032. AUTHORITY OF SUPERVISING STATE AGENCY
- Sec. 2305.033. EMERGENCY NUTRITION AND TEMPORARY EMERGENCY RELIEF PROGRAM
- Sec. 2305.034. ENERGY CRISIS PROGRAM
- Sec. 2305.035. LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM
- Sec. 2305.036. WEATHERIZATION ASSISTANCE PROGRAM
- Sec. 2305.037. NATIVE AMERICAN RESTITUTIONARY PROGRAM
- Sec. 2305.038. RESERVOIR CONSERVATION PROGRAM
- Sec. 2305.039. INSTITUTIONAL CONSERVATION PROGRAM
- Sec. 2305.040. ENERGY EXTENSION SERVICE
- Sec. 2305.041. STATE ENERGY CONSERVATION PROGRAM

[Sections 2305.042 to 2305.060 reserved for expansion]

SUBCHAPTER E. COMPETITIVE GRANT PROGRAMS

- Sec. 2305.061. COMPETITIVE GRANT PROGRAM
- Sec. 2305.062. CONSUMER REPRESENTATION
- Sec. 2305.063. PUBLIC-PRIVATE PARTNERSHIP PROGRAM
- Sec. 2305.064. HOUSING PARTNERSHIP PROGRAM
- Sec. 2305.065. REVOLVING LOAN PROGRAM
- Sec. 2305.066. AGRICULTURAL ENERGY CONSERVATION PROGRAM
- Sec. 2305.067. ALTERNATIVE ENERGY PROGRAM
- Sec. 2305.068. ENERGY RESEARCH AND DEVELOPMENT PROGRAM
- Sec. 2305.069. LOCAL GOVERNMENT ENERGY PROGRAM
- Sec. 2305.070. TRANSPORTATION ENERGY PROGRAM
- Sec. 2305.071. MASS TRANSIT ENERGY PROGRAM
- Sec. 2305.072. ENERGY RESEARCH IN APPLICATIONS PROGRAM
- Sec. 2305.073. DIESEL FUEL CONSERVATION PROGRAM
- Sec. 2305.074. ENERGY RESOURCE OPTIMIZATION PROGRAM
- Sec. 2305.075. SMALL HOSPITALS ENERGY MANAGEMENT PROGRAM
- Sec. 2305.076. TRAFFIC LIGHT SYNCHRONIZATION PROGRAM

CHAPTER 2305. RESTITUTION FOR OIL OVERCHARGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2305.001. SHORT TITLE. This chapter may be cited as the Oil Overcharge Restitutionary Act. (V.A.C.S. Art. 4413(56), Sec. 1.)

Sec. 2305.002. DEFINITIONS. In this chapter:

- (1) "Account" means the oil overcharge account.
- (2) "Applicable federal guidelines" means federal court judgments or orders, case settlements, laws, regulations, or other requirements or discretionary authority, imposed by the judicial, legislative, or executive branch, that govern or restrict the use of money received by the state because of petroleum overcharge litigation relating to the overpricing of crude oil or refined petroleum products during the 1973-1981 period of mandatory federal price controls.
- (3) "Energy office" means the energy office of the governor.
- (4) "Supervising state agency" means the state agency, department, commission, or other entity designated by this chapter or by the governor to supervise, manage, or administer a program financed under this chapter. (V.A.C.S. Art. 4413(56), Secs. 2(1), (2), (5), (6).)

[Sections 2305.003 to 2305.010 reserved for expansion]

SUBCHAPTER B. PROGRAM ADMINISTRATION

Sec. 2305.011. ADMINISTRATION BY GOVERNOR. (a) Subject to Section 2305.013, the governor may:

- (1) finance a project under this chapter; and
  - (2) oversee and monitor the administration of a program prescribed by this chapter.
- (b) The governor may establish direct grant programs and competitive grant programs in addition to the programs provided by this chapter.
- (c) The governor shall:
- (1) determine the supervising state agency for each competitive grant program and for each direct grant program established by the governor;
  - (2) establish programs and criteria and evaluate a proposal in accordance with applicable federal guidelines; and

(3) send to the appropriate federal entity all information required under applicable federal guidelines.

(d) Criteria established under this section may apply generally to all programs or specifically to one or more programs. (V.A.C.S. Art. 4413(56), Sec. 3.)

Sec. 2305.012. STAFF; ASSISTANCE. (a) The energy office shall provide staff to implement and administer this chapter.

(b) The governor may also enlist the assistance of a private entity or a state agency, department, commission, or other entity to:

- (1) evaluate or review a proposal;
- (2) audit a program participant or a supervising state agency;
- (3) perform administrative duties under this chapter; or
- (4) develop eligibility or evaluation criteria. (V.A.C.S. Art. 4413(56), Sec. 4.)

Sec. 2305.013. REVIEW COMMITTEE. (a) A review committee composed of the lieutenant governor and the speaker of the house of representatives shall review each proposal submitted to the committee by the governor under a direct or competitive grant program.

(b) The governor may not finance a project under a direct or competitive grant program unless the governor submits the project proposal to the review committee and the committee approves the project proposal. (V.A.C.S. Art. 4413(56), Sec. 5.)

[Sections 2305.014 to 2305.020 reserved for expansion]

### SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 2305.021. OIL OVERCHARGE ACCOUNT. (a) The oil overcharge account is an account in the general revenue fund.

(b) The comptroller shall deposit to the credit of the account any amount received as a result of petroleum overcharge litigation relating to the overpricing of crude oil or refined petroleum products during the 1973-1981 period of mandatory federal price controls. (V.A.C.S. Art. 4413(56), Sec. 6(a) (part).)

Sec. 2305.022. USE OF ACCOUNT. Money in the account may be used only by the governor to implement and operate the programs authorized by this chapter. (V.A.C.S. Art. 4413(56), Sec. 6(b).)

Sec. 2305.023. ACCOUNT RECORDS. The comptroller shall establish records of the money in the account that are sufficient to identify the source of each particular amount in the account to facilitate a determination of compliance with applicable federal guidelines relating to the use of money derived from each particular source. (V.A.C.S. Art. 4413(56), Sec. 6(c).)

Sec. 2305.024. INVESTMENT OF MONEY AND DEPOSIT OF INTEREST. (a) The state treasurer may invest unobligated money in the account in accordance with Subchapter C, Chapter 404.

(b) The state treasurer shall deposit to the credit of the account all interest or other income received from the investment of the money. (V.A.C.S. Art. 4413(56), Sec. 6(d).)

Sec. 2305.025. SUBMISSION OF VOUCHER. (a) The governor shall designate the individuals who are authorized to sign a voucher submitted to the comptroller for approval of payment from the account and notify the comptroller of each designation.

(b) The comptroller shall approve a payment from the account in the manner provided for approval of a payment from an amount appropriated by the legislature. (V.A.C.S. Art. 4413(56), Sec. 6(e).)

Sec. 2305.026. EFFECT OF RESTRICTION ON USE OR RECEIPT OF MONEY. A restriction or other criterion provided by or under this chapter that relates to the use or receipt of money awarded under this chapter to a supervising state agency, local recipient, or other person applies only to the use or receipt of that money and does not affect the use or receipt of money provided under other law. (V.A.C.S. Art. 4413(56), Sec. 7(a).)

[Sections 2305.027 to 2305.030 reserved for expansion]

SUBCHAPTER D. DIRECT GRANT PROGRAMS

Sec. 2305.031. **DIRECT GRANT PROGRAM.** The governor may use a direct grant program to finance a project under this chapter that has been approved as a component of a proposal recommended by the program's supervising state agency. (V.A.C.S. Art. 4413(56), Sec. 2(4).)

Sec. 2305.032. **AUTHORITY OF SUPERVISING STATE AGENCY.** (a) The supervising state agency of a direct grant program may adopt rules to implement the program, including rules that provide criteria for eligibility.

(b) The rules may not be inconsistent with the criteria:

- (1) established by applicable federal guidelines;
- (2) prescribed by this chapter; or
- (3) adopted by the governor. (V.A.C.S. Art. 4413(56), Sec. 7(b).)

Sec. 2305.033. **EMERGENCY NUTRITION AND TEMPORARY EMERGENCY RELIEF PROGRAM.** (a) The Texas Department of Housing and Community Affairs is the supervising state agency for the emergency nutrition and temporary emergency relief program established under Chapter 34, Human Resources Code.

(b) The department shall provide direct grant money under the program to pay vendors of energy utility services to prevent the interruption or termination of energy utility service for or to restore that service to low-income individuals.

(c) The ultimate beneficiaries of a grant under this section must be low-income individuals in need of emergency assistance. The department shall give priority to assistance for an individual, who is recently unemployed and does not qualify for another income assistance program.

(d) The program may not be limited so that an individual is eligible for assistance only if the individual's income is equal to less than 75 percent of the income standard established by applicable federal poverty guidelines.

(e) The department shall allocate grant money for distribution within counties according to the unemployment and poverty statistics for residents of each county.

(f) The department may distribute grant money to a local unit of government or to a nonprofit organization to provide needed services but shall give priority to a county government.

(g) A local unit of government or a nonprofit organization that receives a grant under this section must match the grant with an equal amount of money from another source. The recipient may not use as matching money any money received under another provision of this chapter. (V.A.C.S. Art. 4413(56), Sec. 8.)

Sec. 2305.034. **ENERGY CRISIS PROGRAM.** (a) The Texas Department of Housing and Community Affairs is the supervising state agency for the energy crisis program.

(b) The department shall provide direct grant money under the program to pay vendors of utilities, goods, or services related to the procurement of energy for heating or cooling residences. In addition, the department may issue directly to a consumer a voucher of not more than \$150 for each household in a case of undue hardship.

(c) The ultimate beneficiaries of a grant under this section must be individuals who:

- (1) are in imminent danger of having utility service terminated;
- (2) are experiencing other energy-related and supply shortage emergencies; or
- (3) meet applicable federal poverty income guidelines.

(d) The department shall give priority to assistance for an individual who is elderly or has a disability. (V.A.C.S. Art. 4413(56), Sec. 9.)

Sec. 2305.035. **LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.** (a) The Texas Department of Housing and Community Affairs is the supervising state agency for the low-income home energy assistance program.

(b) In accordance with the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. Sec. 8621 et seq.), the department shall provide direct grant money under the program to assist eligible households in meeting home energy costs.

(c) The ultimate beneficiaries of a grant under this section must be households that:

(1) have an income that does not exceed the greater of:

(A) 150 percent of the income level established by applicable federal poverty guidelines; or

(B) 60 percent of the state's median income; or

(2) include a recipient of a federal or state income subsidy, such as food stamps, supplemental security income, aid to families with dependent children, or income-based veterans benefits.

(d) The department may make a grant payment directly to an eligible household or to an energy supplier on behalf of an eligible household. (V.A.C.S. Art. 4413(56), Sec. 10.)

Sec. 2305.036. WEATHERIZATION ASSISTANCE PROGRAM. (a) The Texas Department of Housing and Community Affairs is the supervising state agency for the weatherization assistance program.

(b) In accordance with Part A, Energy Conservation in Existing Buildings Act of 1976 (42 U.S.C. Sec. 6861 et seq.), the department shall provide direct grant money under the program to pay for:

(1) the installation of weatherization materials under the low-income weatherization assistance program, including the installation of attic insulation, caulking, weatherstripping, storm windows, and other materials designed to increase furnace efficiency; and

(2) enhanced weatherization of dwellings occupied by low-income individuals, including:

(A) repairing roofs, walls, floors, and other parts of a housing unit if necessary to complete weatherization improvements;

(B) providing additional weatherization assistance on individual housing units; and

(C) tuning up, repairing, or replacing home heating and cooling systems.

(c) The ultimate beneficiaries of a grant under this section must be low-income individuals. The department shall give priority to assistance for an individual who is elderly or has a disability.

(d) A community action agency or private contractor may perform a weatherization assistance project.

(e) The maximum expenditure for a dwelling under Subdivision (b)(1) may not exceed applicable federal guidelines for materials and related program costs. The maximum expenditure for a dwelling under Subdivision (b)(2) may not exceed by more than \$1,500 the current weatherization assistance program limits for such repairs. (V.A.C.S. Art. 4413(56), Sec. 11.)

Sec. 2305.037. NATIVE AMERICAN RESTITUTIONARY PROGRAM. (a) A supervising state agency shall administer the Native American restitutionary program.

(b) The agency shall distribute direct grant money under the program to provide energy-related assistance to Native Americans of this state. (V.A.C.S. Art. 4413(56), Sec. 12.)

Sec. 2305.038. RESERVOIR CONSERVATION PROGRAM. (a) The Railroad Commission of Texas is the supervising state agency for the reservoir conservation program.

(b) The commission shall use direct grant money under the program to isolate productive hydrocarbon-yielding zones by plugging or other remediation of inactive wells in fields with enhanced recovery potential.

(c) The commission shall design the program to prevent the waste of energy and to conserve energy for future use. (V.A.C.S. Art. 4413(56), Sec. 13.)

Sec. 2305.039. INSTITUTIONAL CONSERVATION PROGRAM. (a) The energy office is the supervising state agency for the institutional conservation program.

(b) In accordance with Part E, Energy Policy and Conservation Act (42 U.S.C. Sec. 6371 et seq.), the office shall distribute direct grant money under the program to provide 50 percent

of the cost of projects to assist public and nonprofit schools, colleges, hospitals, and public care facilities to:

(1) conduct technical assistance studies to identify potential building energy conservation opportunities; and

(2) install cost-effective energy conservation measures. (V.A.C.S. Art. 4413(56), Sec. 14.)

Sec. 2305.040. ENERGY EXTENSION SERVICE. (a) The energy office is the supervising state agency for the energy extension service.

(b) In accordance with the National Energy Extension Service Act (42 U.S.C. Sec. 7001 et seq.), the office shall use direct grant money under the program to finance projects designed to assist residential, agricultural, and commercial small energy consumers in learning to conserve energy and to use renewable resource options. The projects may include consumer information and technical assistance.

(c) The office may require a grant recipient to match the amount of the grant. (V.A.C.S. Art. 4413(56), Sec. 15.)

Sec. 2305.041. STATE ENERGY CONSERVATION PROGRAM. (a) The energy office is the supervising state agency for the state energy conservation program.

(b) In accordance with Part B, Energy Policy and Conservation Act (42 U.S.C. Sec. 6321 et seq.), the office, under the program, shall:

(1) distribute direct grant money for projects that save measurable quantities of energy; and

(2) finance the operation of the Energy Management Center for Texas Schools, in accordance with Section 88A, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

(c) A project under Subsection (b)(1) must be implemented primarily by institutions or private sector energy consumers.

(d) A proposal under Subsection (b)(1) must:

(1) promote the conservation of energy; and

(2) improve the efficient use of energy through activities that result in quantifiable energy savings, including:

(A) energy audits of buildings;

(B) technical assistance in reducing energy bills; and

(C) providing training to building operators and fiscal officers on various energy issues such as utility bill analysis and energy management techniques.

(e) A public school may not receive a grant or the benefits of a grant under Subsection (b)(2) unless the governor approves the school's energy conservation plan. (V.A.C.S. Art. 4413(56), Sec. 16.)

[Sections 2305.042 to 2305.060 reserved for expansion]

## SUBCHAPTER E. COMPETITIVE GRANT PROGRAMS

Sec. 2305.061. COMPETITIVE GRANT PROGRAM. The governor may use a competitive grant program to finance a project under this chapter that has been approved from a group of competing proposals submitted by public or private applicants. (V.A.C.S. Art. 4413(56), Sec. 2(3).)

Sec. 2305.062. CONSUMER REPRESENTATION. (a) The governor shall award one or more competitive grants to support regulatory intervention activities that promote the adoption and expansion by energy utilities of consumer-oriented energy conservation programs.

(b) Activities that may be funded under this section include giving technical and legal expert testimony, providing materials, and making studies used to intervene and advise in various cases that are relevant to energy costs for low-income residential, other residential, or small commercial utility ratepayers.

(c) A grant recipient must design funded regulatory intervention activities to:

- (1) promote conservation and energy efficiency;
- (2) provide that energy options that have the least cost are pursued; and
- (3) assist in the reduction of energy costs. (V.A.C.S. Art. 4413(56), Sec. 17.)

Sec. 2305.063. PUBLIC-PRIVATE PARTNERSHIP PROGRAM. (a) The governor may approve and finance under the public-private partnership program one or more energy-related projects, including energy-related demonstration projects.

(b) The ultimate beneficiaries of a competitive grant under this section may include low-income or moderate-income consumers.

(c) A recipient of a grant under this section may include a community foundation affiliated with the Communities Foundation, Inc., of Texas.

(d) The governor may require grant recipients to match from private sources at least the total amount of the grants awarded under this section during a particular fiscal period. (V.A.C.S. Art. 4413(56), Sec. 18.)

Sec. 2305.064. HOUSING PARTNERSHIP PROGRAM. (a) The supervising state agency of the housing partnership program shall distribute competitive grant money under the program for residential energy conservation projects that reduce the amount of energy consumed for space heating, space cooling, water heating, refrigeration, or other residential energy uses.

(b) Projects funded under this section may include:

- (1) demonstration of commercially available cost-effective energy-saving techniques and technologies;
- (2) training and technical assistance in energy-efficient construction or remodeling;
- (3) providing information to occupants; and
- (4) financing incentives for energy-saving designs or improvements.

(c) The ultimate beneficiaries of a grant under this section must be low-income or moderate-income consumers.

(d) A local government, public housing agency, or other public or nonprofit organization serving the housing needs of low and moderate income individuals may apply for a grant under this section.

(e) The supervising state agency may require grant recipients to match from other sources at least the total amount of the grants awarded under this section. (V.A.C.S. Art. 4413(56), Sec. 19.)

Sec. 2305.065. REVOLVING LOAN PROGRAM. (a) The governor under the revolving loan program may approve and finance demonstration projects that provide loans to eligible applicants for energy-saving capital improvements.

(b) The supervising state agency of the program may distribute competitive grant money under the program to finance energy conservation projects approved by the governor for the benefit of:

- (1) a state agency or institution of higher education;
- (2) a public school;
- (3) a political subdivision of the state;
- (4) a transportation provider;
- (5) an agricultural producer;
- (6) a small business; and
- (7) an individual of low or moderate income.

(c) The governor shall determine the terms under which a loan may be made under this section and shall set the interest rate for a loan at a low rate that the governor determines is sufficient to recover the cost of administering the loan program.

(d) A person who receives a loan under this section shall repay the principal of and interest on the loan from the value of energy savings that accrues as the result of the energy conservation measure implemented with the borrowed money.

(e) A state agency or institution that receives a loan under this section shall repay the loan from the amount budgeted for the agency's or institution's energy costs. Until the loan is repaid, the legislature may not reduce the amount budgeted for those energy costs to reflect the value of energy savings that accrues as a result of the energy conservation measure implemented with the borrowed money. (V.A.C.S. Art. 4413(56), Sec. 20.)

Sec. 2305.066. AGRICULTURAL ENERGY CONSERVATION PROGRAM. (a) The supervising state agency of the agricultural energy conservation program shall distribute competitive grant money under the program for energy projects designed to benefit agriculture, including:

- (1) agricultural demonstration projects;
- (2) energy audits of agricultural or food processing facilities; and
- (3) the provision of agricultural information and technical assistance.

(b) The governor may fund a selected proposal without a matching requirement or may require a grant recipient to match any grant received under this section. (V.A.C.S. Art. 4413(56), Sec. 21.)

Sec. 2305.067. ALTERNATIVE ENERGY PROGRAM. (a) The supervising state agency of the alternative energy program shall distribute competitive grant money under the program for demonstration projects that develop alternative energy resources, including:

- (1) photovoltaic, biomass, wind, and solar applications; and
- (2) other appropriate alternative energy applications.

(b) The governor may require a grant recipient to match a grant in a ratio determined by the governor. (V.A.C.S. Art. 4413(56), Sec. 22.)

Sec. 2305.068. ENERGY RESEARCH AND DEVELOPMENT PROGRAM. (a) The governor may use competitive grant money to finance projects under the energy research and development program that supplement or initiate research by public or private institutions on issues related to energy.

(b) The governor may require a grant recipient to match a grant in a ratio determined by the governor. (V.A.C.S. Art. 4413(56), Sec. 23.)

Sec. 2305.069. LOCAL GOVERNMENT ENERGY PROGRAM. (a) The supervising state agency of the local government energy program shall distribute competitive grant money under the program for energy-saving projects that benefit local governments in this state.

(b) Proposals funded under this section may include:

- (1) energy audits of a local government facility;
- (2) traffic light synchronization;
- (3) fleet management; and
- (4) fuel-efficient transit routing.

(c) The governor may require a grant recipient to match a grant in a ratio determined by the governor. (V.A.C.S. Art. 4413(56), Sec. 24.)

Sec. 2305.070. TRANSPORTATION ENERGY PROGRAM. (a) The supervising state agency of the transportation energy program shall distribute competitive grant money under the program for projects relating to mass transit and other transportation services.

(b) A project may:

- (1) assist a service provider in providing services such as:
  - (A) traffic light synchronization;
  - (B) fleet management;
  - (C) computerized transit routing that is energy efficient;
  - (D) car-care clinics;



- (E) vanpooling or ridesharing efforts;
- (F) public education related to mass transit;
- (G) driver training in energy conservation awareness; and
- (H) transportation services for the elderly or persons with a disability; and

(2) include studies to improve existing and plan for future transportation systems in this state.

(c) The governor may require a grant recipient to match a grant in a ratio determined by the governor. (V.A.C.S. Art. 4413(56), Sec. 25.)

Sec. 2305.071. MASS TRANSIT ENERGY PROGRAM. (a) The supervising state agency of the mass transit energy program shall distribute competitive grant money under the program for projects that relate to mass transit and are approved by the governor.

(b) The supervising state agency may allocate grant money among eligible applicants according to the following formula:

(1) one-third to eligible applicants created under:

(A) Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes);

(B) Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes); or

(C) Article 1118z, Revised Statutes;

(2) one-third to eligible applicants that are in urbanized areas with a population of more than 50,000 and that were not created under a law specified in Subdivision (1); and

(3) one-third to eligible applicants in rural areas of the state and in urban areas with a population of 50,000 or less.

(c) To the greatest extent practicable, a grant recipient shall use money received under this section to obtain other grants.

(d) In this section, "eligible applicant" means a:

(1) municipality;

(2) metropolitan or regional authority; or

(3) local governmental body or other entity that receives federal public transportation money through the Texas Department of Transportation or other agency that administers federal public transportation money. (V.A.C.S. Art. 4413(56), Sec. 26.)

Sec. 2305.072. ENERGY RESEARCH IN APPLICATIONS PROGRAM. (a) The supervising state agency of the energy research in applications program shall distribute competitive grant money under the program for projects that are conducted by institutions of higher education and provide advanced research in energy-related subjects.

(b) In addition to the review required under this chapter, a proposal submitted under this section must be submitted to the advisory committee appointed under Section 142.003, Education Code, for a merit review.

(c) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code. (V.A.C.S. Art. 4413(56), Sec. 27.)

Sec. 2305.073. DIESEL FUEL CONSERVATION PROGRAM. (a) The supervising state agency of the diesel fuel conservation program shall implement projects that improve the fuel efficiency of diesel-powered vehicles and equipment. The supervising state agency shall use competitive grant money under the program to benefit diesel fuel consumers by identifying and implementing measures to save diesel fuel.

(b) The supervising state agency may fund a project that:

(1) provides training and technical assistance; or

(2) demonstrates and implements commercially available technologies that improve the fuel efficiency of diesel-powered vehicles and equipment, including trucks, boats, and tractors. (V.A.C.S. Art. 4413(56), Sec. 28.)

Sec. 2305.074. ENERGY RESOURCE OPTIMIZATION PROGRAM. The supervising state agency of the energy resource optimization program shall distribute competitive grant money under the program to initiate or supplement research programs designed to recover additional oil and gas from reservoirs in this state, with emphasis on recovery from state and other public lands. (V.A.C.S. Art. 4413(56), Sec. 29.)

Sec. 2305.075. SMALL HOSPITALS ENERGY MANAGEMENT PROGRAM. (a) The energy office is the supervising state agency for the small hospitals energy management program.

(b) The energy office shall use competitive grant money under the program to finance projects designed to assist small hospitals in controlling energy costs.

(c) Projects funded under this section may include:

(1) training for hospital personnel;

(2) technical assistance in establishing an energy management program;

(3) facility energy audits; and

(4) follow-up assistance in maintaining an energy management program. (V.A.C.S. Art. 4413(56), Sec. 30.)

Sec. 2305.076. TRAFFIC LIGHT SYNCHRONIZATION PROGRAM. (a) The Texas Department of Transportation is the supervising state agency for the traffic light synchronization program. The department shall provide assistance under the program to local governments throughout the state in an effort to save motor fuels through optimizing timing plans for traffic signals.

(b) The department shall award competitive grant money to local jurisdictions to pay the costs of training, engineering services, traffic studies, and other activities directly related to and undertaken as part of a local retiming project for traffic signals.

(c) The governor may require a grant recipient to match a grant in a ratio determined by the governor. (V.A.C.S. Art. 4413(56), Sec. 31.)

## CHAPTER 2306. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2306.001. PURPOSES

Sec. 2306.002. POLICY

Sec. 2306.003. PUBLIC PURPOSE

Sec. 2306.004. DEFINITIONS

Sec. 2306.005. REFERENCES TO FORMER LAW

Sec. 2306.006. RULES OF ABOLISHED AGENCIES

Sec. 2306.007. ESTABLISHING ECONOMICALLY DEPRESSED OR BLIGHTED AREAS

[Sections 2306.008 to 2306.020 reserved for expansion]

### SUBCHAPTER B. GOVERNING BOARD AND DEPARTMENT

Sec. 2306.021. DEPARTMENT DIVISIONS

Sec. 2306.022. APPLICATION OF SUNSET ACT

Sec. 2306.023. SEPARATION OF DIVISIONS

Sec. 2306.024. BOARD MEMBERS: APPOINTMENT AND COMPOSITION

Sec. 2306.025. TERMS OF BOARD MEMBERS

Sec. 2306.026. BOARD PLACES

Sec. 2306.027. ELIGIBILITY

Sec. 2306.028. CONFLICT OF INTEREST

Sec. 2306.029. SURETY BONDS

Sec. 2306.030. PRESIDING OFFICER; OTHER OFFICERS

- Sec. 2306.031. MEMBERS' COMPENSATION
- Sec. 2306.032. BOARD MEETINGS
- Sec. 2306.033. REMOVAL OF MEMBERS
- Sec. 2306.034. DISQUALIFICATION OF MEMBERS AND CERTAIN EMPLOYEES
- Sec. 2306.035. LOBBYIST RESTRICTION
- Sec. 2306.036. DIRECTOR: APPOINTMENT; TERM
- Sec. 2306.037. DIRECTOR'S COMPENSATION
- Sec. 2306.038. ACTING DIRECTOR

[Sections 2306.039 to 2306.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

- Sec. 2306.051. BOARD DUTIES
- Sec. 2306.052. DIRECTOR'S POWERS AND DUTIES
- Sec. 2306.053. DEPARTMENT POWERS AND DUTIES

[Sections 2306.054 to 2306.060 reserved for expansion]

SUBCHAPTER D. GENERAL ADMINISTRATIVE PROVISIONS

- Sec. 2306.061. INFORMATION ON QUALIFICATIONS AND CONDUCT
- Sec. 2306.062. CAREER LADDER
- Sec. 2306.063. PERFORMANCE EVALUATIONS
- Sec. 2306.064. EQUAL EMPLOYMENT OPPORTUNITIES
- Sec. 2306.065. DISCRIMINATION PROHIBITED
- Sec. 2306.066. INFORMATION AND COMPLAINTS
- Sec. 2306.067. LOANED EMPLOYEES
- Sec. 2306.068. INTERAGENCY COOPERATION
- Sec. 2306.069. OUTSIDE LEGAL COUNSEL
- Sec. 2306.070. BUDGET
- Sec. 2306.071. FUNDS
- Sec. 2306.072. ANNUAL REPORT
- Sec. 2306.073. INTERNAL AUDIT
- Sec. 2306.074. AUDIT
- Sec. 2306.075. TAX EXEMPTION

[Sections 2306.076 to 2306.090 reserved for expansion]

SUBCHAPTER E. COMMUNITY AFFAIRS DIVISION

- Sec. 2306.091. GENERAL FUNCTIONS
- Sec. 2306.092. DUTIES
- Sec. 2306.093. HOUSING ASSISTANCE GOAL
- Sec. 2306.094. SPECIAL ADVISORY COUNCILS
- Sec. 2306.095. TRANSFERS FROM GOVERNOR
- Sec. 2306.096. MULTIPURPOSE HUMAN RESOURCE CENTERS
- Sec. 2306.097. ENERGY SERVICES PROGRAM FOR LOW-INCOME INDIVIDUALS
- Sec. 2306.098. ADMINISTRATION OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; ALLOCATION OF FUNDS
- Sec. 2306.099. TRANSFER OF FEDERAL FUNDS
- Sec. 2306.100. STATE COMMUNITY DEVELOPMENT REVIEW COMMITTEE

[Sections 2306.101 to 2306.110 reserved for expansion]

SUBCHAPTER F. HOUSING FINANCE DIVISION: GENERAL PROVISIONS

- Sec. 2306.111. HOUSING ASSISTANCE GOAL
- Sec. 2306.112. PREPARATION AND CONTENT OF ANNUAL BUDGET
- Sec. 2306.113. BOARD CONSIDERATION OF ANNUAL BUDGET
- Sec. 2306.114. FILING OF ANNUAL BUDGET
- Sec. 2306.115. FAILURE TO ADOPT ANNUAL BUDGET
- Sec. 2306.116. AMENDED ANNUAL BUDGET
- Sec. 2306.117. PAYMENT OF EXPENSES; INDEBTEDNESS
- Sec. 2306.118. DEPOSIT OF FUNDS WITH TEXAS TREASURY SAFEKEEPING TRUST COMPANY
- Sec. 2306.119. SELECTION OF DEPOSITORY FOR OPERATING FUNDS
- Sec. 2306.120. SELECTION OF DEPOSITORY UNDER COVENANTS OF BONDS OR TRUST INDENTURES
- Sec. 2306.121. RECORDS
- Sec. 2306.122. ANNUAL REPORT
- Sec. 2306.123. AREA MEDIAN INCOME
- Sec. 2306.124. RULES REGARDING HOUSING DEVELOPMENTS
- Sec. 2306.125. COURT ACTIONS
- Sec. 2306.126. EXEMPTION FROM PROPERTY TAX

[Sections 2306.127 to 2306.140 reserved for expansion]

SUBCHAPTER G. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF BOARD

- Sec. 2306.141. RULES
- Sec. 2306.142. AUTHORIZATION OF BONDS
- Sec. 2306.143. ANNUAL REPORT
- Sec. 2306.144. FEES FOR SERVICES AND FACILITIES; PAYMENT OF DEPARTMENT OBLIGATIONS AND EXPENSES
- Sec. 2306.145. LOAN PROCEDURES
- Sec. 2306.146. INTEREST RATES AND AMORTIZATION SCHEDULES
- Sec. 2306.147. FEES AND PENALTIES
- Sec. 2306.148. UNDERWRITING STANDARDS
- Sec. 2306.149. APPROVED MORTGAGE LENDERS
- Sec. 2306.150. PROPERTY STANDARDS
- Sec. 2306.151. TARGET STRATEGY FOR BOND PROCEEDS
- Sec. 2306.152. ELIGIBILITY CRITERIA

[Sections 2306.153 to 2306.170 reserved for expansion]

SUBCHAPTER H. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF DEPARTMENT

- Sec. 2306.171. GENERAL DUTIES OF DEPARTMENT RELATING TO PURPOSES OF HOUSING FINANCE DIVISION
- Sec. 2306.172. ACQUISITION AND USE OF MONEY; DEPOSITORIES
- Sec. 2306.173. INVESTMENTS
- Sec. 2306.174. ACQUISITION AND DISPOSITION OF PROPERTY
- Sec. 2306.175. TRANSFER AND DISPOSITION OF PROPERTY; MANNER OF SALE
- Sec. 2306.176. FEES
- Sec. 2306.177. HEARINGS
- Sec. 2306.178. INSURANCE
- Sec. 2306.179. INVESTIGATIONS
- Sec. 2306.180. ENCOURAGING HOME OWNERSHIP
- Sec. 2306.181. TARGETING BOND PROCEEDS
- Sec. 2306.182. LOANS TO LENDERS

Sec. 2306.183. NEEDS OF QUALIFYING INDIVIDUALS AND FAMILIES IN RURAL AREAS AND SMALL MUNICIPALITIES

[Sections 2306.184 to 2306.200 reserved for expansion]

SUBCHAPTER I. HOUSING FINANCE DIVISION: FUNDS

- Sec. 2306.201. HOUSING TRUST FUND
- Sec. 2306.202. USE OF HOUSING TRUST FUND
- Sec. 2306.203. RULES REGARDING ADMINISTRATION OF HOUSING TRUST FUND
- Sec. 2306.204. INDEPENDENT AUDIT OF HOUSING TRUST FUND
- Sec. 2306.205. TRANSFER OF MONEY TO HOUSING TRUST FUND
- Sec. 2306.206. HOUSING TRUST FUND NOT SUBJECT TO TEXAS TRUST CODE
- Sec. 2306.207. RESERVE FUND

[Sections 2306.208 to 2306.220 reserved for expansion]

SUBCHAPTER J. HOUSING FINANCE DIVISION: LOAN TERMS AND CONDITIONS

- Sec. 2306.221. HOUSING DEVELOPMENT LOANS
- Sec. 2306.222. CONTRACTS AND AGREEMENTS REGARDING HOUSING DEVELOPMENTS
- Sec. 2306.223. CRITERIA FOR FINANCING HOUSING DEVELOPMENT OF HOUSING SPONSOR
- Sec. 2306.224. LOAN TERMS AND CONDITIONS
- Sec. 2306.225. RATIO OF LOAN TO DEVELOPMENT COST; AMORTIZATION PERIOD
- Sec. 2306.226. INTEREST RATES
- Sec. 2306.227. PREPAYMENT OF MORTGAGE LOANS
- Sec. 2306.228. LOAN FEES
- Sec. 2306.229. DOCUMENTS SUPPORTING MORTGAGE LOANS
- Sec. 2306.230. AGREEMENTS REGARDING CERTAIN LIMITATIONS ON HOUSING SPONSORS
- Sec. 2306.231. LOAN CONDITIONS RELATING TO DEPARTMENT POWERS
- Sec. 2306.232. TEXAS HOUSING AGENCY LOAN OR GUARANTEE

[Sections 2306.233 to 2306.250 reserved for expansion]

SUBCHAPTER K. HOUSING FINANCE DIVISION: HOUSING PROGRAMS

- Sec. 2306.251. PROPERTY OWNERSHIP PROGRAM
- Sec. 2306.252. LOW AND VERY LOW INCOME HOUSING RESOURCE CENTER

[Sections 2306.253 to 2306.260 reserved for expansion]

SUBCHAPTER L. HOUSING FINANCE DIVISION: REGULATION OF HOUSING SPONSORS

- Sec. 2306.261. SUPERVISING HOUSING SPONSORS
- Sec. 2306.262. UNIFORM SYSTEMS OF ACCOUNTS AND RECORDS
- Sec. 2306.263. REPORTING
- Sec. 2306.264. INSPECTIONS AND EXAMINATIONS
- Sec. 2306.265. OPERATION, MAINTENANCE, AND REPAIR
- Sec. 2306.266. FEES RELATING TO REGULATION
- Sec. 2306.267. COMPLIANCE WITH APPLICABLE LAWS, RULES, AND CONTRACT TERMS

- Sec. 2306.268. RENTS AND CHARGES
- Sec. 2306.269. TENANT AND MANAGER SELECTION
- Sec. 2306.270. REGULATION OF RETIREMENT OF CAPITAL INVESTMENT OR REDEMPTION OF STOCK
- Sec. 2306.271. COST CONTROLS
- Sec. 2306.272. HOUSING SPONSOR INVESTMENTS
- Sec. 2306.273. LIMITATION ON APPLICATION OF CERTAIN PROVISIONS OF SUBCHAPTER

[Sections 2306.274 to 2306.290 reserved for expansion]

SUBCHAPTER M. HOUSING FINANCE DIVISION: PURCHASE AND SALE OF MORTGAGE LOANS

- Sec. 2306.291. PURCHASE AND SALE OF MORTGAGE LOANS
- Sec. 2306.292. ELIGIBILITY OF MORTGAGE LOANS FOR PURCHASE
- Sec. 2306.293. FEDERALLY ASSISTED MORTGAGE LOANS
- Sec. 2306.294. MORTGAGE LOAN PURCHASE PRICE
- Sec. 2306.295. RULES GOVERNING PURCHASE AND SALE OF MORTGAGE LOANS
- Sec. 2306.296. REVIEW AND SUBSTITUTION OF PURCHASED MORTGAGE LOANS
- Sec. 2306.297. APPLICATION OF PROVISIONS RELATING TO LOAN TERMS AND CONDITIONS

[Sections 2306.298 to 2306.310 reserved for expansion]

SUBCHAPTER N. HOUSING FINANCE DIVISION: TENANTS OF HOUSING DEVELOPMENTS

- Sec. 2306.311. ADMISSION TO HOUSING DEVELOPMENTS
- Sec. 2306.312. EXAMINATION OF TENANT INCOME
- Sec. 2306.313. TERMINATION OF TENANCY
- Sec. 2306.314. CONTINUED OCCUPANCY ON PAYMENT OF SURCHARGE
- Sec. 2306.315. DISCHARGE FROM LIABILITY; REIMBURSEMENT
- Sec. 2306.316. LIMITATION ON APPLICATION OF SUBCHAPTER

[Sections 2306.317 to 2306.330 reserved for expansion]

SUBCHAPTER O. HOUSING FINANCE DIVISION: REGULATION OF MORTGAGE LENDERS, SERVICERS, AND CONTRACTORS

- Sec. 2306.331. MORTGAGE LENDER SELECTION
- Sec. 2306.332. MONITORING MORTGAGE LENDERS
- Sec. 2306.333. MONITORING MORTGAGE SERVICERS
- Sec. 2306.334. MONITORING CONTRACTORS

[Sections 2306.335 to 2306.350 reserved for expansion]

SUBCHAPTER P. HOUSING FINANCE DIVISION BONDS: ISSUANCE OF BONDS

- Sec. 2306.351. ISSUANCE OF BONDS
- Sec. 2306.352. TEXAS HOUSING BONDS
- Sec. 2306.353. REVENUE BONDS
- Sec. 2306.354. DEFINITIVE REFUNDING BONDS
- Sec. 2306.355. ISSUANCE OF ADDITIONAL PARITY OR SUBORDINATE LIEN BONDS
- Sec. 2306.356. ISSUANCE OF BONDS TO FUND DEPARTMENT RESERVES OR FUNDS
- Sec. 2306.357. BONDS ISSUED BY TEXAS HOUSING AGENCY

[Sections 2306.358 to 2306.370 reserved for expansion]

SUBCHAPTER Q. HOUSING FINANCE DIVISION  
BONDS: BOARD ACTION ON BONDS

- Sec. 2306.371. BOARD AUTHORIZATION OF BONDS
- Sec. 2306.372. DEPARTMENT PROCEDURES
- Sec. 2306.373. USE OF BOND PROCEEDS
- Sec. 2306.374. FACSIMILE SIGNATURES AND SEALS
- Sec. 2306.375. PERSONAL LIABILITY OF BOARD MEMBER OR DIRECTOR

[Sections 2306.376 to 2306.390 reserved for expansion]

SUBCHAPTER R. HOUSING FINANCE DIVISION BONDS: FORM; TERMS

- Sec. 2306.391. FORM
- Sec. 2306.392. DENOMINATION
- Sec. 2306.393. MANNER, PRICE, AND TERMS
- Sec. 2306.394. PLACE OF PAYMENT; MEDIUM OF EXCHANGE
- Sec. 2306.395. INTEREST ON BONDS
- Sec. 2306.396. MATURITY OF BONDS
- Sec. 2306.397. REDEMPTION BEFORE MATURITY; CONVERSION

[Sections 2306.398 to 2306.410 reserved for expansion]

SUBCHAPTER S. HOUSING FINANCE DIVISION  
BONDS: SECURITY FOR BONDS

- Sec. 2306.411. SECURITY FOR PAYMENT OF PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM
- Sec. 2306.412. VALIDITY OF LIENS AND PLEDGES

[Sections 2306.413 to 2306.430 reserved for expansion]

SUBCHAPTER T. HOUSING FINANCE DIVISION BONDS:  
APPROVAL, REGISTRATION, AND EXECUTION

- Sec. 2306.431. APPROVAL OF BONDS
- Sec. 2306.432. REGISTRATION
- Sec. 2306.433. EXECUTION

[Sections 2306.434 to 2306.450 reserved for expansion]

SUBCHAPTER U. HOUSING FINANCE DIVISION BONDS: RIGHTS AND  
REMEDIES OF BONDHOLDERS AND PARTIES IN INTEREST

- Sec. 2306.451. STATE PLEDGE REGARDING BONDHOLDER RIGHTS AND REMEDIES
- Sec. 2306.452. PAYMENT ENFORCEABLE BY MANDAMUS

[Sections 2306.453 to 2306.470 reserved for expansion]

SUBCHAPTER V. HOUSING FINANCE DIVISION BONDS:  
OBLIGATIONS OF DEPARTMENT AND STATE

- Sec. 2306.471. GENERAL OBLIGATION BONDS
- Sec. 2306.472. DEPARTMENT'S BONDS OTHER THAN GENERAL OBLIGATION BONDS NOT OBLIGATIONS OF THE STATE

Sec. 2306.473. STATE NOT OBLIGATED TO PAY; FAITH AND CREDIT NOT PLEDGED

[Sections 2306.474 to 2306.490 reserved for expansion]

SUBCHAPTER W. HOUSING FINANCE DIVISION  
BONDS: MISCELLANEOUS PROVISIONS

- Sec. 2306.491. BONDS NEGOTIABLE INSTRUMENTS
- Sec. 2306.492. BONDS INCONTESTABLE
- Sec. 2306.493. SIGNATURE OF FORMER OFFICER
- Sec. 2306.494. BONDS NOT TAXABLE
- Sec. 2306.495. AUTHORIZED INVESTMENTS
- Sec. 2306.496. SECURITY FOR DEPOSIT OF FUNDS
- Sec. 2306.497. MUTILATED, LOST, STOLEN, OR DESTROYED BONDS
- Sec. 2306.498. NO GAIN ALLOWED

[Sections 2306.499 to 2306.510 reserved for expansion]

SUBCHAPTER X. INDIVIDUALS WITH SPECIAL NEEDS

- Sec. 2306.511. DEFINITION
- Sec. 2306.512. SPECIAL NEEDS
- Sec. 2306.513. HOUSING FOR INDIVIDUALS WITH SPECIAL NEEDS

CHAPTER 2306. TEXAS DEPARTMENT OF  
HOUSING AND COMMUNITY AFFAIRS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2306.001. PURPOSES. The purposes of the department are to:

- (1) assist local governments in:
  - (A) providing essential public services for their residents; and
  - (B) overcoming financial, social, and environmental problems;
- (2) provide for the housing needs of individuals and families of low and moderate income;
- (3) contribute to the preservation, development, and redevelopment of neighborhoods and communities;
- (4) assist the governor and the legislature in coordinating federal and state programs affecting local government; and
- (5) inform state officials and the public of the needs of local government. (V.A.C.S. Art. 4413(501), Sec. 1.01(a) (part).)

Sec. 2306.002. POLICY. (a) The legislature finds that:

- (1) every resident of this state should have a decent, safe, and affordable living environment; and
  - (2) government at all levels should be involved in assisting individuals and families of low income in obtaining a decent, safe, and affordable living environment.
- (b) The highest priority of the department is to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the department. (V.A.C.S. Art. 4413(501), Secs. 1.01(b) (part), (f).)
- Sec. 2306.003. PUBLIC PURPOSE. The duties imposed and activities authorized by this chapter serve public purposes, and public money may be borrowed, spent, advanced, loaned, granted, or appropriated for those purposes. (V.A.C.S. Art. 4413(501), Sec. 1.01(a) (part), (e) (part).)



Sec. 2306.004. DEFINITIONS. In this chapter:

- (1) "Board" means the governing board of the department.
- (2) "Bond" means an evidence of indebtedness or other obligation, regardless of the source of payment, issued by the department under Subchapter P, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable or nonnegotiable, in bearer or registered form, in certified or book-entry form, in temporary or permanent form, or with or without interest coupons.
- (3) "Department" means the Texas Department of Housing and Community Affairs.
- (4) "Director" means the executive director of the department.
- (5) "Economically depressed or blighted area" means an area:
  - (A) that has been determined by the housing finance division to be a qualified census tract or an area of chronic economic distress under Section 103A, Internal Revenue Code of 1954 (26 U.S.C. Section 103A);
  - (B) established in a municipality that has a substantial number of substandard, slum, deteriorated, or deteriorating structures and that suffers from a high relative rate of unemployment; or
  - (C) that has been designed and included in a tax increment district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes).
- (6) "Elderly individual" means an individual 60 years of age or older.
- (7) "Family of moderate income" means a family:
  - (A) that is determined by the board to require assistance, taking into account:
    - (i) the amount of the total income available for housing needs of the individuals and families;
    - (ii) the size of the family;
    - (iii) the cost and condition of available housing facilities;
    - (iv) the ability of the individuals and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and
    - (v) standards established for various federal programs determining eligibility based on income; and
  - (B) that does not qualify as a family of low income.
- (8) "Federal government" means the United States of America and includes any corporate or other instrumentality of the United States of America.
- (9) "Federal mortgage" means a mortgage loan for residential housing:
  - (A) that is made by the federal government; or
  - (B) for which a commitment to make has been given by the federal government.
- (10) "Federally assisted new communities" means federally assisted areas that receive or will receive assistance in the form of loan guarantees under Title X of the National Housing Act (12 U.S.C. Section 1701 et seq.), and a portion of that federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Section 5301 et seq.).
- (11) "Federally insured mortgage" means a mortgage loan for residential housing that:
  - (A) is insured or guaranteed by the federal government; or
  - (B) the federal government has committed to insure or guarantee.
- (12) "Housing development" means property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the department and that is financed under the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease,

use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other nonhousing facilities, such as administrative, community, and recreational facilities the department determines to be necessary, convenient, or desirable appurtenances; and

(B) single and multifamily dwellings in rural and urban areas.

(13) "Housing sponsor" means:

(A) an individual, including an individual or family of low and very low income or family of moderate income, joint venture, partnership, limited partnership, trust, firm, corporation, or cooperative that is approved by the department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the department and other terms and conditions in this chapter; or

(B) in an economically depressed or blighted area, or in a federally assisted new community located within a home-rule municipality, the term may include an individual or family whose income exceeds the moderate income level if at least 90 percent of the total mortgage amount available under a mortgage revenue bond issue is designated for individuals and families of low income or families of moderate income.

(14) "Individuals and families of low income" means individuals and families earning not more than 80 percent of the area median income, as determined under Section 2306.123.

(15) "Individuals and families of very low income" means individuals and families earning not more than 60 percent of the area median income, as determined under Section 2306.123.

(16) "Land development" means:

(A) acquiring land for residential housing construction; and

(B) making, installing, or constructing nonresidential improvements that the department determines are necessary or desirable for a housing development to be financed by the department, including:

(i) waterlines and water supply installations;

(ii) sewer lines and sewage disposal installations;

(iii) steam, gas, and electric lines and installations; and

(iv) roads, streets, curbs, gutters, and sidewalks, whether on or off the site.

(17) "Local government" means a county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394, Local Government Code, or a combination of those entities.

(18) "Mortgage" means an interest-bearing obligation, including a mortgage, mortgage deed, bond, note, deed of trust, or other instrument, that is a lien:

(A) on real property; or

(B) on a leasehold under a lease having a remaining term that, at the time the lien is acquired, does not expire until after the maturity date of the interest-bearing obligation secured by the lien.

(19) "Mortgage lender" means a bank, trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, life insurance company, or other financial institution authorized to transact business in this state and approved as a mortgage lender by the department.

(20) "Mortgage loan" means an interest-bearing obligation secured by a mortgage.

(21) "Municipality" includes only a municipality in this state.

(22) "Public agency" means an agency, board, authority, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of this state, including a county, municipality, housing authority, state-supported

institution of higher education, school district, junior college, other district or authority, or other type of governmental entity of this state.

(23) "Real estate owned contractor" means a person required to meet the obligations of a contract with the housing finance division for managing and marketing foreclosed property.

(24) "Real property" means land, including improvements and fixtures on the land, property of any nature appurtenant to the land or used in connection with the land, and a legal or equitable estate, interest, or right in land, including leasehold interests, terms for years, and a judgment, mortgage, or other lien.

(25) "Reserve fund" means the housing finance division's reserve fund.

(26) "Residential housing" means a specific work or improvement undertaken primarily to provide dwelling accommodations, including the acquisition, construction, reconstruction, remodeling, improvement, or rehabilitation of land and buildings and improvements to the buildings for residential housing and other incidental or appurtenant nonhousing facilities.

(27) "Servicer" means a person required to meet contractual obligations with the housing finance division or with a mortgage lender relating to a loan financed under Subchapter J, including:

- (A) purchasing mortgage certificates backed by mortgage loans;
- (B) collecting principal and interest from the borrower;
- (C) sending principal and interest payments to the division;
- (D) preparing periodic reports;
- (E) notifying the primary mortgage and pool insurers of delinquent and foreclosed loans; and
- (F) filing insurance claims on foreclosed property. (V.A.C.S. Art. 4413(501), Secs. 1.02(1)-(8), (10)-(18), (20)-(23), (24) (part), (25), (26), (28) (part), (29), (30).)

Sec. 2306.005. REFERENCES TO FORMER LAW. A reference in law to the Texas Housing Agency or the Texas Department of Community Affairs means the Texas Department of Housing and Community Affairs. (Ch. 762, Acts of the 72nd Leg., R.S., 1991, Sec. 23(b).)

Sec. 2306.006. RULES OF ABOLISHED AGENCIES. Rules of the abolished Texas Housing Agency and the Texas Department of Community Affairs continue in effect as rules of the Texas Department of Housing and Community Affairs until amended or repealed by the department. (Ch. 762, Acts of the 72nd Leg., R.S., 1991, Sec. 23(a) (part).)

Sec. 2306.007. ESTABLISHING ECONOMICALLY DEPRESSED OR BLIGHTED AREAS. (a) To establish an economically depressed or blighted area under Section 2306.004(5)(B) or (C), the governing body of a municipality must hold a public hearing and find that the area:

- (1) substantially impairs or arrests the sound growth of the municipality; or
- (2) is an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(b) The governing body of a municipality holding a hearing under this section must give notice as provided by Chapter 551, except that notice must be published not less than 10 days before the date of the hearing. (V.A.C.S. Art. 4413(501), Sec. 1.02(28) (part).)

[Sections 2306.008 to 2306.020 reserved for expansion]

## SUBCHAPTER B. GOVERNING BOARD AND DEPARTMENT

Sec. 2306.021. DEPARTMENT DIVISIONS. (a) The Texas Department of Housing and Community Affairs is a public and official agency of the state and is a political and corporate body.

- (b) The department is composed of:
  - (1) the community affairs division;

(2) the housing finance division; and

(3) any other division created by the director. (V.A.C.S. Art. 4413(501), Secs. 1.01(a) (part), 1.07(1) (part), 1.14(a).)

Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 1999. (V.A.C.S. Art. 4413(501), Sec. 1.04.)

Sec. 2306.023. SEPARATION OF DIVISIONS. The duties of the housing finance division shall be kept separate from the duties of the community affairs division and each other division established in the department. (V.A.C.S. Art. 4413(501), Sec. 1.14(b) (part).)

Sec. 2306.024. BOARD MEMBERS: APPOINTMENT AND COMPOSITION. The board consists of nine members appointed by the governor. (V.A.C.S. Art. 4413(501), Secs. 1.05(a), (b).)

Sec. 2306.025. TERMS OF BOARD MEMBERS. Members of the board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. (V.A.C.S. Art. 4413(501), Sec. 1.05(c) (part).)

Sec. 2306.026. BOARD PLACES. (a) An individual is eligible for appointment to the board if the individual is a registered voter of the state and, with the exception of Place 2, does not hold another public office.

(b) Members of the board must be individuals who broadly reflect the economic, cultural, and social diversity of the state, including ethnic minorities and women. (V.A.C.S. Art. 4413(501), Sec. 1.05(f) (part).)

Sec. 2306.027. ELIGIBILITY. (a) The governor shall make appointments to the board as follows:

- (1) Place 1: an individual representing lending institutions;
- (2) Place 2: an individual representing local government;
- (3) Place 3: an individual representing housing construction;
- (4) Place 4: an individual representing community-based nonprofit housing organizations;
- (5) Place 5: an individual representing realtors or housing developers;
- (6) Place 6: an individual representing individuals and families of low or very low income; and
- (7) Places 7 through 9: public members.

(b) Except as necessary to comply with the requirements of Section 2306.026 regarding diversity, appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees and shall be made in a manner that produces representation on the board of the different geographical regions of this state.

(c) An elected or appointed official of a political subdivision appointed to Place 2 on the board is a member of the board as an additional or ex officio duty required by the member's other official capacity, and the member's service on the board is not dual office holding. (V.A.C.S. Art. 4413(501), Secs. 1.05(f) (part), (g), (h).)

Sec. 2306.028. CONFLICT OF INTEREST. An individual is not eligible for appointment as a public member of the board if the individual or the individual's spouse:

- (1) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;
- (2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or
- (3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for department membership, attendance, or expenses. (V.A.C.S. Art. 4413(501), Sec. 1.08.)

Sec. 2306.029. SURETY BONDS. (a) Before the issuance of bonds by the department, each board member shall execute a surety bond in the penal sum of \$25,000, conditioned on the faithful performance of the duties of the member. The bond must be executed by a surety company authorized to transact business in this state, approved by the attorney general, and filed with the secretary of state.

(b) The surety bonds shall be kept in effect at all times.

(c) The housing finance division shall pay the costs of the surety bonds. (V.A.C.S. Art. 4413(501), Sec. 1.06(e).)

Sec. 2306.030. PRESIDING OFFICER; OTHER OFFICERS. (a) The governor shall appoint a presiding officer from the board members. The presiding officer presides at meetings of the board and performs other duties required by this chapter.

(b) The board shall elect the following officers:

(1) from the members of the board, an assistant presiding officer to perform the duties of the presiding officer when the presiding officer is not present or is incapable of performing duties of the presiding officer;

(2) a secretary to be the official custodian of the minutes, books, records, and seal of the board and to perform other duties assigned by the board; and

(3) a treasurer to perform duties assigned by the board.

(c) The offices of secretary and treasurer may be held by one individual, and the holder of each of these offices need not be a board member. The board may appoint one or more individuals who are not members to be assistant secretaries to perform any duty of the secretary.

(d) Officers of the board shall be elected at the first meeting of the board on or after January 31 of each odd-numbered year and at any other time as necessary to fill a vacancy. (V.A.C.S. Art. 4413(501), Secs. 1.05(i), 1.06(a) (part), (c) (part).)

Sec. 2306.031. MEMBERS' COMPENSATION. Members of the board serve without compensation but are entitled to reimbursement for actual expenses incurred in attending board meetings and in performing the duties of a board member. (V.A.C.S. Art. 4413(501), Sec. 1.05(j).)

Sec. 2306.032. BOARD MEETINGS. (a) The board shall meet at least three times annually at the call of the presiding officer and other times the board determines are necessary. The time and place of the other meetings are to be fixed by a majority vote of the board.

(b) The board may hold special meetings when called by the presiding officer, the director, or three of the members.

(c) The board shall keep complete minutes of board meetings. The accounts, minutes, and other records shall be kept at the principal office of the department. (V.A.C.S. Art. 4413(501), Secs. 1.05(n) (part), 1.06(a) (part), (d).)

Sec. 2306.033. REMOVAL OF MEMBERS. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Section 2306.026, 2306.027, or 2306.028 for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Section 2306.026, 2306.027, or 2306.028 for appointment to the board;

(3) violates a prohibition established by Section 2306.034 or 2306.035;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled meetings of the board that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a member exists.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 4413(501), Secs. 1.05(k), (l), (m).)

Sec. 2306.034. DISQUALIFICATION OF MEMBERS AND CERTAIN EMPLOYEES.

(a) An employee or paid consultant of a Texas trade association in the field of banking, real estate, housing development, or housing construction may not be a member of the board or an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. (V.A.C.S. Art. 4413(501), Sec. 1.10.)

Sec. 2306.035. LOBBYIST RESTRICTION. A person may not serve as a member of the board or act as the director of or the general counsel to the department if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation in or on behalf of a profession related to the operation of the department. (V.A.C.S. Art. 4413(501), Sec. 1.11.)

Sec. 2306.036. DIRECTOR: APPOINTMENT; TERM. The governor shall appoint the director with the advice and consent of the senate. The director serves at the pleasure of the governor during the governor's terms of office. (V.A.C.S. Art. 4413(501), Sec. 1.09(a) (part).)

Sec. 2306.037. DIRECTOR'S COMPENSATION. The governor shall set the salary of the director. (V.A.C.S. Art. 4413(501), Sec. 1.09(a) (part).)

Sec. 2306.038. ACTING DIRECTOR. The governor shall establish a procedure for designating an acting director and shall immediately designate an acting director or a new permanent director if the position becomes vacant because of absence or disability. (V.A.C.S. Art. 4413(501), Sec. 1.13.)

[Sections 2306.039 to 2306.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 2306.051. BOARD DUTIES. The board shall consult with and advise the director on the affairs and problems of local government and the work of the department. (V.A.C.S. Art. 4413(501), Sec. 1.05(n) (part).)

Sec. 2306.052. DIRECTOR'S POWERS AND DUTIES. (a) The director is the administrator and the head of the department and must be an individual qualified by training and experience to perform the duties of the office.

(b) The director shall:

(1) administer and organize the work of the department consistent with this chapter and with sound organizational management that promotes efficient and effective operation;

(2) appoint and remove officers and other personnel employed by the department, subject to the annual budget and any resolution authorizing the issuance of bonds under this chapter;

(3) submit, through and with the approval of the governor, requests for appropriations and other money to operate the department;

(4) administer all money entrusted to the department;

(5) make an annual report to the governor and the legislature of the department's operations and provide other reports requested by the governor or the legislature; and

(6) perform other functions that may be assigned by the governor.

(c) The director shall develop and implement the policies established by the board that define the responsibilities of:

(1) the director, board, and staff of the department; and

(2) the community affairs division, the housing finance division, and any other division.

(d) The director is authorized to assign functions and duties to the various offices and divisions, to provide for additional offices, and to reorganize the department when necessary to improve efficiency or effectiveness. (V.A.C.S. Art. 4413(501), Secs. 1.09(a) (part), (g), 1.14(d).)

Sec. 2306.053. DEPARTMENT POWERS AND DUTIES. (a) The department shall:

(1) maintain suitable headquarters and other offices in this state that the director determines are necessary; and

(2) furnish the information, equipment, and staff necessary to implement the work of the board.

(b) The department may:

(1) sue and be sued, or plead and be impleaded;

(2) act for and on behalf of this state;

(3) adopt an official seal or alter it;

(4) adopt and enforce bylaws and rules;

(5) contract with the federal government, state, any public agency, mortgage lender, person, or other entity;

(6) designate mortgage lenders to act for the department for the origination, processing, and servicing of the department's mortgage loans under conditions agreed to by the parties;

(7) provide, contract, or arrange for consolidated processing of a housing development to avoid duplication;

(8) encourage homeless individuals and individuals of low or very low income to attend the department's educational programs and assist those individuals in attending the programs;

(9) appoint and determine the qualifications, duties, and tenure of its agents, counselors, and professional advisors, including accountants, appraisers, architects, engineers, financial consultants, housing construction and financing experts, and real estate consultants; and

(10) do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this chapter. (V.A.C.S. Art. 4413(501), Secs. 1.05(n) (part), 1.07 (part), 1.14(f).)

[Sections 2306.054 to 2306.060 reserved for expansion]

#### SUBCHAPTER D. GENERAL ADMINISTRATIVE PROVISIONS

Sec. 2306.061. INFORMATION ON QUALIFICATIONS AND CONDUCT. The director shall become aware of and provide to the board members and the department employees, as often as necessary, information about the director's, members', and employees':

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 4413(501), Sec. 1.09(h).)

Sec. 2306.062. CAREER LADDER. The director or the director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting. (V.A.C.S. Art. 4413(501), Sec. 1.09(b).)

Sec. 2306.063. PERFORMANCE EVALUATIONS. The director or the director's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this section. (V.A.C.S. Art. 4413(501), Sec. 1.09(c).)

Sec. 2306.064. **EQUAL EMPLOYMENT OPPORTUNITIES.** (a) The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) a comprehensive analysis of the department work force that meets federal and state guidelines;

(2) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature. (V.A.C.S. Art. 4413(501), Secs. 1.09(d), (e), (f).)

Sec. 2306.065. **DISCRIMINATION PROHIBITED.** An individual may not, because of that individual's race, color, national origin, or sex, be excluded from participation, be denied benefits, or be subjected to discrimination in any program or activity funded in whole or in part with funds made available under this chapter. (V.A.C.S. Art. 4413(501), Sec. 4.01.)

Sec. 2306.066. **INFORMATION AND COMPLAINTS.** (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.

(c) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(e) The director shall prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to and participation in the department's programs. (V.A.C.S. Art. 4413(501), Sec. 1.18.)

Sec. 2306.067. **LOANED EMPLOYEES.** (a) The director may enter into reciprocal agreements with a state agency or instrumentality or local government to loan or assign department employees to that entity.

(b) A state agency or instrumentality or local government may loan or assign employees to the department, with or without reimbursement, by agreement between the department and the other party. The department may contract to reimburse all costs incidental to loaning or assigning employees.

(c) An employee loaned or assigned to the department is an employee of the lending agency or unit for purposes of salary, leave, retirement, and other personnel benefits. The loaned or assigned employee is under the supervision of personnel of the department and is an employee of the department for all other purposes. (V.A.C.S. Art. 4413(501), Secs. 1.14(e), 1.15.)



Sec. 2306.068. INTERAGENCY COOPERATION. An agency or institution of the state shall cooperate with the department by providing personnel, information, and technical advice as the department assists the governor in:

- (1) the coordination of federal and state activities affecting local government; and
- (2) providing affordable housing for individuals and families of low and very low income and families of moderate income. (V.A.C.S. Art. 4413(501), Sec. 1.16.)

Sec. 2306.069. OUTSIDE LEGAL COUNSEL. The department shall obtain and evaluate information regarding the affirmative action policies and practices of proposed outside legal counsel. The department must include the evaluation in a request to the attorney general for outside legal counsel. (V.A.C.S. Art. 4413(501), Sec. 1.21.)

Sec. 2306.070. BUDGET. In preparing the department's legislative appropriations request, the department shall also prepare an operating budget for the housing finance division. The department shall submit the operating budget to the Legislative Budget Board, the Senate Finance Committee, and the House Appropriations Committee. (V.A.C.S. Art. 4413(501), Sec. 1.19(c).)

Sec. 2306.071. FUNDS. (a) The department may request, contract for, receive, and spend for its purposes an appropriation, grant, allocation, subsidy, rent supplement, guarantee, aid, contribution, gift, service, labor, or material from this state, the federal government, or another public or private source.

(b) The funds and revenues of the housing finance division shall be kept separate from the funds and revenues of the other divisions, and the other divisions may not use funds and revenues of the housing finance division for any purpose.

(c) Except for legislative appropriations, which shall be kept in the state treasury, all funds and revenue received by the housing finance division are to be kept outside the state treasury. (V.A.C.S. Art. 4413(501), Secs. 1.14(b) (part), 1.17.)

Sec. 2306.072. ANNUAL REPORT. (a) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(b) On or before January 1 of each year, the department shall prepare a report of its activities for the preceding fiscal year for the governor and the legislature. The report must include a complete operating and financial statement. (V.A.C.S. Art. 4413(501), Secs. 1.19(a) (part), (b).)

Sec. 2306.073. INTERNAL AUDIT. (a) The director, with the approval of the board, shall appoint an internal auditor who reports directly to the board on matters concerning housing finance, the community affairs division, or any other division.

(b) The internal auditor shall:

(1) prepare an annual audit plan using risk assessment techniques to rank high-risk functions in the department; and

(2) submit the annual audit plan to the director and board for consideration and approval or change as necessary or advisable.

(c) The internal auditor may bring before the director or board an issue outside the annual audit plan that requires the immediate attention of the director or board.

(d) The internal auditor may not be assigned any operational or management responsibilities that impair the ability of the internal auditor to make an independent examination of the department's operations.

(e) The department shall give the internal auditor unrestricted access to activities and records of the department unless restricted by other law. (V.A.C.S. Art. 4413(501), Sec. 1.20.)

Sec. 2306.074. AUDIT. (a) The state auditor or a certified public accountant shall audit the department's books and accounts each fiscal year and file a copy of the audit with the governor and the legislature on or before January 1 of each year. If the state auditor is conducting the audit and it is not available by January 1, it must be filed as soon as it is available.

(b) The department shall pay for the audit. (V.A.C.S. Art. 4413(501), Sec. 1.19(a) (part).)

Sec. 2306.075. TAX EXEMPTION. The property of the department, its income, and its operations are exempt from all taxes and assessments imposed by this state and all public agencies on property acquired or used by the department under this chapter. (V.A.C.S. Art. 4413(501), Sec. 1.22.)

[Sections 2306.076 to 2306.090 reserved for expansion]

#### SUBCHAPTER E. COMMUNITY AFFAIRS DIVISION

Sec. 2306.091. GENERAL FUNCTIONS. The functions of the community affairs division include:

- (1) intergovernmental cooperation;
- (2) regional and community services including rural community services;
- (3) research;
- (4) economic opportunity; and
- (5) education and training. (V.A.C.S. Art. 4413(501), Sec. 1.14(c).)

Sec. 2306.092. DUTIES. The department, through the community affairs division, shall:

- (1) maintain communication with local governments and act as an advocate for local governments at the state and federal levels;
- (2) assist local governments with advisory and technical services;
- (3) provide financial aid to local governments and combinations of local governments for programs that are authorized to receive assistance;
- (4) provide information about and referrals for state and federal programs and services that affect local governments;
- (5) administer, conduct, or jointly sponsor educational and training programs for local government officials;
- (6) conduct research on problems of general concern to local governments;
- (7) collect, publish, and distribute information useful to local governments, including information on:
  - (A) local government finances and employment;
  - (B) housing;
  - (C) population characteristics; and
  - (D) land-use patterns;
- (8) encourage cooperation among local governments as appropriate;
- (9) advise and inform the governor and the legislature about the affairs of local governments and recommend necessary action;
- (10) assist the governor in coordinating federal and state activities affecting local governments;
- (11) administer, as appropriate:
  - (A) state responsibilities for programs created under the federal Economic Opportunity Act of 1964 (42 U.S.C. Section 2701 et seq.);
  - (B) programs assigned to the department under the Omnibus Budget Reconciliation Act of 1981 (Pub.L. No. 97-35); and
  - (C) other federal acts creating economic opportunity programs assigned to the department;
- (12) adopt rules that are necessary and proper to carry out programs and responsibilities assigned by the legislature or the governor; and
- (13) perform other duties relating to local government that are assigned by the legislature or the governor. (V.A.C.S. Art. 4413(501), Sec. 2.01(a).)

Sec. 2306.093. HOUSING ASSISTANCE GOAL. By action of the board the community affairs division shall have a goal to apply a minimum of 25 percent of the division's total housing-related funds toward housing assistance for individuals and families of very low income. (V.A.C.S. Art. 4413(501), Sec. 2.01(b).)

Sec. 2306.094. SPECIAL ADVISORY COUNCILS. (a) The governor may, with the advice of the director, appoint special advisory councils to:

- (1) assist the board in adopting basic policy for the community affairs division; or
- (2) offer advice on technical aspects of certain programs that the community affairs division administers.

(b) A special advisory council is dissolved on completion of its stated purpose unless continued by the governor. (V.A.C.S. Art. 4413(501), Sec. 2.02.)

Sec. 2306.095. TRANSFERS FROM GOVERNOR. The governor may transfer to the community affairs division personnel, equipment, records, obligations, appropriations, functions, and duties of appropriate divisions of the governor's office. (V.A.C.S. Art. 4413(501), Sec. 2.03.)

Sec. 2306.096. MULTIPURPOSE HUMAN RESOURCE CENTERS. (a) To provide the most effective and efficient delivery of human resource services to individuals and families of low income, as well as the total population, the department, through the community affairs division, may establish multipurpose human resource centers in various communities.

(b) The department, through the community affairs division, may:

- (1) locate and lease with state funds suitable office space at the community level that is easily accessible to clients of human resource service delivery agencies; and
- (2) make the space available to those agencies.

(c) A state or local government agency or a private, nonprofit human resource agency that has filed with the state a state or regional plan for delivery of human resource services is eligible to place staff in a community multipurpose human resource service center.

(d) The department shall report annually to the governor and the legislature the agencies that are and are not placing human resource delivery staff in available community multipurpose human resource service centers.

(e) The Community Multipurpose Human Resource Service Center Fund is in the state treasury. The fund shall be used to provide:

- (1) the state's share of the rental costs for community multipurpose human resource service centers; and
- (2) the administrative costs of the centers' operation. (V.A.C.S. Art. 4413(501), Sec. 2.04.)

Sec. 2306.097. ENERGY SERVICES PROGRAM FOR LOW-INCOME INDIVIDUALS.

(a) The Energy Services Program for Low-Income Individuals is in the community affairs division.

(b) The program shall operate in conjunction with the community service block grant program and has jurisdiction and responsibility for administration of the following elements of the State Low-Income Energy Assistance Program, from whatever sources funded:

- (1) the Energy Crisis Intervention Program; and
- (2) the weatherization program. (V.A.C.S. Art. 4413(501), Sec. 2.05.)

Sec. 2306.098. ADMINISTRATION OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; ALLOCATION OF FUNDS. (a) The department, through the community affairs division, shall, under the Omnibus Budget Reconciliation Act of 1981 (Pub.L. No. 97-35) and 24 CFR, Part 570, Subpart I, administer the state's allocation of federal funds provided under the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.).

(b) Community development block grant program funds shall be allocated to eligible counties and municipalities under department rules. (V.A.C.S. Art. 4413(501), Secs. 2.06, 2.07.)

Sec. 2306.099. TRANSFER OF FEDERAL FUNDS. (a) The department may enter into an interagency agreement with the Texas Department of Commerce to transfer not more than 20 percent of the federal funds received by the department to the Texas Department of Commerce to be used for economic development.

(b) Federal funds transferred under this section include the amount of federal funds designated for administrative expenses under federal law.

(c) Income received from economic development programs of the Texas Department of Commerce remain with that agency.

(d) Use of funds transferred under this section must be approved by the department.

(e) A rule of the Texas Department of Commerce relating to funds transferred under this section must be approved by the department.

(f) The Texas Department of Commerce shall return to the department under an interagency agreement federal funds transferred under this section that are not used in a timely manner under federal guidelines. (V.A.C.S. Art. 4413(501), Secs. 2.08, 2.09.)

Sec. 2306.100. STATE COMMUNITY DEVELOPMENT REVIEW COMMITTEE. (a) The state community development review committee is composed of 12 members appointed by the governor.

(b) A committee member must be:

(1) a member of the governing body of a county or municipality eligible for funding under the community development block grant program; or

(2) a county or municipal employee who is a supervisor and whose regular duties include involvement in community development activities.

(c) The ratio of county officials serving as committee members to all committee members may not exceed the ratio of all counties eligible for funding under the community development block grant program to all eligible applicants.

(d) The governor shall designate the presiding officer of the committee, who serves at the governor's pleasure.

(e) Committee members serve two-year terms expiring February 1 of each odd-numbered year.

(f) A committee member serves without compensation for service on the committee, but is entitled to reimbursement for reasonable and necessary expenses incurred in performing the member's duties.

(g) Service on the committee by an officer or employee of a county or municipality is an additional duty of the individual's office or employment and is not dual office holding.

(h) The committee shall meet at least twice annually at the director's call.

(i) The committee shall:

(1) consult with and advise the director on the administration and enforcement of the community development block grant program; and

(2) review funding applications of eligible counties and municipalities and advise and assist the director regarding the allocation of program funds to those applicants.

(j) The committee may annually recommend to the director a formula for allocating funds to each geographic state planning region established by the governor under Chapter 391, Local Government Code. The formula must give preference to regions according to the regions' needs. (V.A.C.S. Art. 4413(501), Sec. 2.10.)

[Sections 2306.101 to 2306.110 reserved for expansion]

#### SUBCHAPTER F. HOUSING FINANCE DIVISION: GENERAL PROVISIONS

Sec. 2306.111. HOUSING ASSISTANCE GOAL. The housing finance division shall adopt a goal to apply a minimum of 25 percent of the division's total housing funds toward housing assistance for individuals and families of very low income. (V.A.C.S. Art. 4413(501), Sec. 3.01(b).)

Sec. 2306.112. **PREPARATION AND CONTENT OF ANNUAL BUDGET.** (a) On or before August 1 of each year, the director shall file with the board a proposed annual budget for the housing finance division for the succeeding fiscal year.

(b) The budget shall state:

- (1) the general categories of expected expenditures from revenues and income of the housing finance division;
- (2) the amount of expected expenditures for each category;
- (3) expected operating expenses of the housing finance division; and
- (4) the proposed use of projected year-end unencumbered balances.

(c) The budget may include a provision or reserve for contingencies or overexpenditures. (V.A.C.S. Art. 4413(501), Sec. 3.05(a).)

Sec. 2306.113. **BOARD CONSIDERATION OF ANNUAL BUDGET.** On or before September 1 of each year, the board shall consider the director's proposed annual budget for the housing finance division and shall approve or change the budget as the board determines necessary or advisable. (V.A.C.S. Art. 4413(501), Sec. 3.05(b) (part).)

Sec. 2306.114. **FILING OF ANNUAL BUDGET.** (a) Copies of the annual budget certified by the presiding officer of the board shall be filed promptly with the governor and the legislature.

(b) The annual budget is not effective until filed. (V.A.C.S. Art. 4413(501), Sec. 3.05(b) (part).)

Sec. 2306.115. **FAILURE TO ADOPT ANNUAL BUDGET.** If the board does not adopt the annual budget on or before September 1, the budget for the preceding year remains in effect until a new budget is adopted. (V.A.C.S. Art. 4413(501), Sec. 3.05(c).)

Sec. 2306.116. **AMENDED ANNUAL BUDGET.** (a) The board may adopt an amended annual budget during the fiscal year.

(b) An amended annual budget does not supersede a prior budget until it is filed with the governor and the legislature. (V.A.C.S. Art. 4413(501), Sec. 3.05(d).)

Sec. 2306.117. **PAYMENT OF EXPENSES; INDEBTEDNESS.** (a) The expenses incurred in carrying out the functions of the housing finance division may be paid only from revenues or funds provided under this chapter.

(b) This chapter does not authorize the housing finance division to incur debt or liability on behalf of or payable by the state, except as provided by this chapter or other law. (V.A.C.S. Art. 4413(501), Sec. 3.05(e).)

Sec. 2306.118. **DEPOSIT OF FUNDS WITH TEXAS TREASURY SAFEKEEPING TRUST COMPANY.** Except as provided by Section 2306.120, revenue and funds of the department received by or payable through the programs and functions of the housing finance division, other than funds necessary for the operation of the housing finance division and appropriated funds, shall be deposited outside the treasury with the Texas Treasury Safekeeping Trust Company. (V.A.C.S. Art. 4413(501), Sec. 3.06(a).)

Sec. 2306.119. **SELECTION OF DEPOSITORY FOR OPERATING FUNDS.** (a) The department shall choose a depository for the operating funds of the housing finance division after inviting bids for favorable interest rates.

(b) The housing finance division shall publish notice in at least one newspaper of general circulation in this state no later than the 14th day before the last day set for the receipt of the bids.

(c) Notice published under this section must state the:

- (1) types of deposits planned;
- (2) last day on which bids will be received; and
- (3) time and place for opening bids.

(d) Sealed bids must be:

- (1) identified on the envelope as bids; and
- (2) submitted to the housing finance division before the deadline for receiving bids.

(e) The housing finance division shall provide a tabulation of all submitted bids for public inspection.

(f) The department shall choose the depository submitting the bid with the most favorable financial terms to the department, considering the security and efficiency with which the depository is capable of managing the department's funds. (V.A.C.S. Art. 4413(501), Secs. 3.06(b), (c), (d).)

Sec. 2306.120. SELECTION OF DEPOSITORY UNDER COVENANTS OF BONDS OR TRUST INDENTURES. (a) If covenants related to the department's bonds or the trust indentures governing the bonds specify one or more depositories or set out a method of selecting depositories different from the method required by this subchapter, the covenants prevail regarding the funds to which they apply and the funds are not required to be deposited with the Texas Treasury Safekeeping Trust Company.

(b) Bonds of the housing finance division issued under trust indentures executed or resolutions adopted on or after September 1, 1991, may not include a covenant that interferes with the deposit of funds in the Texas Treasury Safekeeping Trust Company. (V.A.C.S. Art. 4413(501), Sec. 3.06(e).)

Sec. 2306.121. RECORDS. The housing finance division shall keep complete records and accounts of its business transactions according to generally accepted accounting principles. (V.A.C.S. Art. 4413(501), Sec. 3.07.)

Sec. 2306.122. ANNUAL REPORT. (a) The housing finance division shall examine:

(1) the ethnicity and income of applicants and recipients under housing finance division programs; and

(2) the amount funded for and the geographic location of housing units assisted by programs of the housing finance division.

(b) This section does not require a borrower to disclose the borrower's race or ethnicity if that information is protected from disclosure under state or federal law.

(c) The department shall publish the findings made under this section in an annual report made to the board and available to the general public. (V.A.C.S. Art. 4413(501), Sec. 3.08.)

Sec. 2306.123. AREA MEDIAN INCOME. The department may determine the median income of an individual or family for an area by using a source or methodology acceptable under federal law or rule. (V.A.C.S. Art. 4413(501), Sec. 3.10.)

Sec. 2306.124. RULES REGARDING HOUSING DEVELOPMENTS. The department may adopt and publish rules regarding the:

(1) making of mortgage loans under this subchapter;

(2) regulation of borrowers;

(3) construction of ancillary commercial facilities; and

(4) resale and disposition of real property, or an interest in the property, that is financed by the department. (V.A.C.S. Art. 4413(501), Sec. 3.11(c).)

Sec. 2306.125. COURT ACTIONS. (a) The department may institute a judicial action or proceeding against a housing sponsor receiving a loan or owning a housing development under this chapter to:

(1) enforce this chapter;

(2) enforce the terms and provisions of an agreement or contract between the department and the recipient of a loan under this chapter, including provisions regarding rental or carrying charges and income limits as applied to tenants or occupants;

(3) foreclose its mortgage; or

(4) protect:

(A) the public interest;

(B) individuals and families of low and very low income or families of moderate income;

(C) stockholders; or

(D) creditors of the sponsor.

(b) In an action or proceeding under this section, the department may apply for the appointment of a trustee or receiver to assume the management and operation of the affairs of a housing sponsor.

(c) The department, through its designated agent, may accept appointment as trustee or receiver of a housing sponsor when appointed by a court of competent jurisdiction. (V.A.C.S. Art. 4413(501), Sec. 3.11(e).)

Sec. 2306.126. **EXEMPTION FROM PROPERTY TAX.** (a) The department may, under its terms, conditions, and rules, pay public agencies in lieu of ad valorem taxes on property that the department acquires through foreclosure or sale under a deed of trust.

(b) The department shall make payments under this section instead of paying taxes whenever practicable with money lawfully available for this purpose, subject to the provisions of any bond resolution. (V.A.C.S. Art. 4413(501), Sec. 3.09.)

[Sections 2306.127 to 2306.140 reserved for expansion]

### SUBCHAPTER G. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF BOARD

Sec. 2306.141. **RULES.** The board shall have the specific duty and power to adopt rules governing the administration of the housing finance division and its programs. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.142. **AUTHORIZATION OF BONDS.** In its discretion, the board shall authorize all bonds issued by the housing finance division. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.143. **ANNUAL REPORT.** The board shall have the specific duty and power to approve an annual report of the housing finance division. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.144. **FEES FOR SERVICES AND FACILITIES; PAYMENT OF DEPARTMENT OBLIGATIONS AND EXPENSES.** (a) It is the duty of the board to establish and collect sufficient fees for services and facilities.

(b) The board shall use available sources of revenue, income, and receipts to:

- (1) pay all expenses of the department's operation and maintenance;
- (2) pay the principal and interest on department bonds; and
- (3) create and maintain the reserves or funds provided by each resolution authorizing the issuance of department bonds. (V.A.C.S. Art. 4413(501), Sec. 3.37 (part).)

Sec. 2306.145. **LOAN PROCEDURES.** The board shall have the specific duty and power to adopt procedures for approving loans, purchases of loans and interests in loans, and commitments to purchase loans under this chapter. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.146. **INTEREST RATES AND AMORTIZATION SCHEDULES.** The board shall have the specific duty and power to establish interest rates and amortization schedules for loans made or financed under this chapter. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.147. **FEES AND PENALTIES.** The board shall have the specific duty and power to establish a schedule of fees and penalties relating to the operation of the housing finance division and authorized by this chapter, including application, processing, loan commitment, origination, servicing, and administrative fees. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.148. **UNDERWRITING STANDARDS.** The board shall have the specific duty and power to adopt underwriting standards for loans made or financed by the housing finance division. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.149. **APPROVED MORTGAGE LENDERS.** The board shall have the specific duty and power to compile a list of approved mortgage lenders. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.150. PROPERTY STANDARDS. The board shall have the specific duty and power to adopt minimum property standards for housing developments financed or acquired under this chapter. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.151. TARGET STRATEGY FOR BOND PROCEEDS. The board shall have the specific duty and power to adopt a target strategy for the percentage of mortgage revenue bond proceeds to be made available to individuals and families of low and very low income. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

Sec. 2306.152. ELIGIBILITY CRITERIA. The board shall have the specific duty and power to establish eligibility criteria for participation in the housing finance division's programs for individuals and families of low and very low income and families of moderate income. (V.A.C.S. Art. 4413(501), Sec. 3.02 (part).)

[Sections 2306.153 to 2306.170 reserved for expansion]

#### SUBCHAPTER H. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF DEPARTMENT

Sec. 2306.171. GENERAL DUTIES OF DEPARTMENT RELATING TO PURPOSES OF HOUSING FINANCE DIVISION. The department shall:

(1) develop policies and programs designed to increase the number of individuals and families of low and very low income that participate in the housing finance division's programs;

(2) work with municipalities, public agencies, housing sponsors, and nonprofit corporations to provide:

(A) information on division programs; and

(B) technical assistance to municipalities and nonprofit corporations;

(3) encourage private and nonprofit corporations and state organizations to match the division's funds to assist in providing affordable housing to individuals and families of low and very low income and families of moderate income;

(4) provide matching funds to municipalities, public agencies, housing sponsors, and nonprofit developers who qualify under the division's programs; and

(5) administer the state's allocation of federal funds provided under the rental rehabilitation grant program authorized by Section 17, Title I, of the United States Housing Act of 1937 (42 U.S.C. Section 1437o). (V.A.C.S. Art. 4413(501), Secs. 3.04, 3.44.)

Sec. 2306.172. ACQUISITION AND USE OF MONEY; DEPOSITORIES. The department may:

(1) acquire, hold, invest, deposit, use, and spend its income and money from every source; and

(2) select its depository or depositories, subject only to the provisions of:

(A) this chapter; and

(B) a covenant relating to the department's bonds issued by the housing finance division. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.173. INVESTMENTS. Subject to a resolution authorizing issuance of its bonds, the department may:

(1) invest its money in bonds, obligations, or other securities; or

(2) place its money in demand or time deposits, whether or not evidenced by certificates of deposit. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.174. ACQUISITION AND DISPOSITION OF PROPERTY. The department may:

(1) acquire, own, rent, lease, accept, hold, or dispose of any real, personal, or mixed property, or any interest in property, including a right or easement, in performing its duties and exercising its powers under this chapter, by purchase, exchange, gift, assignment, transfer, foreclosure, sale, lease, or otherwise;



(2) hold, manage, operate, or improve real, personal, or mixed property, except that:

(A) the department is restricted in acquiring property under Section 2306.251 unless it is required to foreclose on a delinquent loan and elects to acquire the property at foreclosure;

(B) the department shall make a diligent effort to sell a housing development acquired through foreclosure to a purchaser who will be required to pay ad valorem taxes on the housing development or, if such a purchaser cannot be found, to another purchaser; and

(C) the department shall sell a housing development acquired through foreclosure not later than the third anniversary of the date of acquisition unless the board adopts a resolution stating that a purchaser cannot be found after diligent search by the housing finance division, in which case the department shall continue to try to find a purchaser and shall sell the housing development when a purchaser is found; and

(3) lease or rent land or a dwelling, house, accommodation, building, structure, or facility from a private party to carry out the housing finance division's purposes. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.175. TRANSFER AND DISPOSITION OF PROPERTY; MANNER OF SALE. (a) The department may:

(1) sell, assign, lease, encumber, mortgage, or otherwise dispose of real, personal, or mixed property, or an interest in property, or a deed of trust or mortgage lien interest owned by it or in its control, custody, or possession; and

(2) release or relinquish a right, title, claim, lien, interest, easement, or demand acquired in any manner, including an equity or right of redemption in property foreclosed by it.

(b) Notwithstanding any other law, the department may, under this section, conduct a public or private sale, with or without public bidding. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.176. FEES. The department may set, charge, and collect fees relating to loans made or other services provided by the department under this chapter. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.177. HEARINGS. The department may:

(1) conduct hearings; and

(2) take testimony and proof, under oath, at public hearings, on matters necessary to carry out the housing finance division's purposes. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.178. INSURANCE. The department may acquire, and pay premiums on, insurance of any kind in amounts and from insurers that the board considers necessary or advisable. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.179. INVESTIGATIONS. The department may:

(1) investigate housing conditions and means for improving those conditions; and

(2) determine the location of slum or blighted areas. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.180. ENCOURAGING HOME OWNERSHIP. The department may encourage individual or cooperative home ownership among individuals and families of low and very low income and families of moderate income. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.181. TARGETING BOND PROCEEDS. The department may target the proceeds from housing bonds issued by it to a geographic area or areas of the state. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.182. LOANS TO LENDERS. The department may make loans to mortgage lenders, public agencies, or other housing sponsors and use the proceeds to make loans for multifamily housing developments that will be substantially occupied by individuals and families of low and very low income or families of moderate income. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.183. NEEDS OF QUALIFYING INDIVIDUALS AND FAMILIES IN RURAL AREAS AND SMALL MUNICIPALITIES. The department may adopt a target

strategy to ensure that the credit and housing needs of qualifying individuals and families who reside in rural areas and small municipalities are equitably served by the housing finance division. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

[Sections 2306.184 to 2306.200 reserved for expansion]

### SUBCHAPTER I. HOUSING FINANCE DIVISION: FUNDS

Sec. 2306.201. HOUSING TRUST FUND. (a) The housing trust fund is a fund:

- (1) administered by the department through the housing finance division; and
  - (2) placed with the Texas Treasury Safekeeping Trust Company.
- (b) The fund consists of:
- (1) appropriations or transfers made to the fund;
  - (2) unencumbered fund balances; and
  - (3) public or private gifts or grants. (V.A.C.S. Art. 4413(501), Sec. 3.16(a) (part).)

Sec. 2306.202. USE OF HOUSING TRUST FUND. (a) The department, through the housing finance division, shall use the housing trust fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations, and income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing.

- (b) Use of the fund is limited to providing:
- (1) assistance for individuals and families of low and very low income; and
  - (2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income. (V.A.C.S. Art. 4413(501), Sec. 3.16(b).)

Sec. 2306.203. RULES REGARDING ADMINISTRATION OF HOUSING TRUST FUND. The board shall adopt rules to administer the housing trust fund, including rules providing:

- (1) that the division give priority to programs that maximize federal resources;
- (2) for a process to set priorities for use of the fund, including the distribution of fund resources under a request for a proposal process developed and approved by the board;
- (3) that the criteria used to rank proposals will include the:
  - (A) leveraging of federal resources;
  - (B) cost-effectiveness of a proposed development; and
  - (C) extent to which individuals and families of very low income are served by the development;
- (4) that funds may not be made available to a development that permanently and involuntarily displaces individuals and families of low income;
- (5) that the board attempt to allocate funds to achieve a broad geographical distribution with:
  - (A) special emphasis on equitably serving rural and nonmetropolitan areas; and
  - (B) consideration of the number and percentage of income-qualified families in different geographical areas; and
- (6) that multifamily housing developed or rehabilitated through the fund remain affordable to income-qualified households for at least 20 years. (V.A.C.S. Art. 4413(501), Sec. 3.16(c).)

Sec. 2306.204. INDEPENDENT AUDIT OF HOUSING TRUST FUND. (a) An independent auditor shall annually conduct an audit of the housing trust fund to determine the amount of unencumbered fund balances that is greater than the amount required for the reserve fund.

(b) The independent auditor shall submit the audit report to the board not later than December 31 of each year. (V.A.C.S. Art. 4413(501), Sec. 3.16(d).)

Sec. 2306.205. TRANSFER OF MONEY TO HOUSING TRUST FUND. (a) Except as provided by Subsections (c), (d), and (e), not later than January 10 of each year the housing finance division shall transfer to the housing trust fund an amount, as determined by the audit report prepared under Section 2306.204, equal to one-half of the housing finance division's unencumbered fund balances in excess of two percent of the division's total bonded indebtedness that is not rated on its own merits in the highest long-term debt rating category by one or more nationally recognized rating agencies.

(b) The department shall determine the unencumbered fund balance under Subsection (a) according to the debt rating criteria established for housing finance agencies by one or more nationally recognized rating agencies.

(c) If, at the time an annual audit required by Section 2306.204 is concluded, the housing finance division's unencumbered fund balances exceed four percent of its total bonded indebtedness that is not rated on its own merits in the highest long-term debt rating category, the department shall transfer not later than January 10 of the next year all amounts in excess of that four percent.

(d) If, at the time an annual audit required by Section 2306.204 is concluded, a nationally recognized rating agency has recommended that the housing finance division maintain unencumbered fund balances in excess of the amount permitted by Subsection (a) to achieve or maintain a rating of at least Aa/A+ on all or a portion of the bonded indebtedness of the housing finance division that is issued under an open indenture or an open flow of funds, the department shall transfer not later than January 10 of the next year all amounts in excess of the amount required by the rating agency to be held as unencumbered fund balances.

(e) If, at the time an annual audit required by Section 2306.204 is concluded, a nationally recognized rating agency has recommended that the housing finance division increase the amount of its unencumbered fund balances to achieve or maintain a financially sound condition or to prevent a decrease in the long-term debt rating maintained on all or a portion of the housing finance division's bonded indebtedness, the housing finance division may not make further annual transfers to the housing trust fund until all requirements and conditions of the rating agency have been met. (V.A.C.S. Art. 4413(501), Secs. 3.16(e), (f), (g), (h).)

Sec. 2306.206. HOUSING TRUST FUND NOT SUBJECT TO TEXAS TRUST CODE. The housing trust fund provided for by this subchapter is not subject to Subtitle B, Title 9, Property Code. (V.A.C.S. Art. 4413(501), Sec. 3.16(i).)

Sec. 2306.207. RESERVE FUND. (a) The housing finance division may create a reserve fund with the state treasurer out of:

- (1) proceeds from the sale of the division's bonds; or
- (2) other resources.

(b) The reserve fund is additional security for the division's bonds. (V.A.C.S. Art. 4413(501), Sec. 1.02(24) (part).)

[Sections 2306.208 to 2306.220 reserved for expansion]

#### SUBCHAPTER J. HOUSING FINANCE DIVISION: LOAN TERMS AND CONDITIONS

Sec. 2306.221. HOUSING DEVELOPMENT LOANS. To finance the purchase, construction, remodeling, improvement, or rehabilitation of housing developments for residential housing designed and planned for individuals and families of low and very low income and families of moderate income, the department, on the terms and conditions stated in this chapter, may:

- (1) make, commit to make, and participate in the making of mortgage loans, including federally insured loans to housing sponsors; and
- (2) make temporary loans and advances in anticipation of permanent mortgage loans. (V.A.C.S. Art. 4413(501), Sec. 3.11(b).)

Sec. 2306.222. **CONTRACTS AND AGREEMENTS REGARDING HOUSING DEVELOPMENTS.** The department may enter into agreements and contracts with housing sponsors and mortgage lenders under this chapter to make or participate in mortgage loans for residential housing for individuals and families of low and very low income and families of moderate income. (V.A.C.S. Art. 4413(501), Sec. 3.11(d).)

Sec. 2306.223. **CRITERIA FOR FINANCING HOUSING DEVELOPMENT OF HOUSING SPONSOR.** Notwithstanding any other provision of this chapter, the department may not finance a housing development undertaken by a housing sponsor under this chapter, unless the department first determines that:

- (1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford;
- (2) the housing sponsor undertaking the proposed housing development will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;
- (3) the housing sponsor is financially responsible;
- (4) the financing of the housing development is a public purpose and will provide a public benefit; and
- (5) the housing development will be undertaken within the authority granted by this chapter to the housing finance division and the housing sponsor. (V.A.C.S. Art. 4413(501), Sec. 3.23.)

Sec. 2306.224. **LOAN TERMS AND CONDITIONS.** A loan financed through a program of the housing finance division under this subchapter is subject to the terms and conditions provided by this subchapter. (V.A.C.S. Art. 4413(501), Sec. 3.12(a).)

Sec. 2306.225. **RATIO OF LOAN TO DEVELOPMENT COST; AMORTIZATION PERIOD.** (a) Except as provided by Subsection (b), the ratio of loan to total housing development cost and the amortization period of a loan insured or guaranteed by the federal government is governed by the federal government mortgage insurance commitment or federal guarantee for each housing development.

(b) The amortization period for a loan may not exceed 40 years. (V.A.C.S. Art. 4413(501) Sec. 3.12(b).)

Sec. 2306.226. **INTEREST RATES.** (a) The board shall set the interest rates at which the housing finance division makes loans and loan commitments.

(b) The interest rates shall be set to produce, when combined with other available funds, at least the amounts required to pay for the housing finance division's costs of operation and to meet its covenants with and responsibilities to the holders of its bonds. (V.A.C.S. Art. 4413(501), Sec. 3.12(d) (part).)

Sec. 2306.227. **PREPAYMENT OF MORTGAGE LOANS.** A mortgage loan made under this chapter may be prepaid to maturity after the period of years and under the terms and conditions determined by the board. (V.A.C.S. Art. 4413(501), Sec. 3.12(c).)

Sec. 2306.228. **LOAN FEES.** The department shall make and collect loan fees that the department determines are reasonable, including:

- (1) fees to reimburse the housing finance division's financing costs;
- (2) service charges;
- (3) insurance premiums;
- (4) mortgage insurance premiums; and
- (5) fees for administrative costs. (V.A.C.S. Art. 4413(501), Sec. 3.12(d) (part).)

Sec. 2306.229. **DOCUMENTS SUPPORTING MORTGAGE LOANS.** (a) A mortgage loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage that creates a lien on the housing development and on all real property that constitutes the site of or that relates to the housing development.

(b) A note or bond and a mortgage or deed of trust:

- (1) must contain provisions satisfactory to the department;

(2) must be in a form satisfactory to the department; and

(3) may contain exculpatory provisions relieving the borrower or its principal from personal liability if the department agrees. (V.A.C.S. Art. 4413(501), Sec. 3.12(e).)

Sec. 2306.230. AGREEMENTS REGARDING CERTAIN LIMITATIONS ON HOUSING SPONSORS. A mortgage loan is subject to an agreement between the department and the housing sponsor that subjects the sponsor and its principals or stockholders to limitations established by the department regarding:

(1) rentals and other charges;

(2) builders' and developers' profits and fees;

(3) the disposition of its property; and

(4) the real property that constitutes the site of or relates to the housing development. (V.A.C.S. Art. 4413(501), Sec. 3.12(f).)

Sec. 2306.231. LOAN CONDITIONS RELATING TO DEPARTMENT POWERS. As a condition of each loan, the department, acting through the housing finance division, may at any time during the construction, rehabilitation, or operation of a housing development:

(1) enter and inspect the housing development to:

(A) investigate the development's:

(i) physical and financial condition;

(ii) construction;

(iii) rehabilitation;

(iv) operation;

(v) management; and

(vi) maintenance; and

(B) examine all books and records relating to:

(i) capitalization;

(ii) income; and

(iii) other matters regarding capitalization or income;

(2) impose charges that are required to cover the cost of inspections and examinations under Subdivision (1);

(3) order alterations, changes, or repairs necessary to protect:

(A) the security of the department's investment in a housing development; or

(B) the health, safety, and welfare of the occupants of a housing development;

(4) order a managing agent, housing development manager, or housing development owner to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, department rule, or term of an agreement regarding the housing development; and

(5) file and prosecute a complaint against a managing agent, housing development manager, or housing development owner for a violation of any applicable law or ordinance. (V.A.C.S. Art. 4413(501), Sec. 3.12(g).)

Sec. 2306.232. TEXAS HOUSING AGENCY LOAN OR GUARANTEE. A loan or guarantee made by the Texas Housing Agency becomes a loan or guarantee of the housing finance division. (Ch. 762, Acts of the 72nd Leg., R.S., 1991, Sec. 23(c).)

[Sections 2306.233 to 2306.250 reserved for expansion]

## SUBCHAPTER K. HOUSING FINANCE DIVISION: HOUSING PROGRAMS

Sec. 2306.251. PROPERTY OWNERSHIP PROGRAM. (a) The department may acquire and own real property on an interim basis for sale or rental to:

(1) individuals and families of low and very low income; and

(2) nonprofit housing organizations and other housing organizations to serve the needs of individuals and families of low and very low income.

(b) Property acquired by the department must qualify for home mortgage insurance after rehabilitation.

(c) The housing finance division may use money from the housing trust fund or unencumbered fund balances to purchase property under this section. The division may not use more than 10 percent of the yearly balance of the housing trust fund to acquire real property.

(d) If the department acquires property under this section, the housing finance division shall have an independent audit conducted annually to analyze the property ownership program's:

(1) financial stability;

(2) cost-effectiveness; and

(3) effectiveness in serving individuals of low and very low income. (V.A.C.S. Art. 4413(501), Sec. 3.17.)

Sec. 2306.252. LOW AND VERY LOW INCOME HOUSING RESOURCE CENTER.

(a) The board shall establish a low and very low income housing resource center in the housing finance division.

(b) The center shall:

(1) provide educational material to housing advocates, housing sponsors, borrowers, and tenants;

(2) provide technical assistance to nonprofit housing sponsors;

(3) focus on marketing loans and other programs of the housing finance division to individuals and families of low and very low income; and

(4) assist lenders in marketing loans to individuals and families of low and very low income. (V.A.C.S. Art. 4413(501), Sec. 3.18.)

[Sections 2306.253 to 2306.260 reserved for expansion]

#### SUBCHAPTER L. HOUSING FINANCE DIVISION: REGULATION OF HOUSING SPONSORS

Sec. 2306.261. SUPERVISING HOUSING SPONSORS. The housing finance division may, as provided by this subchapter, supervise:

(1) housing sponsors, including limited profit housing sponsors, of housing developments that are financed under this chapter and rented or leased to tenants; and

(2) real and personal property of sponsors. (V.A.C.S. Art. 4413(501); Sec. 3.21(a).)

Sec. 2306.262. UNIFORM SYSTEMS OF ACCOUNTS AND RECORDS. The department may require uniform systems of accounts and records for housing sponsors. (V.A.C.S. Art. 4413(501), Sec. 3.21(b) (part).)

Sec. 2306.263. REPORTING. The department may require housing sponsors to:

(1) make reports and certifications of their expenditures; and

(2) answer specific questions on forms whenever necessary for the purposes of this chapter. (V.A.C.S. Art. 4413(501), Sec. 3.21(b) (part).)

Sec. 2306.264. INSPECTIONS AND EXAMINATIONS. The department, through its agents or employees, may:

(1) enter and inspect, in whole or in part, the land, buildings, and equipment of a housing sponsor; and

(2) examine all records showing the capital structure, income, expenditures, and other payments of a housing sponsor. (V.A.C.S. Art. 4413(501), Sec. 3.21(c).)

Sec. 2306.265. OPERATION, MAINTENANCE, AND REPAIR. The department may:

(1) supervise the operation and maintenance of a housing development; and

(2) order necessary repairs to protect the public interest or the health, welfare, or safety of the housing development occupants. (V.A.C.S. Art. 4413(501), Sec. 3.21(d).)

Sec. 2306.266. FEES RELATING TO REGULATION. The department may require a housing sponsor to pay the housing finance division fees for the cost of regulating the housing sponsor, including the cost of:

- (1) examination;
- (2) inspection;
- (3) supervision; and
- (4) auditing. (V.A.C.S. Art. 4413(501), Sec. 3.21(g).)

Sec. 2306.267. COMPLIANCE WITH APPLICABLE LAWS, RULES, AND CONTRACT TERMS. The department may order a housing sponsor to perform or refrain from performing certain acts in order to comply with the law, housing finance division rules, or terms of a contract or agreement to which the housing sponsor is a party. (V.A.C.S. Art. 4413(501), Sec. 3.21(h).)

Sec. 2306.268. RENTS AND CHARGES. The department shall approve and may change from time to time a schedule of rents and charges for a housing development operated by the department under Section 2306.251. (V.A.C.S. Art. 4413(501), Sec. 3.21(e).)

Sec. 2306.269. TENANT AND MANAGER SELECTION. The department shall set standards for tenant and management selection by a housing sponsor. (V.A.C.S. Art. 4413(501), Sec. 3.21(f).)

Sec. 2306.270. REGULATION OF RETIREMENT OF CAPITAL INVESTMENT OR REDEMPTION OF STOCK. The department shall regulate the retirement of a capital investment or the redemption of stock of a limited profit housing sponsor if the retirement or redemption, when added to a dividend or other distribution, exceeds in any one fiscal year the permitted percentage, as allowed by the housing finance division's rules, of the original face amount of the limited profit housing sponsor's investment or equity in a housing development. (V.A.C.S. Art. 4413(501), Sec. 3.21(i).)

Sec. 2306.271. COST CONTROLS. (a) The housing finance division by rule shall specify the categories of costs allowable in the construction, reconstruction, remodeling, improvement, or rehabilitation of a housing development.

(b) The housing finance division shall require a housing sponsor to certify the actual housing development costs on completion of the housing development, subject to audit and determination by the department.

(c) The department may accept, instead of certification of housing development costs under Subsection (b), other assurances of the costs, in any form, that will enable the housing finance division to determine with reasonable accuracy the amount of the costs.

(d) In this section, "housing development costs" means the total of all costs incurred in financing, creating, or purchasing a housing development, including a single-family dwelling, approved by the department as reasonable and necessary. The costs may include:

(1) the value of land and buildings on the land owned by the sponsor or the cost of acquiring land and buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing site;

(2) costs of site preparation, demolition, and development;

(3) expenses relating to the issuance of bonds;

(4) fees paid or payable in connection with the planning, execution, and financing of the housing development, including fees to:

(A) architects;

(B) engineers;

(C) attorneys;

(D) accountants; or

(E) the housing finance division on the department's behalf;

(5) costs of necessary studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(6) costs of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, and apparatus related to the real property;

(7) costs of land improvements, including landscaping and off-site improvements, whether or not the costs have been paid in cash or in a form other than cash;

(8) necessary expenses for the initial occupancy of the housing development;

(9) a reasonable profit and risk fee in addition to job overhead to the general contractor or limited profit housing sponsor;

(10) an allowance established by the department for working capital and contingency reserves and reserves for anticipated operating deficits during the first two years of occupancy; and

(11) the cost of other items, including tenant relocation if tenant relocation costs are not otherwise provided for, that the department determines are reasonable and necessary for the development of the housing development, less net rents and other net revenues received from the operation of the real and personal property on the development site during construction. (V.A.C.S. Art. 4413(501), Secs. 1.02(9), 3.21(j).)

Sec. 2306.272. HOUSING SPONSOR INVESTMENTS. (a) A principal or stockholder of a housing sponsor may not earn, accept, or receive a per annum return on an investment in a housing development financed by the department greater than that allowed by department rule.

(b) A housing sponsor's equity in a housing development is the difference between the mortgage loan and the total housing development cost.

(c) The department shall establish a housing sponsor's equity when the final mortgage advance is made.

(d) For the purposes of this section, the amount established under Subsection (c) remains constant during the life of the department's mortgage on the development, except for additional equity investment made by the sponsor with the department's approval or at its order.

(e) In this section, "housing development costs" has the meaning assigned by Section 2306.271(d). (V.A.C.S. Art. 4413(501), Sec. 3.12(h).)

Sec. 2306.273. LIMITATION ON APPLICATION OF CERTAIN PROVISIONS OF SUBCHAPTER. Sections 2306.261 through 2306.271 do not apply to a housing development:

(1) for which individuals or families of low and very low income or families of moderate income receive a mortgage loan under this chapter; and

(2) that initially is intended for occupancy by those individuals or families. (V.A.C.S. Art. 4413(501), Sec. 3.21(k).)

[Sections 2306.274 to 2306.290 reserved for expansion]

#### SUBCHAPTER M. HOUSING FINANCE DIVISION: PURCHASE AND SALE OF MORTGAGE LOANS

Sec. 2306.291. PURCHASE AND SALE OF MORTGAGE LOANS. (a) The department may purchase and take assignments from mortgage lenders or the federal government of notes and mortgages evidencing loans or interest in loans for the construction, remodeling, improvement or rehabilitation, purchase, leasing, or refinancing of housing developments for individuals and families of low and very low income and families of moderate income.

(b) The department may sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the department. (V.A.C.S. Art. 4413(501), Sec. 3.14.)

Sec. 2306.292. ELIGIBILITY OF MORTGAGE LOANS FOR PURCHASE. A mortgage loan or interest in a mortgage loan is not eligible for purchase by or on behalf of the department from a mortgage lender unless the mortgage lender certifies that the mortgage loan or interest in the mortgage loan is for a housing development for individuals or families



of low and very low income or for families of moderate income. (V.A.C.S. Art. 4413(501), Sec. 3.15(a).)

Sec. 2306.293. **FEDERALLY ASSISTED MORTGAGE LOANS.** A mortgage loan or interest in a mortgage loan purchased or sold under this subchapter may include a mortgage loan that is insured, guaranteed, or assisted by the federal government or a mortgage loan that the federal government has committed to insure, guarantee, or assist. (V.A.C.S. Art. 4413(501), Sec. 3.15(c).)

Sec. 2306.294. **MORTGAGE LOAN PURCHASE PRICE.** (a) On purchasing a mortgage loan or interest in a mortgage loan from a mortgage lender, the department shall pay a purchase price equal to the outstanding principal balance, except that a discount from the principal balance or the payment of a premium may be used to produce a fair rate of return consistent with the obligations of the department and the purposes of this chapter.

(b) In addition to payment of the outstanding principal balance, the department shall pay the accrued interest due to the date on which the mortgage loan is delivered against payment. (V.A.C.S. Art. 4413(501), Sec. 3.15(b).)

Sec. 2306.295. **RULES GOVERNING PURCHASE AND SALE OF MORTGAGE LOANS.** The department shall adopt rules governing the purchase and sale of mortgage loans and the application of sale proceeds, including rules governing:

- (1) procedures for submitting requests or inviting proposals for the purchase and sale of mortgage loans or interest in the mortgage loans;
- (2) restrictions on the number of family units, location, or other qualifications of residences to be financed by residential mortgage loans;
- (3) income limits of individuals and families of low and very low income or families of moderate income occupying a residence financed by a residential mortgage loan;
- (4) restrictions relating to the interest rates on mortgage loans or the return realized by mortgage lenders;
- (5) requirements for commitments by mortgage lenders relating to mortgage loans;
- (6) schedules of fees and charges necessary for expenses and reserves of the housing finance division;
- (7) resale of the housing development; and
- (8) any other matter related to the power of the department to purchase and sell mortgage loans or interests in mortgage loans. (V.A.C.S. Art. 4413(501), Sec. 3.15(d).)

Sec. 2306.296. **REVIEW AND SUBSTITUTION OF PURCHASED MORTGAGE LOANS.** (a) The department shall review each mortgage loan purchased or financed by the department to determine if the loan meets:

- (1) the conditions of this chapter;
- (2) the department's rules; and
- (3) any commitment made with the mortgage lender to purchase mortgage loans.

(b) The department may require the substitution of another mortgage loan if it determines that a loan does not comply with the criteria of Subsection (a). (V.A.C.S. Art. 4413(501), Sec. 3.15(e) (part).)

Sec. 2306.297. **APPLICATION OF PROVISIONS RELATING TO LOAN TERMS AND CONDITIONS.** Sections 2306.225 through 2306.229 apply to the purchase of mortgage loans. (V.A.C.S. Art. 4413(501), Sec. 3.15(e) (part).)

[Sections 2306.298 to 2306.310 reserved for expansion]

#### SUBCHAPTER N. HOUSING FINANCE DIVISION: TENANTS OF HOUSING DEVELOPMENTS

Sec. 2306.311. **ADMISSION TO HOUSING DEVELOPMENTS.** Admission to a housing development financed under this chapter that is leased to tenants is limited to individuals or families of low and very low income and families of moderate income. (V.A.C.S. Art. 4413(501), Sec. 3.22(a).)

Sec. 2306.312. EXAMINATION OF TENANT INCOME. The department shall periodically examine, or require that a housing sponsor examine, the income of an individual or family residing as a tenant in a housing development. (V.A.C.S. Art. 4413(501), Sec. 3.22(b) (part).)

Sec. 2306.313. TERMINATION OF TENANCY. (a) The department or, with the department's approval, the housing sponsor of a housing development may terminate the tenancy or interest of an individual or family whose gross income exceeds the income level allowed for admission by more than 25 percent for six months or more.

(b) A tenancy or interest of an individual or family in a housing development may not be terminated except on reasonable notice and opportunity to obtain suitable alternate housing under the department's rules.

(c) At the time notice of termination is given, the housing finance division shall provide information to the tenant on other division programs for which the tenant qualifies and shall encourage the tenant's participation in those programs. (V.A.C.S. Art. 4413(501), Sec. 3.22(b) (part).)

Sec. 2306.314. CONTINUED OCCUPANCY ON PAYMENT OF SURCHARGE. An individual or family whose gross income would not otherwise permit continued occupancy of a dwelling unit may, with the department's approval, continue to occupy a dwelling unit on payment of a surcharge to the housing sponsor under a schedule of surcharges determined by the department. (V.A.C.S. Art. 4413(501), Sec. 3.22(b) (part).)

Sec. 2306.315. DISCHARGE FROM LIABILITY; REIMBURSEMENT. If an individual or family who resides in a cooperative housing development is required to move from the development because of excessive income, the individual or family must be:

- (1) discharged from liability for any note, bond, or other evidence of indebtedness; and
- (2) reimbursed, under department rules, for all sums paid to the housing sponsor on account of the:
  - (A) purchase of stock or debentures as a condition of occupancy; or
  - (B) acquisition of title for that purpose. (V.A.C.S. Art. 4413(501), Sec. 3.22(c).)

Sec. 2306.316. LIMITATION ON APPLICATION OF SUBCHAPTER. This subchapter does not apply to a housing development:

- (1) for which individuals or families of low and very low income or families of moderate income receive a mortgage loan under this chapter; and
- (2) that initially is intended for occupancy by those persons or families. (V.A.C.S. Art. 4413(501), Sec. 3.22(d).)

[Sections 2306.317 to 2306.330 reserved for expansion]

#### SUBCHAPTER O. HOUSING FINANCE DIVISION: REGULATION OF MORTGAGE LENDERS, SERVICERS, AND CONTRACTORS

Sec. 2306.331. MORTGAGE LENDER SELECTION. The department shall develop a process to select mortgage lenders that includes consideration of the lender's:

- (1) distribution of loans by income and geographic region in past programs of the department or its predecessor; and
- (2) rating under the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.). (V.A.C.S. Art. 4413(501), Sec. 3.19.)

Sec. 2306.332. MONITORING MORTGAGE LENDERS. The department shall develop a written plan to monitor and audit the performance of mortgage lenders. The plan must include a requirement:

- (1) that mortgage lenders comply with quality control standards established by appropriate federal agencies;
- (2) for an audit of mortgage lenders' compliance with program guidelines to be conducted by random selection of loans and associated paperwork for review;

(3) for monitoring delinquency and foreclosure rates for currently participating mortgage lenders to identify unfavorable trends;

(4) for an extensive audit after a finding of an unfavorable trend under Subdivision (3); and

(5) for reporting the information gathered under this section to the director and the board. (V.A.C.S. Art. 4413(501), Sec. 3.20(a).)

Sec. 2306.333. **MONITORING MORTGAGE SERVICERS.** The housing finance division shall develop a written plan to monitor and audit the performance of mortgage servicers. The plan must include:

(1) a method of developing criteria to evaluate the performance of servicers;

(2) a method of monitoring the performance of a servicer under the criteria developed under Subdivision (1);

(3) a requirement for a review of the financial statements of a servicer;

(4) a process for an extensive audit of servicers who repeatedly violate the terms of the servicers' contracts with the department;

(5) the designation of an audit team consisting of staff members from relevant areas of the housing finance division; and

(6) a method of reporting the information gathered under this section to the director and the board. (V.A.C.S. Art. 4413(501), Sec. 3.20(b).)

Sec. 2306.334. **MONITORING CONTRACTORS.** The department shall develop a written plan to monitor and audit the performance of real estate owned contractors and other contractors. The plan must include:

(1) a requirement for a periodic inspection of foreclosed property;

(2) a method of monitoring contractors' performance of contract requirements; and

(3) a requirement for a periodic review of contractors' billing procedures. (V.A.C.S. Art. 4413(501), Sec. 3.20(c).)

[Sections 2306.335 to 2306.350 reserved for expansion]

## SUBCHAPTER P. HOUSING FINANCE DIVISION BONDS: ISSUANCE OF BONDS

Sec. 2306.351. **ISSUANCE OF BONDS.** (a) The department may issue bonds under this chapter and may:

(1) provide for and secure payment of the bonds;

(2) provide for the rights of the holders of the bonds, as permitted by this chapter and the Texas Constitution; and

(3) purchase, hold, cancel, resell, or otherwise dispose of its bonds, subject to restrictions in a resolution authorizing issuance of its bonds.

(b) In connection with or incidental to issuing and selling its bonds, the department may enter into contracts that the board considers necessary or appropriate for the department's obligation, as represented by the bonds and incidental contracts, to be placed, in whole or in part, on the basis desired by the board, including interest rate, currency, or cash flow.

(c) Contracts that may be entered into under Subsection (b) include contracts:

(1) commonly known as interest rate swap agreements, currency swap agreements, or forward payment conversion agreements;

(2) providing for payments based on levels of or changes in interest rates or currency exchange rates;

(3) to exchange cash flows or a series of payments; or

(4) that include options, puts or calls to hedge payment, currency, rate, spread, or similar exposure.

(d) A contract entered into under this section shall be on terms and conditions approved by the board. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.352. TEXAS HOUSING BONDS. (a) The board by resolution may provide for the issuance of negotiable bonds as authorized by the Texas Constitution.

(b) The bonds shall be on a parity and shall be called Texas Housing Bonds.

(c) The board:

(1) may issue the bonds in one or several installments; and

(2) shall date the bonds of each issue. (V.A.C.S. Art. 4413(501), Sec. 3.24(a).)

Sec. 2306.353. REVENUE BONDS. (a) In addition to issuing general obligation bonds under Section 2306.352, the department may issue revenue bonds to provide money to carry out a purpose, power, or duty of the housing finance division under this chapter.

(b) The bonds may be issued from time to time in one or more series or issues.

(c) The bonds shall be payable as to principal, interest, and redemption premium, if any, from, and secured by, a first or subordinate lien on, and pledge of, all or part of the revenues, income, or other resources of the housing finance division, including:

(1) the repayments of mortgage loans;

(2) the earnings from investment or deposit or the reserve fund and other funds of the housing finance division;

(3) the fees, charges, and other amounts or payments received under this chapter; and

(4) appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contribution, or donations. (V.A.C.S. Art. 4413(501), Sec. 3.24(b).)

Sec. 2306.354. DEFINITIVE REFUNDING BONDS. (a) The department may issue definitive refunding bonds if the bonds are issued and delivered to refund:

(1) other department bonds; or

(2) the obligations of:

(A) the department's predecessor; or

(B) a local housing finance corporation.

(b) The bonds must be payable as to principal, interest, and redemption premium, if any, from the refunding bonds and other revenues, income, or resources of the department.

(c) The department may contract to issue, sell, and deliver the definitive refunding bonds in a manner that will provide the money necessary to pay a required part of the principal, interest, and redemption premium, if any, on the refunded bonds or obligations when due.

(d) The refunded bonds or obligations may be refunded in another manner permitted by this chapter or other state law, including Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4413(501), Secs. 3.24(c), (h).)

Sec. 2306.355. ISSUANCE OF ADDITIONAL PARITY OR SUBORDINATE LIEN BONDS. The department may issue additional parity bonds or subordinate lien bonds under terms or conditions in the resolution authorizing issuance of the bonds. (V.A.C.S. Art. 4413(501), Sec. 3.24(f).)

Sec. 2306.356. ISSUANCE OF BONDS TO FUND DEPARTMENT RESERVES OR FUNDS. The department may issue bonds to provide all or part of the money required for funding or increasing the department's reserves or funds. (V.A.C.S. Art. 4413(501), Sec. 3.24(g).)

Sec. 2306.357. BONDS ISSUED BY TEXAS HOUSING AGENCY. A general obligation or revenue bond issued by the Texas Housing Agency becomes a general obligation or revenue bond of the housing finance division. (Ch. 762, Acts of the 72nd Leg., R.S., 1991, Sec. 23(d).)

SUBCHAPTER Q. HOUSING FINANCE DIVISION  
BONDS: BOARD ACTION ON BONDS

Sec. 2306.371. BOARD AUTHORIZATION OF BONDS. Bonds issued by the department must be authorized by board resolution. (V.A.C.S. Art. 4413(501), Sec. 3.24(e) (part).)

Sec. 2306.372. DEPARTMENT PROCEDURES. In a resolution authorizing the issuance of department bonds, the board may prescribe the systems and procedures under which the department shall function. (V.A.C.S. Art. 4413(501), Sec. 3.37 (part).)

Sec. 2306.373. USE OF BOND PROCEEDS. The board may provide in a resolution authorizing the issuance of department bonds that part of the proceeds from the sale of the bonds may be used to:

- (1) pay the costs and expenses of issuing the bonds;
- (2) pay interest on the bonds during a period required by the board;
- (3) pay or repay the department's operation and maintenance expenses to the extent and for the period specified in the resolution; and
- (4) fund, increase, or restore any depletions of the reserve fund or of other reserves or funds for any purpose. (V.A.C.S. Art. 4413(501), Sec. 3.24(e) (part).)

Sec. 2306.374. FACSIMILE SIGNATURES AND SEALS. (a) The board may state in a resolution authorizing the issuance of an installment or series of bonds the extent to which the presiding officer of the board or any other officer may use a facsimile signature or facsimile seal instead of a manual signature or manually impressed seal to execute or attest the bonds and appurtenant coupons.

(b) An interest coupon may be signed by the facsimile signature of the presiding officer of the board. (V.A.C.S. Art. 4413(501), Sec. 3.32.)

Sec. 2306.375. PERSONAL LIABILITY OF BOARD MEMBER OR DIRECTOR. A member of the board or the director is not liable personally for bonds issued or contracts executed by the housing finance division. (V.A.C.S. Art. 4413(501), Sec. 1.06(f).)

[Sections 2306.376 to 2306.390 reserved for expansion]

## SUBCHAPTER R. HOUSING FINANCE DIVISION BONDS: FORM; TERMS

Sec. 2306.391. FORM. The department's bonds may be issued as:

- (1) serial bonds;
- (2) term bonds; or
- (3) a combination of serial and term bonds as determined by the board. (V.A.C.S. Art. 4413(501), Sec. 3.26(a).)

Sec. 2306.392. DENOMINATION. (a) The department's bonds may be issued:

- (1) in coupon form payable to bearer;
- (2) in fully registered form;
- (3) as coupon bonds payable to bearer but registrable as to principal alone or as to both principal and interest; or
- (4) in another form, including a registered uncertificated obligation not represented by written instruments, commonly known as a book-entry obligation.

(b) The department shall provide for the registration of ownership and transfer of a book-entry obligation under a system of books and records maintained by a bank serving as trustee, paying agent, or bond registrar. (V.A.C.S. Art. 4413(501), Sec. 3.26(b).)

Sec. 2306.393. MANNER, PRICE, AND TERMS. The department's bonds may be sold in a manner, at a price, and under terms and conditions determined by the board under a contractual arrangement approved by the board. (V.A.C.S. Art. 4413(501), Sec. 3.26(d).)

Sec. 2306.394. PLACE OF PAYMENT; MEDIUM OF EXCHANGE. (a) The department's bonds may be payable at a place inside or outside the United States.

(b) The bonds may be made payable in any currency or medium of exchange, including United States dollars and currencies of other nations. (V.A.C.S. Art. 4413(501), Sec. 3.26(c) (part).)

Sec. 2306.395. INTEREST ON BONDS. The department's bonds may be issued to bear interest at a rate determined by the board. (V.A.C.S. Art. 4413(501), Sec. 3.25.)

Sec. 2306.396. MATURITY OF BONDS. The department's bonds may mature within a period determined by the board. (V.A.C.S. Art. 4413(501), Sec. 3.27.)

Sec. 2306.397. REDEMPTION BEFORE MATURITY; CONVERSION. (a) Department bonds may be made redeemable before maturity.

(b) The board may provide and covenant for the:

- (1) conversion of one form of bond to another form; and
- (2) reconversion of a bond to another form.

(c) Except as provided by Subsection (d), a replacement, converted, or reconverted bond must be approved and registered as provided by Sections 2306.431 and 2306.432, under procedures established by the resolution authorizing the bonds.

(d) If the duty of replacement, conversion, or reconversion of a bond is imposed on a place of payment (paying agent) or a corporate trustee under a trust agreement or trust indenture, the replacement, converted, or reconverted bond does not need to be reapproved by the attorney general or reregistered by the comptroller as provided by Sections 2306.431 and 2306.432. (V.A.C.S. Art. 4413(501), Secs. 3.26(c) (part), 3.28.)

[Sections 2306.398 to 2306.410 reserved for expansion]

#### SUBCHAPTER S. HOUSING FINANCE DIVISION BONDS: SECURITY FOR BONDS

Sec. 2306.411. SECURITY FOR PAYMENT OF PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM. (a) In addition to other security for the department's bonds authorized by this chapter, payment of the principal and interest and redemption premium, if any, on the department's bonds may be secured by a first or subordinate lien on and pledge of all or part of:

(1) the department's assets and real, personal, or mixed property, including:

- (A) mortgages or other obligations securing the assets of property;
- (B) investments; and
- (C) trust agreements or trust indentures administered by one or more corporate trustees as allowed by the board; and

(2) the reserves or funds of the housing finance division.

(b) The form of a mortgage, trust agreement, or trust indenture securing department bonds must be authorized under the resolution authorizing the issuance of the bonds. (V.A.C.S. Art. 4413(501), Secs. 3.24(d), (e) (part).)

Sec. 2306.412. VALIDITY OF LIENS AND PLEDGES. (a) A lien on or pledge of revenues, income, assets, reserves, funds, or other resources of the housing finance division, as authorized by this chapter, is valid and binding from the time of payment for and delivery of the bonds authorized by the board resolution creating or confirming the lien or pledge.

(b) A lien or pledge is fully effective as to revenues, income, assets, reserves, funds, or other resources on hand or later received, and those items are subject to the lien or pledge without physical delivery of the item or any further act.

(c) A lien or pledge is valid and binding against a party who has a claim in tort, contract, or otherwise against the department or another party, regardless of whether the party has notice of the lien or pledge.

(d) A resolution authorizing the issuance of department bonds or any other instrument creating or confirming a lien or pledge is not required to be filed or recorded, except that:

- (1) the resolution or instrument must be filed in the department's records; and
- (2) each department bond resolution must be submitted to the attorney general under Section 2306.431. (V.A.C.S. Art. 4413(501), Sec. 3.38.)

[Sections 2306.413 to 2306.430 reserved for expansion]

#### SUBCHAPTER T. HOUSING FINANCE DIVISION BONDS: APPROVAL, REGISTRATION, AND EXECUTION

Sec. 2306.431. APPROVAL OF BONDS. (a) Bonds issued by the department and the appropriate proceedings authorizing the bonds' issuance shall be submitted to the attorney general for examination.

(b) The attorney general shall approve the bonds if the attorney general finds that the bonds have been authorized as provided by this chapter. (V.A.C.S. Art. 4413(501), Sec. 3.30 (part).)

Sec. 2306.432. REGISTRATION. On approval of the attorney general under Section 2306.431, the comptroller shall register the department's bonds. (V.A.C.S. Art. 4413(501), Sec. 3.30 (part).)

Sec. 2306.433. EXECUTION. Bonds authorized by Section 2306.352 shall be executed on the board's behalf as general obligations of the state as follows:

- (1) the presiding officer of the board shall sign the bonds;
- (2) the board shall impress its seal on the bonds;
- (3) the governor shall sign the bonds; and
- (4) the secretary of state shall attest the bonds and impress on them the state seal. (V.A.C.S. Art. 4413(501), Sec. 3.31.)

[Sections 2306.434 to 2306.450 reserved for expansion]

#### SUBCHAPTER U. HOUSING FINANCE DIVISION BONDS: RIGHTS AND REMEDIES OF BONDHOLDERS AND PARTIES IN INTEREST

Sec. 2306.451. STATE PLEDGE REGARDING BONDHOLDER RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the holders of bonds issued under this chapter that it will not limit or alter the rights vested in the department under this chapter to fulfill the terms of an agreement made with a bondholder or impair the rights and remedies of a bondholder until the following obligations are fully discharged:

- (1) the bonds;
- (2) interest on the bonds;
- (3) interest on any unpaid installment of interest; and
- (4) all costs and expenses related to an action or proceeding by or on behalf of the holders.

(b) The department may include the state's pledge and agreement under Subsection (a) in an agreement with the holders of the department's bonds. (V.A.C.S. Art. 4413(501), Sec. 3.29(c).)

Sec. 2306.452. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of mandamus and any other legal or equitable remedy are available to a party in interest to require the department, the treasurer, or another party to carry out an agreement or to perform a function or duty under:

- (1) this chapter;
- (2) the Texas Constitution; or
- (3) the department's bond resolutions. (V.A.C.S. Art. 4413(501), Sec. 3.35.)

[Sections 2306.453 to 2306.470 reserved for expansion]

**SUBCHAPTER V. HOUSING FINANCE DIVISION BONDS:  
OBLIGATIONS OF DEPARTMENT AND STATE**

Sec. 2306.471. **GENERAL OBLIGATION BONDS.** General obligation bonds issued under Section 2306.352 and approved and registered under this chapter are general obligations of the state. (V.A.C.S. Art. 4413(501), Sec. 3.34(b).)

Sec. 2306.472. **DEPARTMENT'S BONDS OTHER THAN GENERAL OBLIGATION BONDS NOT OBLIGATIONS OF THE STATE.** Except for bonds authorized by the Texas Constitution and issued under Section 2306.352, the department's bonds:

- (1) are solely obligations of the department and are payable solely from funds of the housing finance division;
- (2) are not an obligation, debt, or liability of the state; and
- (3) do not create or constitute a pledge, giving, or lending of the faith, credit, or taxing power of the state. (V.A.C.S. Art. 4413(501), Sec. 3.29(a).)

Sec. 2306.473. **STATE NOT OBLIGATED TO PAY; FAITH AND CREDIT NOT PLEDGED.** A department bond not authorized by Section 2306.352 must contain a statement on the face of the bond that:

- (1) the state is not obligated to pay the principal or interest on the bond; and
- (2) the faith, credit, or taxing power of the state is not pledged, given, or loaned to payment of the bond's principal or interest. (V.A.C.S. Art. 4413(501), Sec. 3.29(b).)

[Sections 2306.474 to 2306.490 reserved for expansion]

**SUBCHAPTER W. HOUSING FINANCE DIVISION  
BONDS: MISCELLANEOUS PROVISIONS**

Sec. 2306.491. **BONDS NEGOTIABLE INSTRUMENTS.** Notwithstanding any other statute, a bond and interest coupon issued and delivered by the housing finance division is a negotiable instrument under the Uniform Commercial Code, except that the bond may be registered or subject to registration under this chapter. (V.A.C.S. Art. 4413(501), Sec. 3.36.)

Sec. 2306.492. **BONDS INCONTESTABLE.** Department bonds are incontestable for any reason in a court or other forum after approval by the attorney general and registration by the comptroller and are valid and binding obligations for all purposes under the terms of the bonds. (V.A.C.S. Art. 4413(501), Sec. 3.34(a).)

Sec. 2306.493. **SIGNATURE OF FORMER OFFICER.** If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on a coupon is not an officer at the time the bond is delivered, the signature is valid and sufficient for all purposes as if the officer had remained in office until delivery. (V.A.C.S. Art. 4413(501), Sec. 3.33.)

Sec. 2306.494. **BONDS NOT TAXABLE.** The following are free from taxation or assessment by this state or a public agency:

- (1) department bonds issued under this chapter;
- (2) interest and income from department bonds, including a profit from the sale of the bonds; and
- (3) all fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of the department's bonds. (V.A.C.S. Art. 4413(501), Sec. 3.39.)

Sec. 2306.495. **AUTHORIZED INVESTMENTS.** Bonds issued by the department under this chapter are legal and authorized investments for:

- (1) banks;
- (2) savings banks;



- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; or
- (9) sinking or other public funds of:
  - (A) this state;
  - (B) a municipality;
  - (C) a county;
  - (D) a school district; or
  - (E) another political subdivision or public agency of this state. (V.A.C.S. Art. 4413(501), Sec. 3.40.)

Sec. 2306.496. SECURITY FOR DEPOSIT OF FUNDS. Department bonds are eligible and lawful security for a deposit of public funds of the state or a public agency to the extent of the greater of the bonds' par or market value when accompanied by appurtenant unmatured interest coupons. (V.A.C.S. Art. 4413(501), Sec. 3.41.)

Sec. 2306.497. MUTILATED, LOST, STOLEN, OR DESTROYED BONDS. The board may provide procedures for the replacement of a mutilated, lost, stolen, or destroyed bond or interest coupon. (V.A.C.S. Art. 4413(501), Sec. 3.42.)

Sec. 2306.498. NO GAIN ALLOWED. (a) The director or a board member may not have or attempt to have a pecuniary interest in a transaction to which the department is a party for purposes of personal pecuniary gain.

(b) A board member or department employee may not purchase department bonds in the open secondary market for municipal securities. (V.A.C.S. Art. 4413(501), Sec. 3.43.)

[Sections 2306.499 to 2306.510 reserved for expansion]

## SUBCHAPTER X. INDIVIDUALS WITH SPECIAL NEEDS

Sec. 2306.511. DEFINITION. In this subchapter, "individual with special needs" means an individual who:

- (1) is considered to be an individual having a disability under a state or federal law;
- (2) is elderly;
- (3) is designated by the board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or
- (4) is legally responsible for caring for an individual described by Subdivision (1), (2), or (3) and meets the income guidelines established by the board. (V.A.C.S. Art. 4413(501), Sec. 1.02(19).)

Sec. 2306.512. SPECIAL NEEDS. The department may adopt a strategy to serve the needs of individuals with special needs. (V.A.C.S. Art. 4413(501), Sec. 3.03 (part).)

Sec. 2306.513. HOUSING FOR INDIVIDUALS WITH SPECIAL NEEDS. (a) The board shall adopt rules to achieve occupancy by individuals with special needs of at least five percent of the units in each multifamily housing development.

(b) Subsection (a) applies only to a multifamily housing development that contains at least 20 units and is financed by bonds issued under this chapter.

(c) If a survey that is conducted by the housing sponsor and verified by the housing finance division reveals that there is not sufficient need for housing for individuals with special needs in the area in which the development will be built or renovated to justify building or renovating and reserving at least five percent of the units for individuals with special needs, the department may, on a showing of good cause by the housing sponsor, lower the requirements to correspond to the amount of need found by the housing sponsor.

(d) The housing finance division shall cooperate with the Texas Department on Aging to implement this section and shall reimburse the department for the costs of:

- (1) assessing the need for housing for individuals with special needs in different locations;
- (2) setting standards relating to the design and construction of housing for individuals with special needs;
- (3) providing planning assistance to builders; and
- (4) publicizing the availability of the housing program to potential developers and residents.

(e) The department and the Texas Department on Aging shall determine a procedure for paying for services provided by the Texas Department on Aging. (V.A.C.S. Art. 4413(501), Sec. 3.13.)

SECTION 2. CONFORMING AMENDMENT. Chapter 121, Civil Practice and Remedies Code, is amended by adding Section 121.015 to read as follows:

*Sec. 121.015. PRIVATE SEAL OR SCROLL NOT REQUIRED. A private seal or scroll may not be required on a written instrument other than an instrument made by a corporation. (V.A.C.S. Art. 27 (part).)*

SECTION 3. CONFORMING AMENDMENT. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 136 to read as follows:

#### CHAPTER 136. PROOF OF MAILING

*Sec. 136.001. CERTIFIED MAIL. (a) Except as provided by Subsection (b), a person may use certified mail with return receipt requested in any case in which registered mail is required by law. The mailing of a notice of hearing, citation, bid request, or other notice, information, or material by certified mail has the same legal effect as if sent by registered mail, if the receipt for the certified mail is validated with an official post office postmark.*

*(b) An article shall be sent by registered mail if registered mail is required by law to provide insurance against loss of the article. (V.A.C.S. Art. 29c.)*

SECTION 4. CONFORMING AMENDMENT. Subsection (f), Section 7, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(f) The members of the board shall meet at least once in each quarter of the calendar year at a site determined by the chairman for the purpose of making clemency decisions. [~~As a specific exception to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the board, at the call of the chair, may hold a hearing on clemency matters by telephone conference call.~~] The portion of a meeting that is public shall be recorded and the recording made available to the public to be heard at one or more places designated by the board.

SECTION 5. CONFORMING AMENDMENT. Article 19.14, Code of Criminal Procedure, is amended to read as follows:

Art. 19.14. SUMMONING. The sheriff shall summon the persons named in the list at least three days, exclusive of the day of service, prior to the day on which the grand jury is to be impaneled, by giving personal notice to each juror of the time and place when and where he is to attend as a grand juror, or by leaving at his place of residence with a member of his family over sixteen years old, a written notice to such juror that he has been selected as a grand juror, and the time and place when and where he is to attend; or the judge, at his election, may direct the sheriff to summon the grand jurors by registered or certified mail.

SECTION 6. AMENDMENT. Chapter 56, Code of Criminal Procedure, is amended by designating Sections 56.01 through 56.10 as "SUBCHAPTER A. CRIME VICTIMS' RIGHTS," and by adding Subchapter B to read as follows:

#### SUBCHAPTER B. CRIME VICTIMS' COMPENSATION

*Art. 56.31. SHORT TITLE. This subchapter may be cited as the Crime Victims' Compensation Act. (V.A.C.S. Art. 8309-1, Sec. 1.)*

Art. 56.32. *DEFINITIONS. In this subchapter:*

- (1) "Child" means an individual younger than 17 years of age.
- (2) "Claimant" means a victim or an authorized person acting on behalf of a victim.
- (3) "Collateral source" means any of the following sources of benefits or advantages for pecuniary loss that a victim has received or that is readily available to the victim:
  - (A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;
  - (B) the United States, a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this subchapter;
  - (C) social security, Medicare, or Medicaid;
  - (D) state-required temporary nonoccupational disability insurance;
  - (E) workers' compensation;
  - (F) an employer's wage continuation program;
  - (G) proceeds of an insurance contract payable to the victim for loss that the victim sustained because of the criminally injurious conduct; or
  - (H) a contract providing prepaid hospital and other health care services or benefits for disability.
- (4) "Criminally injurious conduct" means conduct that:
  - (A) occurs or is attempted;
  - (B) poses a substantial threat of personal injury or death;
  - (C) is punishable by fine, imprisonment, or death, or would be punishable by fine, imprisonment, or death if the person engaging in the conduct possessed capacity to commit the conduct; and
  - (D) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle, unless the conduct is intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701-1, Revised Statutes.
- (5) "Dependent" means:
  - (A) a surviving spouse;
  - (B) a person who is a dependent, within the meaning of Section 152, Internal Revenue Code of 1986 (26 U.S.C. Section 152), of a deceased victim; or
  - (C) a posthumous child of a deceased victim.
- (6) "Immediate family member" means an individual who:
  - (A) is the father, mother, sister, brother, daughter, son, or spouse of a victim; and
  - (B) resided in the same permanent household as the victim at the time that the criminally injurious conduct occurred.
- (7) "Intervenor" means an individual who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in criminally injurious conduct, or to aid a police officer. The term does not include a peace officer, firefighter, lifeguard, or individual whose employment includes the duty to protect the public safety acting within the course and scope of the individual's employment.
- (8) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:
  - (A) as a result of personal injury for:
    - (i) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;
    - (ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury; and

(iii) care of a minor child enabling a victim or a victim's spouse, but not both of them, to continue gainful employment; and

(B) as a result of death for:

(i) funeral and burial expenses;

(ii) loss of support to a dependent; and

(iii) care of a minor child enabling the surviving spouse of a victim to engage in lawful employment.

(9) "Personal injury" means physical harm to a victim.

(10) "Victim" means:

(A) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct;

(ii) at the time of the criminally injurious conduct, is in this state; and

(iii) is a resident of this state, another state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession or territory of the United States;

(B) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct;

(ii) at the time of the criminally injurious conduct, is in a state that does not have a crime victims' compensation program that meets the requirements of Section 1403(b), Crime Victims Compensation Act of 1984 (42 U.S.C. Section 10602(b));

(iii) at the time of the criminally injurious conduct, is a resident of this state; and

(iv) would be entitled to compensation under this subchapter if the criminally injurious conduct had occurred in this state;

(C) an intervenor;

(D) a dependent of a deceased victim;

(E) an immediate family member of a deceased victim who is not a dependent of the victim and who requires psychiatric care or counseling as a direct result of the criminally injurious conduct;

(F) an individual who:

(i) is not an immediate family member or a dependent, but who resided in the same permanent household as a deceased victim in a relationship with the victim within the second degree of consanguinity; and

(ii) requires psychiatric care or counseling as a direct result of the criminally injurious conduct;

(G) in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or burial expenses incurred as a direct result of the criminally injurious conduct; or

(H) an immediate family member of a victim who is a child and who requires psychological or psychiatric counseling as a direct result of the criminally injurious conduct. (V.A.C.S. Art. 8309-1, Sec. 3 (part).)

Art. 56.33. ADMINISTRATION; RULES. (a) The attorney general shall adopt rules consistent with this subchapter governing its administration, including rules relating to the method of filing claims and the proof of entitlement to compensation. Subchapters A and B, Chapter 2001, Government Code, except Sections 2001.004(3) and 2001.005, apply to the attorney general.

(b) The attorney general may designate a power, duty, or responsibility given to the attorney general under this subchapter to a person in the attorney general's office. (V.A.C.S. Art. 8309-1, Secs. 3a, 10(a) (part).)

Art. 56.34. COMPENSATION. (a) The attorney general shall award compensation for pecuniary loss arising from criminally injurious conduct if the attorney general is satisfied by a preponderance of the evidence that the requirements of this subchapter are met.

(b) *The attorney general shall establish whether, as a direct result of criminally injurious conduct, a victim suffered personal injury or death that resulted in a pecuniary loss for which the victim is not compensated from a collateral source. (V.A.C.S. Art. 8309-1, Secs. 6(a), (b).)*

**Art. 56.35. TYPES OF ASSISTANCE.** *If the attorney general approves an application for compensation under Section 56.41 of this code, the attorney general shall determine what type of state assistance will best aid the claimant. The attorney general may do one or more of the following:*

- (1) *authorize cash payment or payments to or on behalf of a claimant for pecuniary loss;*
- (2) *refer a claimant to a state agency for vocational or other rehabilitative services; or*
- (3) *provide counseling services for a victim or contract with a private entity to provide counseling services. (V.A.C.S. Art. 8309-1, Sec. 7(a).)*

**Art. 56.36. APPLICATION.** (a) *An applicant for compensation under this subchapter must apply in writing in a form that conforms substantially to that prescribed by the attorney general.*

(b) *An application must be verified and must contain:*

- (1) *the date on which the criminally injurious conduct occurred;*
- (2) *a description of the nature and circumstances of the criminally injurious conduct;*
- (3) *a complete financial statement, including:*
  - (A) *the cost of medical care or burial expenses and the loss of wages or support the claimant has incurred or will incur; and*
  - (B) *the extent to which the claimant has been indemnified for those expenses from a collateral source;*
- (4) *if appropriate, a statement indicating the extent of a disability resulting from the injury incurred;*
- (5) *an authorization permitting the attorney general to verify the contents of the application; and*
- (6) *other information the attorney general requires. (V.A.C.S. Art. 8309-1, Secs. 4(a), (d).)*

**Art. 56.37. TIME FOR FILING.** (a) *Except as otherwise provided by this section, a claimant must file an application not later than the first anniversary of the criminally injurious conduct.*

(b) *The attorney general may extend the time for filing for good cause shown by the claimant.*

(c) *Subsection (a) of this section does not apply to a claimant if:*

- (1) *the claimant is a child who is the victim; or*
- (2) *the claimant is an immediate family member of a child who is the victim, and the immediate family member, as the direct result of the criminally injurious conduct, requires psychological or psychiatric counseling.*

(d) *If a claimant presents medically documented evidence of a physical incapacity that was incurred by the claimant as a result of the criminally injurious conduct and that reasonably prevented the claimant from filing the application within the limitations period under Subsection (a) of this section, the period of the incapacity is not included. (V.A.C.S. Art. 8309-1, Sec. 4(c).)*

**Art. 56.38. REVIEW; VERIFICATION.** (a) *The attorney general shall appoint a clerk to review each application for compensation under Section 56.36 of this code to ensure the application is complete. If an application is not complete, the clerk shall return it to the claimant and give a brief statement showing the additional information required. Not later than the 30th day after receiving a returned application, a claimant may:*

- (1) *supply the additional information; or*

(2) appeal the action to the attorney general, who shall review the application to determine whether it is complete.

(b) The attorney general may investigate an application.

(c) Incident to the attorney general's review, verification, and hearing duties under this subchapter, the attorney general may:

(1) request from prosecuting attorneys and law enforcement officers investigations and information to enable the attorney general to determine whether and the extent to which a claimant qualifies for an award;

(2) subpoena witnesses and administer oaths to determine whether and the extent to which a claimant qualifies for an award; and

(3) order a victim to submit to a mental or physical examination by a physician or psychologist or order an autopsy of a deceased victim as provided by Section 56.39 of this code, if the mental, physical, or emotional condition of a victim is material to a claim. (V.A.C.S. Art. 8309-1, Secs. 5(a), (b), (e) (part).)

Art. 56.39. **MENTAL OR PHYSICAL EXAMINATION; AUTOPSY.** (a) An order for a mental or physical examination or an autopsy as provided by Section 56.38(c)(3) of this code may be made for good cause shown on notice to the individual to be examined and to all persons who have appeared.

(b) An order shall:

(1) specify the time, place, manner, conditions, and scope of the examination or autopsy;

(2) specify the person by whom the examination or autopsy is to be made; and

(3) require the person making the examination or autopsy to file with the attorney general a detailed written report of the examination or autopsy.

(c) A report shall set out the findings of the person making the examination or autopsy, including:

(1) the results of any tests made; and

(2) diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(d) On request of the individual examined, the attorney general shall furnish the individual with a copy of the report. If the victim is deceased, the attorney general on request shall furnish the claimant with a copy of the report.

(e) A physician or psychologist making an examination or autopsy under this section shall be compensated from funds appropriated for the administration of this subchapter. (V.A.C.S. Art. 8309-1, Secs. 5(e) (part), (f).)

Art. 56.40. **HEARINGS.** (a) The attorney general shall determine whether a hearing on an application for compensation under this subchapter is necessary.

(b) If the attorney general determines that a hearing is not necessary, the attorney general may approve the application in accordance with the provisions of Section 56.41 of this code.

(c) If the attorney general determines that a hearing is necessary or the claimant requests a hearing, the attorney general shall consider the application at a hearing at a time and place of the attorney general's choosing. The attorney general shall notify all interested persons not less than 10 days before the date of the hearing.

(d) At the hearing the attorney general shall:

(1) review the application for assistance and the report prepared under Section 56.39 of this code and any other evidence obtained as a result of the attorney general's investigation; and

(2) receive other evidence that the attorney general finds necessary or desirable to evaluate the application properly.

(e) The attorney general may appoint hearing officers to conduct hearings or prehearing conferences under this subchapter.

(f) *A hearing or prehearing conference is open to the public unless in a particular case the hearing officer or attorney general determines that the hearing or prehearing conference or a part of it should be held in private because a criminal suspect has not been apprehended or because it is in the interest of the claimant.*

(g) *The attorney general may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make an emergency award under Section 56.50 of this code.*

(h) *Subchapters C through H, Chapter 2001, Government Code, do not apply to the attorney general or the attorney general's orders and decisions. (V.A.C.S. Art. 8309-1, Secs. 5(c), (d); 10(a) (part), (b)-(d).)*

**Art. 56.41. APPROVAL OF CLAIM.** (a) *The attorney general shall approve an application for compensation under this subchapter if the attorney general finds that grounds for compensation under this subchapter exist.*

(b) *The attorney general shall deny an application for compensation under this subchapter if:*

(1) *the criminally injurious conduct is not reported as provided by Section 56.46 of this code;*

(2) *the application is not made in the manner provided by Sections 56.36 and 56.37 of this code;*

(3) *the victim or individual whose injury or death gives rise to the application knowingly and willingly participated in the criminally injurious conduct;*

(4) *the claimant is the offender or an accomplice of the offender;*

(5) *an award of compensation to the claimant would benefit the offender or an accomplice of the offender; or*

(6) *the victim was incarcerated in a penal institution, as defined by Section 1.07(26), Penal Code, at the time the offense was committed.*

(c) *Except as provided by rules adopted by the attorney general to prevent the unjust enrichment of an offender, the attorney general may not deny an award otherwise payable to a victim because the victim:*

(1) *is an immediate family member of the offender; or*

(2) *resides in the same household as the offender. (V.A.C.S. Art. 8309-1, Secs. 6(a)-(c), (e).)*

**Art. 56.42. LIMITS ON COMPENSATION.** (a) *A claimant is not entitled to compensation for pecuniary loss under this subchapter:*

(1) *in excess of \$200 a week for:*

(A) *actual loss of past earnings or anticipated loss of future earnings; or*

(B) *loss of support to a dependent;*

(2) *for actual loss of past earnings or anticipated loss of future earnings if the victim is an accomplice of the offender;*

(3) *for loss of support to a dependent after the date the dependence would have ended if the victim had survived;*

(4) *for care of a minor child in excess of:*

(A) *\$50 a week for one child;*

(B) *\$100 a week for two children; or*

(C) *\$125 a week for three or more children;*

(5) *for loss of support to a dependent or care of a minor child as a result of death, if the expense is otherwise compensated for as a pecuniary loss for personal injury; or*

(6) *for loss attributable to pain and suffering.*

(b) *Awards payable to a victim and all other claimants sustaining pecuniary loss because of injury or death of that victim may not exceed \$25,000 in the aggregate. (V.A.C.S. Art. 8309-1, Secs. 3 (part), 7(b).)*

**Art. 56.43. ATTORNEY FEES.** (a) *As part of an order, the attorney general shall determine and award reasonable attorney fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant.*

(b) *Attorney fees may be denied on a finding that the claim or appeal is frivolous.*

(c) *An award of attorney fees is in addition to an award of compensation.*

(d) *An attorney may not contract for or receive an amount larger than that allowed under this section.*

(e) *Attorney fees may not be paid to an attorney of a claimant unless an award is made to the claimant. (V.A.C.S. Art. 8309-1, Sec. 12 (part).)*

**Art. 56.44. PAYMENTS.** (a) *The attorney general may provide for the payment of an award in a lump sum or in installments. The attorney general shall provide that the part of an award equal to the amount of pecuniary loss accrued to the date of the award be paid in a lump sum. Except as provided in Subsection (b) of this section, the attorney general shall pay the part of an award for allowable expense that accrues after the award is made in installments.*

(b) *At the request of the claimant, the attorney general may provide that an award for future pecuniary loss be paid in a lump sum if the attorney general finds that:*

(1) *paying the award in a lump sum will promote the interests of the claimant; or*

(2) *the present value of all future pecuniary loss does not exceed \$1,000.*

(c) *The attorney general may not provide for an award for future pecuniary loss payable in installments for a period for which the attorney general cannot reasonably determine the future pecuniary loss. (V.A.C.S. Art. 8309-1, Secs. 7(c)-(e).)*

**Art. 56.45. DENIAL OR REDUCTION OF AWARD.** *The attorney general may deny or reduce an award otherwise payable:*

(1) *if the victim has not substantially cooperated with an appropriate law enforcement agency;*

(2) *if the victim bears a share of the responsibility for the act or omission giving rise to the claim because of the victim's behavior at the time of the act or omission; or*

(3) *to the extent that pecuniary loss is recouped from another person, including a collateral source. (V.A.C.S. Art. 8309-1, Sec. 6(d).)*

**Art. 56.46. REPORTING OF CRIME.** (a) *Except as otherwise provided by this section, a claimant may not file an application unless the victim reports the criminally injurious conduct to the appropriate state or local public safety or law enforcement agency not later than 72 hours after the criminally injurious conduct is committed.*

(b) *The attorney general may extend the time for reporting the criminally injurious conduct if the attorney general determines that the extension is justified by extraordinary circumstances.*

(c) *Subsection (a) of this section does not apply if the victim is a child. (V.A.C.S. Art. 8309-1, Sec. 4(b).)*

**Art. 56.47. RECONSIDERATION.** (a) *The attorney general, on the attorney general's own motion or on request of a claimant, may reconsider:*

(1) *a decision to make or deny an award; or*

(2) *the amount of an award.*

(b) *At least annually, the attorney general shall reconsider each award being paid in installments.*

(c) *An order on reconsideration may not require refund of amounts previously paid unless the award was obtained by fraud.*

(d) *The right of reconsideration does not affect the finality of an attorney general decision for the purpose of judicial review. (V.A.C.S. Art. 8309-1, Secs. 9(a), (b).)*

**Art. 56.48. JUDICIAL REVIEW.** (a) *Not later than the 20th day after the attorney general renders a final decision, a claimant may file with the attorney general a notice of*



*dissatisfaction with the decision. Not later than the 20th day after the claimant gives notice, the claimant shall bring suit in the district court having jurisdiction in the county in which:*

- (1) *the injury or death occurred; or*
- (2) *the victim resided at the time the injury or death occurred.*

(b) *While judicial review of a decision by the attorney general is pending, the attorney general:*

- (1) *shall suspend payments to the claimant; and*
- (2) *may not reconsider the award.*

(c) *The court shall determine the issues by trial de novo. The burden of proof is on the claimant.*

(d) *A court may award additional attorney fees to a claim in the event of review.*

(e) *In computing a period under this section, if the last day is a legal holiday or Sunday, the last day is not counted, and the time is extended to include the next business day. (V.A.C.S. Art. 8309-1, Secs. 9(c), 12 (part).)*

**Art. 56.49. EXEMPTION; ASSIGNABILITY.** (a) *An award is not subject to execution, attachment, garnishment, or other process, except that an award is not exempt from a claim of a creditor to the extent that the creditor provided products, services, or accommodations, the costs of which are included in the award.*

(b) *An assignment or agreement to assign a right to benefits for loss accruing in the future is unenforceable except:*

(1) *an assignment of a right to benefits for loss of earnings is enforceable to secure payment of alimony, maintenance, or child support; and*

(2) *an assignment of a right to benefits is enforceable to the extent that the benefits are for the cost of products, services, or accommodations:*

- (A) *made necessary by the injury or death on which the claim is based; and*
- (B) *provided or to be provided by the assignee. (V.A.C.S. Art. 8309-1, Secs. 7(f), (g).)*

**Art. 56.50. EMERGENCY AWARD.** (a) *The attorney general may make an emergency award if, before acting on an application for compensation under this subchapter, it appears likely that:*

(1) *a final award will be made; and*

(2) *the claimant will suffer undue hardship if immediate economic relief is not obtained.*

(b) *An emergency award may not exceed \$1,500.*

(c) *The amount of an emergency award shall be:*

(1) *deducted from the final award; or*

(2) *repaid by and recoverable from the claimant to the extent the emergency award exceeds the final award. (V.A.C.S. Art. 8309-1, Sec. 8.)*

**Art. 56.51. SUBROGATION.** *If compensation is awarded under this subchapter, the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a collateral source. (V.A.C.S. Art. 8309-1, Sec. 11(a).)*

**Art. 56.52. NOTICE OF PRIVATE ACTION.** (a) *Before a claimant may bring an action to recover damages related to criminally injurious conduct for which compensation under this subchapter is claimed or awarded, the claimant must give the attorney general written notice of the proposed action. After receiving the notice, the attorney general shall promptly:*

(1) *join in the action as a party plaintiff to recover benefits awarded;*

(2) *require the claimant to bring the action in the claimant's name as a trustee on behalf of the state to recover benefits awarded; or*

(3) *reserve the attorney general's rights and do neither in the proposed action.*

(b) *If the claimant brings the action as trustee and recovers compensation awarded by the attorney general, the claimant may deduct from the benefits recovered on behalf of the state the reasonable expenses of the suit, including attorney fees, expended in pursuing the recovery for the state. The claimant must justify this deduction in writing to the attorney general on a form provided by the attorney general. (V.A.C.S. Art. 8309-1, Secs. 11(b), (c).)*

**Art. 56.53. ANNUAL REPORT.** *Annually, the attorney general shall report to the governor and the legislature on the attorney general's activities, including a statistical summary of claims and awards made and denied. The reporting period is the state fiscal year. The attorney general shall file the report not later than the 60th day after the end of the fiscal year. (V.A.C.S. Art. 8309-1, Sec. 13.)*

**Art. 56.54. FUNDS.** (a) *The compensation to victims of crime fund and the compensation to victims of crime auxiliary fund are in the state treasury.*

(b) *The compensation to victims of crime fund may be used by the attorney general only for the payment of compensation to claimants under this subchapter and other expenses in administering this subchapter.*

(c) *The compensation to victims of crime auxiliary fund may be used by the attorney general only for the payment of compensation to claimants under this subchapter.*

(d) *The attorney general may not make compensation payments in excess of the amount of money available from the combined funds.*

(e) *General revenues may not be used for payments under this subchapter. (V.A.C.S. Art. 8309-1, Sec. 14(a).)*

**Art. 56.55. COURT COSTS.** (a) *A person shall pay:*

(1) *\$20 as a court cost on conviction of a felony;*

(2) *\$15 as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of more than \$200 or on conviction of a misdemeanor punishable by imprisonment or by a fine of more than \$500; or*

(3) *\$5 as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of not more than \$200 or on conviction of a misdemeanor punishable by a fine of not more than \$500, other than a conviction of a misdemeanor offense or a violation of a municipal ordinance relating to pedestrians and the parking of motor vehicles.*

(b) *The court shall assess and make a reasonable effort to collect the cost due under this section whether any other court cost is assessed or collected.*

(c) *In this section, a person is considered to have been convicted if:*

(1) *a sentence is imposed;*

(2) *the defendant receives probation or deferred adjudication; or*

(3) *the court defers final disposition of the case.*

(d) *Court costs under this section are collected in the same manner as other fines or costs. (V.A.C.S. Art. 8309-1, Secs. 14(b), (c).)*

**Art. 56.56. DEPOSIT AND REMITTANCE OF COURT COSTS.** (a) *The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under Section 56.55 of this code and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, or district court case shall keep separate records of the funds collected as costs under Section 56.55 of this code and shall deposit the funds in the county treasury.*

(b) *The custodian of a municipal or county treasury shall:*

(1) *keep records of the amount of funds on deposit collected under Section 56.55 of this code; and*

(2) *send to the comptroller before the last day of the first month following each calendar quarter the funds collected during the preceding quarter.*

(c) *A municipality or county may retain 10 percent of the funds collected under Section 56.55 of this code as a collection fee if the custodian of the treasury:*

(1) keeps records of the amount of funds on deposit collected under Section 56.55 of this code; and

(2) sends to the comptroller the funds within the period prescribed by Subsection (b)(2) of this section.

(d) If no funds due as costs under Section 56.55 of this code are collected by a custodian of a municipal or county treasury in a quarter, the custodian shall file the report required for the quarter in the regular manner and must state that no funds were collected. (V.A.C.S. Art. 8309-1, Secs. 14(d), (e).)

Art. 56.57. **DEPOSIT BY COMPTROLLER; AUDIT.** (a) The comptroller shall deposit the funds received under Section 56.56 of this code in the compensation to victims of crime fund.

(b) Funds collected are subject to audit by the comptroller. Funds spent are subject to audit by the state auditor. (V.A.C.S. Art. 8309-1, Sec. 14(f).)

Art. 56.58. **ADJUSTMENT OF AWARDS AND PAYMENTS.** The attorney general shall establish a policy to adjust awards and payments so that the total amount of awards granted in each calendar year does not exceed the amount of money credited to the fund during that year. (V.A.C.S. Art. 8309-1, Sec. 14(g).)

Art. 56.59. **ATTORNEY GENERAL SUPERVISION OF COLLECTION OF COSTS; FAILURE TO COMPLY.** (a) If the attorney general has reason to believe that a court has not been assessing costs due under Section 56.55 of this code or has not been making a reasonable effort to collect those costs, the attorney general shall send a warning letter to the court or the governing body of the governmental unit in which the court is located.

(b) Within 60 days after receipt of a warning letter, the court or governing body shall respond in writing to the attorney general, specifically referring to the charges in the warning letter.

(c) If the court or governing body does not respond or if the attorney general considers the response inadequate, the attorney general may request the comptroller to audit the records of:

(1) the court;

(2) the officer charged with collecting the costs; or

(3) the treasury of the governmental unit in which the court is located.

(d) The comptroller shall give the attorney general the results of the audit.

(e) If, using the results of the audit and other evidence available, the attorney general finds that a court is not assessing costs due under Section 56.55 of this code or is not making a reasonable effort to collect those costs, the attorney general may:

(1) refuse to award compensation under this subchapter to residents of the jurisdiction served by the court; or

(2) notify the State Commission on Judicial Conduct of the findings.

(f) The failure, refusal, or neglect of a judicial officer to comply with a requirement of Section 56.55 of this code:

(1) constitutes official misconduct; and

(2) is grounds for removal from office. (V.A.C.S. Art. 8309-1, Sec. 14(h).)

Art. 56.60. **PUBLIC NOTICE.** (a) A hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this subchapter. The attorney general shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this subchapter to each hospital and physician licensed to practice in this state.

(b) Each local law enforcement agency shall inform a victim of criminally injurious conduct of the provisions of this subchapter and provide application forms to a victim who desires assistance. The attorney general shall provide application forms and all other documents that local law enforcement agencies may require to comply with this section. The attorney general shall set standards to be followed by local law enforcement agencies for this

purpose and may require them to file with the attorney general a description of the procedures adopted by each agency to comply. (V.A.C.S. Art. 8309-1, Secs. 10(e), (f).)

Art. 56.61. **COMPENSATION FOR CERTAIN CRIMINALLY INJURIOUS CONDUCT PROHIBITED.** The attorney general may not award compensation for economic loss arising from criminally injurious conduct that occurred before January 1, 1980. (V.A.C.S. Art. 8309-1, Sec. 15 (part).)

**SECTION 7. CONFORMING AMENDMENT.** Subchapter Z, Chapter 21, Education Code, is amended by adding Section 21.938 to read as follows:

Sec. 21.938. **SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING.** (a) A school board shall publish notice before a public hearing relating to a budget in a daily, weekly, or biweekly newspaper published in the district. If no daily, weekly, or biweekly newspaper is published in the district, the board shall publish notice in at least one newspaper of general circulation in the county in which the board is located.

(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.

(c) This section does not apply to a school board required by other law to give notice by publication of a hearing on a budget. (V.A.C.S. Art. 29e (part).)

**SECTION 8. AMENDMENT.** Subtitle H, Title 3, Education Code, is amended by adding Chapter 149 to read as follows:

#### CHAPTER 149. GEO-TECHNOLOGY RESEARCH INSTITUTE

Sec. 149.001. **DEFINITIONS**

Sec. 149.002. **GEO-TECHNOLOGY RESEARCH INSTITUTE**

Sec. 149.003. **ADMINISTRATION**

Sec. 149.004. **DUTIES**

Sec. 149.005. **FUNDS**

#### CHAPTER 149. GEO-TECHNOLOGY RESEARCH INSTITUTE

Sec. 149.001. **DEFINITIONS.** In this chapter:

- (1) "Center" means the Houston Advanced Research Center.
- (2) "Institute" means the Geo-Technology Research Institute. (V.A.C.S. Art. 6049h, Sec. 2.)

Sec. 149.002. **GEO-TECHNOLOGY RESEARCH INSTITUTE.** The Geo-Technology Research Institute is located at the center, a research consortium. (V.A.C.S. Art. 6049h, Sec. 3 (part).)

Sec. 149.003. **ADMINISTRATION.** The board of directors of the center directs the administration of the institute. (V.A.C.S. Art. 6049h, Sec. 4.)

Sec. 149.004. **DUTIES.** (a) The institute shall conduct basic and applied research in geophysics, geo-technology, and related fields to discover new reserves and to develop technology that increases the production potential of oil and natural gas.

(b) Results of the research of the institute shall be made available to the General Land Office, the Railroad Commission of Texas, other public bodies and officials, and private groups. (V.A.C.S. Art. 6049h, Secs. 3 (part), 5.)

Sec. 149.005. **FUNDS.** (a) The institute may receive:

- (1) funds from the federal government or the state government; and
- (2) pledges or gifts from private sources.

(b) The board of directors of the center shall manage and approve disbursement of all funds, pledges, and gifts.

(c) *The use of state funds is limited to expenditures for basic and applied research, excluding costs for construction, operation, or maintenance of facilities. (V.A.C.S. Art. 6049h, Sec. 6.)*

SECTION 9. AMENDMENT. Subchapter A, Chapter 27, Government Code, is amended by adding Section 27.006 to read as follows:

*Sec. 27.006. COLLECTING DEBT FOR ANOTHER; OFFENSE. (a) A justice commits an offense if the justice:*

*(1) accepts for collection or undertakes the collection of a claim for a debt for another, unless the justice acts under a law that prescribes the duties of the justice; or*

*(2) accepts compensation not prescribed by law for accepting for collection or undertaking the collection of a claim for debt for another.*

*(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than \$200 or more than \$500.*

*(c) In addition to the fine, the justice may be removed from office.*

*(d) This section does not prohibit a justice who is authorized by law to act for others in the collection of debts from undertaking to collect a debt for another if the amount of the debt is beyond the jurisdiction of the justice court. (V.A.C.S. Art. 6252-24 (part).)*

SECTION 10. CONFORMING AMENDMENT. Subchapter G, Chapter 51, Government Code, is amended by adding Section 51.606 to read as follows:

*Sec. 51.606. PROHIBITED FEES. A clerk is not entitled to a fee for:*

*(1) the examination of a paper or record in the clerk's office;*

*(2) filing any process or document the clerk issues that is returned to court;*

*(3) a motion or judgment on a motion for security for costs; or*

*(4) taking or approving a bond for costs. (V.A.C.S. Art. 3904 (part).)*

SECTION 11. CONFORMING AMENDMENT. Subchapter B, Chapter 312, Government Code, is amended by adding Section 312.015 to read as follows:

*Sec. 312.015. QUORUM. A majority of a board or commission established under law is a quorum unless otherwise specifically provided. (V.A.C.S. Art. 14.)*

SECTION 12. CONFORMING AMENDMENT. Subchapter B, Chapter 312, Government Code, is amended by adding Section 312.016 to read as follows:

*Sec. 312.016. STANDARD TIME. (a) The standard time in this state is the time at the 90th meridian longitude west from Greenwich, commonly known as "central standard time."*

*(b) The standard time in a region of this state that used mountain standard time before June 12, 1947, is the time at the 105th meridian longitude west from Greenwich, commonly known as "mountain standard time."*

*(c) Unless otherwise expressly provided, a reference in a statute, order, or rule to the time in which an act shall be performed means the appropriate standard time as provided by this section. (V.A.C.S. Art. 23a.)*

SECTION 13. CONFORMING AMENDMENT. Subchapter C, Chapter 316, Government Code, is amended by adding Sections 316.023 and 316.024 to read as follows:

*Sec. 316.023. AUTHORIZATION TO FIND FACT. The governor may find any fact specified by the legislature in an appropriation Act as a contingency for the expenditure of a designated item of appropriation. (V.A.C.S. Art. 689a-4b, Sec. 1.)*

*Sec. 316.024. PROCEDURE FOR FINDING FACT. (a) The governor shall make a finding of fact under Section 316.023 from the evidence as it exists at the time of the determination.*

*(b) The governor shall make a finding of fact under Section 316.023 only after a public hearing, if such a hearing is required in an appropriation Act.*

*(c) The governor shall file a decision, together with a finding of fact made under Section 316.023, with the Legislative Budget Board and the comptroller.*

(d) *The governor's certificate, under the seal of office, stating the decision or finding is evidence of the decision or finding.*

(e) *A decision or finding under Section 316.023 is final, subject to judicial review by appropriate legal remedies. (V.A.C.S. Art. 689a-4b, Sec. 2.)*

SECTION 14. CONFORMING AMENDMENT. Chapter 316, Government Code, is amended by adding Subchapter G to read as follows:

#### SUBCHAPTER G. FISCAL YEAR

Sec. 316.071. *FISCAL YEAR; APPROPRIATIONS. (a) The state fiscal year ends on August 31 of each year.*

(b) *Appropriations of state government shall conform to this fiscal year. (V.A.C.S. Art. 12 (part).)*

Sec. 316.072. *REPORTS; CLOSURE OF ACCOUNTS. (a) All officers required by law to report annually or biennially to the legislature or governor shall close their accounts at the end of the fiscal year.*

(b) *As soon as practicable after the end of the fiscal year, the officers shall prepare and compile their respective reports. (V.A.C.S. Art. 12 (part).)*

SECTION 15. AMENDMENT. Chapter 401, Government Code, is amended by adding Subchapters C, D, and E to read as follows:

#### SUBCHAPTER C. GOVERNOR'S BUDGET

Sec. 401.041. *CHIEF BUDGET OFFICER. The governor is the chief budget officer of the state. (V.A.C.S. Art. 689a-1.)*

Sec. 401.042. *UNIFORM BUDGET ESTIMATE FORMS. (a) The governor may collaborate with the Legislative Budget Board in designing and preparing uniform budget estimate forms on which all requests for legislative appropriations must be prepared.*

(b) *The governor shall require that all appropriation requests be submitted to the governor on the forms. (V.A.C.S. Art. 689a-2.)*

Sec. 401.043. *BUDGET HEARINGS. (a) After receiving the appropriation requests, the governor shall hold one or more public hearings concerning the requests. The governor shall preside at each hearing, except that the governor may authorize any employee of the executive branch to preside and represent the governor in the governor's absence.*

(b) *The head of a state agency that is seeking appropriations is entitled to speak at a hearing under this section at which the appropriation request is considered. The governor may require the head or any employee of a state agency seeking appropriations to appear at the hearing and present information about the appropriations. A taxpayer is entitled to participate in the discussion at a hearing under this section of any item proposed to be included in the budget under consideration.*

(c) *In this section, "state agency" means a board, commission, department, or other agency in the executive or judicial branch of state government. (V.A.C.S. Art. 689a-4; New.)*

Sec. 401.044. *COOPERATION WITH LEGISLATIVE BUDGET BOARD. (a) The governor and the Legislative Budget Board may cooperate, exchange information, and hold joint public hearings on the biennial appropriation budget.*

(b) *At a joint hearing under this section, the governor shall preside or, if the governor is unable to preside:*

(1) *the lieutenant governor shall preside; or*

(2) *a person appointed by the governor and the lieutenant governor shall preside. (V.A.C.S. Art. 689a-4a.)*

Sec. 401.045. *LEGISLATIVE EXPENSES. The governor may not include in the governor's budget or appropriation bill any appropriation for per diem or mileage expenses of members of the legislature or for necessary expenses of the legislature. (V.A.C.S. Art. 689a-8.)*

*Sec. 401.046. DISTRIBUTION OF BUDGET.* (a) *The governor shall deliver a copy of the governor's budget to each member of the legislature not later than the sixth day of each regular legislative session.*

(b) *The governor shall have as many copies of the budget printed for public distribution as the governor considers necessary. (V.A.C.S. Art. 689a-6.)*

*Sec. 401.047. PENALTY.* *A person who refuses to comply with a provision of this subchapter other than Section 401.044 commits an offense. An offense under this section is punishable by a fine of not less than \$100 or more than \$1,000, confinement in county jail for not less than one month or more than one year, or both fine and confinement. (V.A.C.S. Art. 689a-21.)*

*Sec. 401.048. ANNUAL BUDGETS.* *A reference in this subchapter or in Chapter 322 to a biennial budget or a regular legislative session means an annual budget or an annual budget session if a constitutional amendment is adopted providing for annual budget sessions of the legislature. (V.A.C.S. Art. 689a-8a.)*

*[Sections 401.049 to 401.060 reserved for expansion]*

#### SUBCHAPTER D. GOVERNOR'S EMERGENCY APPROPRIATIONS

*Sec. 401.061. APPROPRIATIONS FOR EMERGENCY.* *The legislature may appropriate money to the governor to be used only:*

(1) *in an emergency, including an imperative public necessity;*

(2) *for the executive branch of state government;*

(3) *if other money is not available, because previously appropriated money has been spent or obligated; and*

(4) *for purposes for which specific other appropriations previously have been made. (V.A.C.S. Art. 689a-4c, Secs. 1 (part), 2 (part), 4 (part).)*

*Sec. 401.062. CERTIFICATION OF EMERGENCY.* (a) *The governor may determine that an emergency exists requiring the use of appropriations made under Section 401.061.*

(b) *A governor who makes a determination under this section shall certify to the comptroller the facts constituting the emergency and the reasons why the facts constitute an emergency.*

(c) *The defense of the nation and this state and the safety and economic prosperity of the people of this state require the governor, in making a determination to use or authorize the use of an appropriation made under Section 401.061, to give preference to impacted regions of significant new naval military facilities, as those terms are defined by Section 4, Article 1, National Defense Impacted Region Assistance Act of 1985 (Article 689a-4d, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 689a-4c, Sec. 2 (part).)*

*Sec. 401.063. DETERMINATION OF AVAILABILITY OF MONEY.* (a) *After receiving a certification under Section 401.062, the comptroller shall determine whether money other than emergency appropriations is available for purposes of the emergency. The comptroller may obtain from any other agency whatever assistance the comptroller considers necessary for this purpose.*

(b) *The comptroller shall endorse on the governor's certification the availability or unavailability of other money, stating the source and amounts of available money, if any.*

(c) *The comptroller must return the governor's certification to the governor's office not later than the second working day after the date the comptroller receives the certification. (V.A.C.S. Art. 689a-4c, Secs. 1 (part), 2 (part).)*

*Sec. 401.064. FILING OF CERTIFICATION.* *The governor shall file with the secretary of state and the Legislative Budget Board a copy of the governor's original certification and the returned certification containing the comptroller's endorsement. (V.A.C.S. Art. 689a-4c, Sec. 2 (part).)*

*Sec. 401.065. EXPENDITURE FOR EMERGENCY. (a) The governor may spend appropriations made under Section 401.061 for the purpose of a certified emergency, but only after:*

*(1) the certification is endorsed by the comptroller showing that money other than emergency appropriations is not available for purposes of the emergency; and*

*(2) the governor receives the certification from the comptroller.*

*(b) The comptroller shall draw and the state treasurer shall pay the necessary warrants for the emergency.*

*(c) The governor by interagency contract may authorize an agency of the executive branch of state government to administer emergency appropriations approved under this subchapter. A contract made under this subsection is exempt from Chapter 771. (V.A.C.S. Art. 689a-4c, Secs. 2 (part), 3, 4 (part).)*

*[Sections 401.066 to 401.080 reserved for expansion]*

### SUBCHAPTER E. SUCCESSION OF GOVERNOR-ELECT AND LIEUTENANT GOVERNOR-ELECT

*Sec. 401.081. SUCCESSION OF GOVERNOR-ELECT AND LIEUTENANT GOVERNOR-ELECT. The speaker of the house of representatives and the president pro tem of the senate shall call a joint session of the house of representatives and the senate for the purpose of electing a governor and a lieutenant governor if:*

*(1) the governor-elect and the lieutenant governor-elect are or are permanently incapacitated to take their oaths of office at the time the legislature canvasses the election returns for governor and lieutenant governor; and*

*(2) the legislature finds that the governor-elect and the lieutenant governor-elect are not able to take the oath of office and to fulfill the duties of office.*

*Sec. 401.082. TERM OF SERVICE AS GOVERNOR. The individual who receives the highest number of votes cast by the members of the legislature for governor shall hold that office until the next general election.*

*Sec. 401.083. TERM OF SERVICE AS LIEUTENANT GOVERNOR. The individual who receives the highest number of votes cast by members of the legislature for lieutenant governor shall hold that office until the next general election. (V.A.C.S. Art. 6252-9aa.)*

**SECTION 16. CONFORMING AMENDMENT.** Subsection (d), Section 403.013, Government Code, is amended to read as follows:

*(d) The report under Subsection (c) shall be compiled from the financial information requested by the comptroller under Subchapter B, Chapter 2101 [Article 4345a, Revised Statutes], until it can be prepared from information contained in a fully operational uniform automated statewide accounting and reporting system.*

**SECTION 17. CONFORMING AMENDMENT.** Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.022 to read as follows:

*Sec. 403.022. REVIEW OF STATE AGENCIES. (a) The comptroller periodically may review and analyze the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of state agencies.*

*(b) The comptroller shall report the findings of the review and analysis to the governor, lieutenant governor, and speaker of the house of representatives.*

*(c) The legislature may consider the comptroller's reports in connection with the legislative appropriations process. (V.A.C.S. Art. 6252-31, Sec. 7, as added Acts 72nd Leg., R.S., Ch. 384.)*

**SECTION 18. CONFORMING AMENDMENT.** Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0121 to read as follows:

*Sec. 403.0121. ACCEPTANCE OF FEDERAL MONEY. The comptroller shall execute instruments necessary to accept money, gifts, or assets authorized by federal statute to be paid to the state in lieu of taxes or as a gift by the Secretary of Housing and Urban*



*Development or any federal agency. The comptroller shall deposit funds received under this section in the general revenue fund. (V.A.C.S. Art. 5248f, Secs. 1, 2.)*

**SECTION 19. CONFORMING AMENDMENT.** Subchapter C, Chapter 404, Government Code, is amended by adding Section 404.0211 to read as follows:

*Sec. 404.0211. CONFLICT OF INTEREST. A bank is not disqualified from serving as a depository for funds of a state agency if:*

*(1) an officer or employee of the agency who does not have the duty to select the agency's depository is an officer, director, or shareholder of the bank; or*

*(2) one or more officers or employees of the agency who have the duty to select the agency's depository are officers or directors of the bank or own or have a beneficial interest, individually or collectively, in 10 percent or less of the outstanding capital stock of the bank, if:*

*(A) a majority of the members of the board, commission, or other body of the agency vote to select the bank as a depository; and*

*(B) the interested officer or employee does not vote or take part in the proceedings. (V.A.C.S. Art. 2529c, Sec. 2 (part).)*

**SECTION 20. CONFORMING AMENDMENT.** Subchapter F, Chapter 431, Government Code, is amended by adding Section 431.085 to read as follows:

*Sec. 431.085. EMPLOYEES IN NATIONAL GUARD; EMERGENCY LEAVE. A state employee called to active duty as a member of the National Guard by the governor is entitled to receive emergency leave without loss of military or annual leave. (V.A.C.S. Art. 6252-4b.)*

**SECTION 21. CONFORMING AMENDMENT.** If Chapter 779, Acts of the 72nd Legislature, Regular Session, 1991, does not take effect as provided by Section 2 of that Act, Subsections (a) and (c), Section 659.012, Government Code, as added by this Act, are amended to read as follows:

*(a) A justice of a court of appeals other than the chief justice is entitled to an annual salary from the state that is 10 [five] percent less than the salary provided by the General Appropriations Act for a justice of the supreme court. The combined salary of a justice of a court of appeals other than the chief justice from all state and county sources may not exceed the amount that is \$1,000 less than the salary provided for a justice of the supreme court.*

*(c) A judge of a district court is entitled to an annual salary from the state that is five [10] percent less than the salary provided in the General Appropriations Act for a justice of a court of appeals [the supreme court]. Unless otherwise provided by law, the combined salary of a district judge from state and county sources may not exceed the amount that is \$2,000 less than the salary provided for a justice of the supreme court. To the extent of any conflict, the salary differential provided by this section for the combined salary of a district judge prevails over any differential set by Chapter 32.*

**SECTION 22. CONFORMING AMENDMENT.** Subchapter A, Chapter 51, Local Government Code, is amended by adding Section 51.002 to read as follows:

*Sec. 51.002. FAIR HOUSING ORDINANCES. (a) The governing body of a municipality may adopt fair housing ordinances that provide fair housing rights, compliance duties, and remedies that are substantially equivalent to those granted under federal law. Enforcement procedures and remedies in fair housing ordinances may vary from state or federal fair housing law.*

*(b) Fair housing ordinances that were in existence on January 1, 1991, and are more restrictive than federal fair housing law shall remain in effect. (V.A.C.S. Art. 1f, Sec. 2.08(a).)*

**SECTION 23. CONFORMING AMENDMENT.** Subtitle B, Title 3, Local Government Code, is amended by adding Chapter 88 to read as follows:

#### **CHAPTER 88. OFFICIAL BONDS OF CERTAIN COUNTY OFFICERS**

*Sec. 88.001. CERTAIN BONDS PAYABLE TO COUNTY JUDGE; CUSTODY OF BONDS. The official bond of a county officer that is required by law to be approved by the*

commissioners court must, except as required by other law, be made payable to the county judge and kept and recorded by the county clerk. (V.A.C.S. Art. 6000.)

**Sec. 88.002. APPLICATION OF SURETY TO TERMINATE LIABILITY ON BOND.** A surety on the official bond of a county officer may apply to the commissioners court to be relieved from the bond. (V.A.C.S. Art. 6001 (part).)

**Sec. 88.003. NOTICE TO OFFICER OF SURETY'S APPLICATION.** (a) The county clerk shall issue to the officer giving the bond a notice and a copy of a surety's application to be relieved from a bond.

(b) The sheriff or a constable of the county shall serve the notice and a copy of the application under this section on the officer. (V.A.C.S. Art. 6001 (part).)

**Sec. 88.004. OFFICER TO STOP EXERCISING FUNCTIONS OF OFFICE.** On service of notice under Section 88.003, an officer shall stop exercising the functions of the officer's office, except that:

- (1) the officer shall preserve records and property in the officer's charge; and
- (2) if the officer is a sheriff or constable, the officer shall:
  - (A) keep prisoners;
  - (B) preserve the peace; and
  - (C) execute warrants of arrest. (V.A.C.S. Art. 6001 (part).)

**Sec. 88.005. OFFICER WHO FAILS TO GIVE NEW BOND VACATES OFFICE.** An officer who does not give a new bond before the 21st day after the date the officer receives notice under Section 88.003 vacates the officer's office. (V.A.C.S. Art. 6001 (part).)

**Sec. 88.006. NEW BOND; DISCHARGE OF FORMER SURETIES.** If an officer served notice under Section 88.003 gives a new bond and the bond is approved, the former sureties are discharged from liability for misconduct of the officer after the approval of the new bond. (V.A.C.S. Art. 6001 (part).)

**Sec. 88.007. NEW BOND REQUIRED BY COMMISSIONERS COURT.** (a) A commissioners court that finds that a county officer's bond approved by the court is insufficient for any reason shall:

- (1) require the officer to give a new bond or additional security; and
  - (2) have the officer cited to appear at a term of the court not earlier than the sixth day after the date of service and take any action the court considers best for the public interest.
- (b) Action taken by the commissioners court under this section is final and may not be appealed. (V.A.C.S. Art. 6002.)

**SECTION 24. CONFORMING AMENDMENT.** Chapter 102, Local Government Code, is amended by adding Section 102.0065 to read as follows:

**Sec. 102.0065. SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING.** (a) The governing body of a municipality shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county in which the municipality is located.

(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.

(c) This section does not apply to the governing body of a municipality required by other law to give notice by publication of a hearing on a budget. (V.A.C.S. Art. 29e (part).)

**SECTION 25. CONFORMING AMENDMENT.** Subsection (c), Section 105.014, Local Government Code, is amended to read as follows:

(c) The conflict of interests provisions of Section 131.903 [~~Chapter 179, Acts of the 60th Legislature, Regular Session, 1967 (Article 2529e, Vernon's Texas Civil Statutes),~~] apply to the selection of the depositories.

**SECTION 26. CONFORMING AMENDMENT.** Subchapter A, Chapter 111, Local Government Code, is amended by adding Section 111.0075 to read as follows:

*Sec. 111.0075. SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING. (a) A commissioners court shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county.*

*(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.*

*(c) This section does not apply to a commissioners court required by other law to give notice by publication of a hearing on a budget. (V.A.C.S. Art. 29e (part).)*

**SECTION 27. CONFORMING AMENDMENT.** Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.0385 to read as follows:

*Sec. 111.0385. SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING. (a) A commissioners court shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county.*

*(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.*

*(c) This section does not apply to a commissioners court required by other law to give notice by publication of a hearing on a budget. (V.A.C.S. Art. 29e (part).)*

**SECTION 28. CONFORMING AMENDMENT.** Subchapter C, Chapter 111, Local Government Code, is amended by adding Section 111.0675 to read as follows:

*Sec. 111.0675. COMMISSIONERS COURT: SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING. (a) A commissioners court shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county.*

*(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.*

*(c) This section does not apply to a commissioners court required by other law to give notice by publication of a hearing on a budget. (V.A.C.S. Art. 29e (part).)*

**SECTION 29. CONFORMING AMENDMENT.** Subsection (d), Section 116.024, Local Government Code, is amended to read as follows:

*(d) The conflict of interests provisions of Section 131.903 [Chapter 179, Acts of the 60th Legislature, Regular Session, 1967 (Article 2529c, Vernon's Texas Civil Statutes),] apply to the selection of the depositories.*

**SECTION 30. CONFORMING AMENDMENT.** Subsection (c), Section 117.023, Local Government Code, is amended to read as follows:

*(c) The conflict of interests provisions of Section 131.903 [Chapter 179, Acts of the 60th Legislature, Regular Session, 1967 (Article 2529c, Vernon's Texas Civil Statutes),] apply to the selection of the depository.*

**SECTION 31. CONFORMING AMENDMENT.** Subchapter A, Chapter 118, Local Government Code, is amended by adding Section 118.002 to read as follows:

*Sec. 118.002. BILL FOR FEES. A fee under this chapter is not payable to a person until a clerk or officer produces or is ready to produce a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer. (V.A.C.S. Art. 3908 (part).)*

**SECTION 32. CONFORMING AMENDMENT.** Subchapter C, Chapter 118, Local Government Code, is amended by adding Section 118.066 to read as follows:

*Sec. 118.066. PROHIBITED FEES. A county clerk is not entitled to a fee for:*

- (1) the examination of a paper or record in the clerk's office;*
- (2) filing any process or document the clerk issues that is returned to court;*
- (3) a motion or judgment on a motion for security for costs; or*
- (4) taking or approving a bond for costs. (V.A.C.S. Art. 3904 (part).)*

SECTION 33. CONFORMING AMENDMENT. Subchapter E, Chapter 118, Local Government Code, is amended by adding Section 118.124 to read as follows:

*Sec. 118.124. PROHIBITED FEES. A justice of the peace is not entitled to a fee for:*

- (1) the examination of a paper or record in the justice's office;*
- (2) filing any process or document the justice issues that is returned to court;*
- (3) a motion or judgment on a motion for security for costs; or*
- (4) taking or approving a bond for costs. (V.A.C.S. Art. 3904 (part).)*

SECTION 34. CONFORMING AMENDMENT. Chapter 118, Local Government Code, is amended by adding Subchapter Y to read as follows:

#### SUBCHAPTER Y. PENALTIES

*Sec. 118.801. OVERCHARGING OF FEES; PENALTY. An officer named in this chapter who demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for four times the amount unlawfully demanded and received. (V.A.C.S. Art. 3909 (part).)*

SECTION 35. CONFORMING AMENDMENT. Subchapter A, Chapter 131, Local Government Code, is amended by adding Section 131.005 to read as follows:

*Sec. 131.005. STATE FUNDS. (a) The comptroller shall determine the amount of state funds held by a county depository that suspends business or is taken charge of by the Banking Commissioner of Texas or the federal comptroller of the currency. The comptroller may:*

- (1) contract with a special depository selected by the county authorities as provided by this subchapter for the custody and payment of those funds; and*
- (2) approve a bond for the deposit contract.*

*(b) State funds placed in a special depository as provided by Subsection (a) shall bear the average rate of interest received by the state on state funds placed with regularly selected state depositories.*

*(c) The comptroller may proceed with available legal remedies against a suspended bank that is a depository for state funds if the comptroller considers that action to be in the best interest of the public. (V.A.C.S. Arts. 2568, 2569.)*

SECTION 36. CONFORMING AMENDMENT. Subchapter Z, Chapter 131, Local Government Code, is amended by adding Section 131.903 to read as follows:

*Sec. 131.903. CONFLICT OF INTEREST. (a) A bank is not disqualified from serving as a depository for funds of a political subdivision if:*

- (1) an officer or employee of the political subdivision who does not have the duty to select the political subdivision's depository is an officer, director, or shareholder of the bank; or*
- (2) one or more officers or employees of the political subdivision who have the duty to select the political subdivision's depository are officers or directors of the bank or own or have a beneficial interest, individually or collectively, in 10 percent or less of the outstanding capital stock of the bank, if:*

*(A) a majority of the members of the board, commission, or other body of the political subdivision vote to select the bank as a depository; and*

*(B) the interested officer or employee does not vote or take part in the proceedings.*

*(b) This section may not be construed as changing or superseding a conflicting provision in the charter of a home-rule municipality. (V.A.C.S. Art. 2529c, Sec. 2 (part).)*

SECTION 37. CONFORMING AMENDMENT. Chapter 140, Local Government Code, is amended by adding Sections 140.005 and 140.006 to read as follows:

*Sec. 140.005. ANNUAL FINANCIAL STATEMENT OF SCHOOL, ROAD, OR OTHER DISTRICT. The governing body of a school district, junior college district, or a district or authority organized under Article III, Section 52, or Article XVI, Section 59, of the Texas*

*Constitution, shall prepare an annual financial statement showing for each fund subject to the authority of the governing body during the fiscal year:*

*(1) the total receipts of the fund, itemized by source of revenue, including taxes, assessments, service charges, grants of state money, gifts, or other general sources from which funds are derived;*

*(2) the total disbursements of the fund, itemized by the nature of the expenditure; and*

*(3) the balance in the fund at the close of the fiscal year. (V.A.C.S. Art. 29b(a).)*

**Sec. 140.006. PUBLICATION OF ANNUAL FINANCIAL STATEMENT BY SCHOOL, ROAD, OR OTHER DISTRICT.** *(a) Except as provided by Subsection (c), the presiding officer of a governing body shall submit a financial statement prepared under Section 140.005 to a newspaper in each county in which the district or any part of the district is located.*

*(b) If a district is located in more than one county, the financial statement may be published in a newspaper that has general circulation in the district. If a newspaper is not published in the county, the financial statement may be published in a newspaper in an adjoining county.*

*(c) The presiding officer of a school district shall submit a financial statement prepared under Section 140.005 to a daily, weekly, or biweekly newspaper published within the boundaries of the district. If a daily, weekly, or biweekly newspaper is not published within the boundaries of the district, the financial statement shall be published in the manner provided by Subsections (a) and (b).*

*(d) A statement shall be published not later than two months after the date the fiscal year ends, except that a school district's statement shall be published not later than the 120th day after the date the fiscal year ends and in accordance with the accounting method required by the Central Education Agency. (V.A.C.S. Arts. 29b(b), (c).)*

**SECTION 38. CONFORMING AMENDMENT.** Section 142.006, Local Government Code, is amended to read as follows:

**Sec. 142.006. MOTOR VEHICLE LIABILITY INSURANCE FOR PEACE OFFICERS AND FIRE FIGHTERS.** *(a) ~~In this section, "motor vehicle" means any motor vehicle for which motor vehicle automobile insurance is written under Subchapter A, Chapter 5, Insurance Code.~~*

~~(b)~~ This section does not apply to a municipality covered by Section 142.007.

~~(b) [(e)]~~ A municipality shall provide for insuring each peace officer and fire fighter ~~[insure peace officers and fire fighters]~~ in its employ against liability to third persons arising out of the operation, maintenance, or use of a motor vehicle owned or leased by the municipality.

*(c) The liability coverage provided under this section must be in amounts not less than those required by the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) to provide proof of financial responsibility.*

*(d) The municipality may elect to be self-insured or to reimburse the actual cost of extended automobile liability insurance endorsements obtained by a [its] peace officer [officers] and fire fighter [fighters] on an [their] individually owned automobile liability insurance policy [policies]. The extended endorsements must:*

*(1) be in the amount required by Subsection (c); and*

*(2) extend the coverage to include the operation and use of vehicles by a peace officer or fire fighter in the scope of the officer's or fire fighter's employment ~~[be in amounts not less than those required under this section and shall extend the coverage to include the operation and use of municipal vehicles by the peace officers or fire fighters in the scope of their employment].~~*

*(e) If the reimbursement method is used, the municipality ~~[A municipality that elects to use the reimbursement method]~~ may require that a peace officer or fire fighter who operates and uses a motor vehicle ~~[all peace officers and fire fighters who operate and use motor vehicles]~~ present proof that an extended coverage endorsement has been purchased and is in effect for the period of reimbursement ~~[current].~~*

(f) *In this section, "motor vehicle" means any motor vehicle for which motor vehicle automobile insurance may be written under Subchapter A, Chapter 5, Insurance Code. [Liability coverage provided under this section must be in amounts not less than those required by the Texas Motor Vehicle Safety Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) to provide proof of financial responsibility.]*

SECTION 39. CONFORMING AMENDMENT. Section 155.021, Local Government Code, is amended to read as follows:

Sec. 155.021. DEDUCTIONS ENUMERATED. The county treasurer or, if another officer is specified by law, that other officer shall make the deductions from, or take other similar actions with regard to, the compensation of county employees as required:

(1) for employee contributions for coverage under the federal social security program in accordance with Chapter 606, *Government Code* [500, Acts of the 52nd Legislature, 1951 (Article 695g, Vernon's Texas Civil Statutes)];

(2) for the purchase of annuities or for contributions to investments for employees in accordance with Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(3) for the purchase of United States savings bonds for employees in accordance with Chapter 606, *Government Code* [603, Acts of the 51st Legislature, Regular Session, 1949 (Article 6252-3, Vernon's Texas Civil Statutes)];

(4) for employee participation in a deferred compensation plan in accordance with Chapter 609, *Government Code* [197, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-3b, Vernon's Texas Civil Statutes)]; or

(5) for employee contributions to a retirement system in accordance with Section 845.403, *Government Code*.

SECTION 40. AMENDMENT. The Property Code is amended by adding Title 15 to read as follows:

## TITLE 15. FAIR HOUSING PRACTICES

### CHAPTER 301. TEXAS FAIR HOUSING ACT

#### SUBCHAPTER A. TITLE, PURPOSE, AND DEFINITIONS

Sec. 301.001. *SHORT TITLE.* This chapter may be cited as the Texas Fair Housing Act. (V.A.C.S. Art. 1f, Sec. 1.01.)

Sec. 301.002. *PURPOSES.* The purposes of this chapter are to:

- (1) provide for fair housing practices in this state;
- (2) create a procedure for investigating and settling complaints of discriminatory housing practices; and
- (3) provide rights and remedies substantially equivalent to those granted under federal law. (V.A.C.S. Art. 1f, Sec. 1.02.)

Sec. 301.003. *DEFINITIONS.* In this chapter:

- (1) "Aggrieved person" includes any person who:
  - (A) claims to have been injured by a discriminatory housing practice; or
  - (B) believes that the person will be injured by a discriminatory housing practice that is about to occur.
- (2) "Complainant" means a person, including the commission, that files a complaint under Section 301.081.
- (3) "Commission" means the Commission on Human Rights.
- (4) "Conciliation" means the informal negotiations among an aggrieved person, the respondent, and the commission to resolve issues raised by a complaint or by the investigation of the complaint.

(5) "Conciliation agreement" means a written agreement resolving the issues in conciliation.

(6) "Disability" means a mental or physical impairment that substantially limits at least one major life activity, a record of the impairment, or being regarded as having the impairment. The term does not include current illegal use or addiction to any drug or illegal or federally controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite.

(7) "Discriminatory housing practice" means an act prohibited by Subchapter B or conduct that is an offense under Subchapter I.

(8) "Dwelling" means any:

(A) structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(B) vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure described by Paragraph (A).

(9) "Family" includes a single individual.

(10) "Respondent" means:

(A) a person accused of a violation of this chapter in a complaint of discriminatory housing practice; or

(B) a person identified as an additional or substitute respondent under Section 301.084 or an agent of an additional or substitute respondent.

(11) "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant. (V.A.C.S. Art. 1f, Sec. 1.03 (part).)

Sec. 301.004. **FAMILIAL STATUS.** A discriminatory act is committed because of familial status if the act is committed because the person who is the subject of discrimination is:

(1) pregnant;

(2) domiciled with an individual younger than 18 years of age in regard to whom the person:

(A) is the parent or legal custodian; or

(B) has the written permission of the parent or legal custodian for domicile with that person; or

(3) in the process of obtaining legal custody of an individual younger than 18 years of age. (V.A.C.S. Art. 1f, Sec. 1.04.)

Sec. 301.005. **CONSTRUCTION OF CHAPTER.** The statutory civil remedies or theories of recovery created by this chapter may not be expanded beyond their express statutory terms. (V.A.C.S. Art. 1f, Sec. 10.01.)

[Sections 301.006 to 301.020 reserved for expansion]

## SUBCHAPTER B. DISCRIMINATION PROHIBITED

Sec. 301.021. **SALE OR RENTAL.** (a) A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to another because of race, color, religion, sex, familial status, or national origin.

(b) A person may not discriminate against another in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin.

(c) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance. (V.A.C.S. Art. 1f, Sec. 3.01.)

Sec. 301.022. *PUBLICATION.* A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, or national origin. (V.A.C.S. Art. 1f, Sec. 3.02.)

Sec. 301.023. *INSPECTION.* A person may not represent to another because of race, color, religion, sex, disability, familial status, or national origin that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection. (V.A.C.S. Art. 1f, Sec. 3.03.)

Sec. 301.024. *ENTRY INTO NEIGHBORHOOD.* A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, disability, familial status, or national origin. (V.A.C.S. Art. 1f, Sec. 3.04.)

Sec. 301.025. *DISABILITY.* (a) A person may not discriminate in the sale or rental of, or make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

- (1) the buyer or renter;
- (2) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (3) any person associated with the buyer or renter.

(b) A person may not discriminate against another in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

- (1) the other person;
- (2) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (3) any person associated with the other person.

(c) In this section, discrimination includes:

(1) a refusal to permit, at the expense of the person having a disability, a reasonable modification of existing premises occupied or to be occupied by the person if the modification may be necessary to afford the person full enjoyment of the premises;

(2) a refusal to make a reasonable accommodation in rules, policies, practices, or services if the accommodation may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(3) the failure to design and construct a covered multifamily dwelling in a manner:

(A) that allows the public use and common use portions of the dwellings to be readily accessible to and usable by persons having a disability;

(B) that allows all doors designed to allow passage into and within all premises within the dwellings to be sufficiently wide to allow passage by a person who has a disability and who is in a wheelchair; and

(C) that provides all premises within the dwellings contain the following features of adaptive design:

- (i) an accessible route into and through the dwelling;
- (ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- (iii) reinforcements in bathroom walls to allow later installation of grab bars; and
- (iv) kitchens and bathrooms that are usable and have sufficient space in which an individual in a wheelchair can maneuver.

(d) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as "ANSI A 117.1," satisfies the requirements of Subsection (c)(3)(C).



(e) Subsection (c)(3) does not apply to a building the first occupancy of which occurred on or before March 13, 1991.

(f) This section does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(g) In this subsection, the term "covered multifamily dwellings" means:

(1) buildings consisting of four or more units if the buildings have one or more elevators; and

(2) ground floor units in other buildings consisting of four or more units. (V.A.C.S. Art. 1f, Sec. 3.05.)

**Sec. 301.026. RESIDENTIAL REAL ESTATE RELATED TRANSACTION.** (a) A person whose business includes engaging in residential real estate related transactions may not discriminate against another in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, disability, familial status, or national origin.

(b) In this section, "residential real estate related transaction" means:

(1) the making or purchasing of loans or the provision of other financial assistance:

(A) to purchase, construct, improve, repair, or maintain a dwelling; or

(B) to secure residential real estate; or

(2) the selling, brokering, or appraising of residential real property. (V.A.C.S. Art. 1f, Sec. 3.06.)

**Sec. 301.027. BROKERAGE SERVICES.** A person may not deny another access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, sex, disability, familial status, or national origin. (V.A.C.S. Art. 1f, Sec. 3.07.)

[Sections 301.028 to 301.040 reserved for expansion]

### SUBCHAPTER C. EXEMPTIONS

**Sec. 301.041. SALES AND RENTALS EXEMPTED.** (a) Subchapter B does not apply to:

(1) the sale or rental of a single-family house sold or rented by the owner if:

(A) the owner does not:

(i) own more than three single-family houses at any one time; or

(ii) own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and

(B) the house is sold or rented without:

(i) the use of the sales or rental facilities or services of a real estate broker, agent, or salesman licensed under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), or of an employee or agent of a licensed broker, agent, or salesman, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; or

(ii) the publication, posting, or mailing of a notice, statement, or advertisement prohibited by Section 301.022; or

(2) the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.

(b) *The exemption in Subsection (a)(1) applies only to one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental. (V.A.C.S. Art. 1f, Sec. 1.05.)*

**Sec. 301.042. RELIGIOUS ORGANIZATION, PRIVATE CLUB, AND APPRAISAL EXEMPTION.** (a) *This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from:*

(1) *limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or*

(2) *giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.*

(b) *This chapter does not prohibit a private club that is not open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members.*

(c) *This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, familial status, or national origin. (V.A.C.S. Art. 1f, Secs. 1.06, 1.08.)*

**Sec. 301.043. HOUSING FOR ELDERLY EXEMPTED.** *The provisions of this chapter relating to familial status do not apply to housing:*

(1) *that the commission determines is specifically designed and operated to assist elderly individuals under a federal or state program;*

(2) *intended for, and solely occupied by, individuals 62 years of age or older; or*

(3) *intended and operated for occupancy by at least one individual 55 years of age or older for each unit as determined by commission rules. (V.A.C.S. Art. 1f, Sec. 1.07.)*

**Sec. 301.044. EFFECT ON OTHER LAW.** (a) *This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards.*

(b) *This chapter does not affect a requirement of nondiscrimination in any other state or federal law. (V.A.C.S. Art. 1f, Sec. 1.09.)*

*[Sections 301.045 to 301.060 reserved for expansion]*

#### SUBCHAPTER D. ADMINISTRATIVE PROVISIONS

**Sec. 301.061. COMMISSION ON HUMAN RIGHTS.** *The Commission on Human Rights shall administer this chapter. (V.A.C.S. Art. 1f, Sec. 2.01.)*

**Sec. 301.062. RULES.** *The commission may adopt rules necessary to implement this chapter, but substantive rules adopted by the commission shall impose obligations, rights, and remedies that are the same as are provided in federal fair housing regulations. (V.A.C.S. Art. 1f, Sec. 2.02.)*

**Sec. 301.063. COMPLAINTS.** *As provided by Subchapters E and F, the commission shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this chapter. (V.A.C.S. Art. 1f, Sec. 2.03.)*

**Sec. 301.064. DELEGATION OF AUTHORITY.** *The commission by rule may authorize the executive director of the commission to exercise the commission's powers or perform the commission's duties under this chapter. (V.A.C.S. Art. 1f, Sec. 2.04.)*

**Sec. 301.065. REPORTS AND STUDIES.** (a) *The commission shall, at least annually, publish a written report recommending legislative or other action to carry out the purposes of this chapter.*

(b) *The commission shall make studies relating to the nature and extent of discriminatory housing practices in this state. (V.A.C.S. Art. 1f, Sec. 2.05.)*

*Sec. 301.066. COOPERATION WITH OTHER ENTITIES. The commission shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices. (V.A.C.S. Art. 1f, Sec. 2.06.)*

*Sec. 301.067. SUBPOENAS AND DISCOVERY. (a) The commission may issue subpoenas and order discovery in investigations and hearings under this chapter.*

*(b) The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court. (V.A.C.S. Art. 1f, Sec. 2.07.)*

*Sec. 301.068. REFERRAL TO MUNICIPALITY. The commission may defer proceedings under this chapter and refer a complaint to a municipality that has been certified by the federal Department of Housing and Urban Development as a substantially equivalent fair housing agency. (V.A.C.S. Art. 1f, Sec. 2.08(b).)*

*Sec. 301.069. GIFTS AND GRANTS. (a) The commission may accept gifts and grants from any public or private source for administering this chapter.*

*(b) Gifts and grants received shall be deposited to the credit of the fair housing fund in the state treasury.*

*(c) Money deposited to the credit of the fund may be used only for administering this chapter. (V.A.C.S. Art. 1f, Secs. 2.09, 7.01.)*

*[Sections 301.070 to 301.080 reserved for expansion]*

#### SUBCHAPTER E. ADMINISTRATIVE ENFORCEMENT

*Sec. 301.081. COMPLAINT. (a) The commission shall investigate complaints of alleged discriminatory housing practices.*

*(b) A complaint must be:*

- (1) in writing;*
- (2) under oath; and*
- (3) in the form prescribed by the commission.*

*(c) An aggrieved person may file a complaint with the commission alleging the discriminatory housing practice. The commission may file a complaint.*

*(d) A complaint must be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later.*

*(e) A complaint may be amended at any time.*

*(f) On the filing of a complaint, the commission shall:*

- (1) give the aggrieved person notice that the complaint has been received;*
- (2) advise the aggrieved person of the time limits and choice of forums under this chapter; and*

*(3) not later than the 20th day after the date of the filing of the complaint or the identification of an additional or substitute respondent under Section 301.084, serve on each respondent:*

*(A) a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter; and*

*(B) a copy of the original complaint. (V.A.C.S. Art. 1f, Sec. 4.01.)*

*Sec. 301.082. ANSWER. (a) Not later than the 10th day after the date of receipt of the notice and copy of the complaint under Section 301.081(f)(3), a respondent may file an answer to the complaint.*

*(b) An answer must be:*

- (1) in writing;*
- (2) under oath; and*

(3) in the form prescribed by the commission.

(c) An answer may be amended at any time.

(d) An answer does not inhibit the investigation of a complaint. (V.A.C.S. Art. 1f, Sec. 4.02.)

**Sec. 301.083. INVESTIGATION.** (a) If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall promptly investigate the allegations set forth in the complaint.

(b) The commission shall investigate all complaints and, except as provided by Subsection (c), shall complete an investigation not later than the 100th day after the date the complaint is filed or, if it is unable to complete the investigation within the 100-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.

(c) If the commission is unable to complete an investigation within the time periods prescribed by Subsection (b), the commission shall notify the complainant and the respondent in writing of the reasons for the delay. (V.A.C.S. Art. 1f, Sec. 4.03.)

**Sec. 301.084. ADDITIONAL OR SUBSTITUTE RESPONDENT.** (a) The commission may join a person not named in the complaint as an additional or substitute respondent if during the investigation the commission determines that the person should be accused of a discriminatory housing practice.

(b) In addition to the information required in the notice under Section 301.081(f), the commission shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent. (V.A.C.S. Art. 1f, Sec. 4.04.)

**Sec. 301.085. CONCILIATION.** (a) The commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in conciliation with respect to the complaint.

(b) A conciliation agreement between a respondent and the complainant is subject to commission approval.

(c) A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

(d) A conciliation agreement is public information unless:

(1) the complainant and respondent agree that it is not; and

(2) the commission determines that disclosure is not necessary to further the purposes of this chapter.

(e) Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

(f) After completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation. (V.A.C.S. Art. 1f, Sec. 4.05.)

**Sec. 301.086. TEMPORARY OR PRELIMINARY RELIEF.** (a) The commission may authorize a civil action for temporary or preliminary relief pending the final disposition of a complaint if the commission concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter.

(b) On receipt of the commission's authorization, the attorney general shall promptly file the action.

(c) A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Texas Rules of Civil Procedure.

(d) *The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings under Section 301.111. (V.A.C.S. Art. 1f, Sec. 4.06.)*

**Sec. 301.087. INVESTIGATIVE REPORT.** (a) *The commission shall prepare a final investigative report including:*

- (1) *the names of and dates of contacts with witnesses;*
- (2) *a summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts;*
- (3) *a summary description of other pertinent records;*
- (4) *a summary of witness statements; and*
- (5) *answers to interrogatories.*

(b) *A final report under this section may be amended if additional evidence is discovered. (V.A.C.S. Art. 1f, Sec. 4.07.)*

**Sec. 301.088. REASONABLE CAUSE DETERMINATION.** (a) *The commission shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.*

(b) *The commission shall make the determination under Subsection (a) not later than the 100th day after the date a complaint is filed unless:*

- (1) *making the determination is impracticable; or*
- (2) *the commission approves a conciliation agreement relating to the complaint.*

(c) *If within the period provided by Subsection (b) making the determination is impracticable, the commission shall give in writing to the complainant and the respondent the reasons for the delay.*

(d) *If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided by Section 301.090, immediately issue a charge on behalf of the aggrieved person. (V.A.C.S. Art. 1f, Sec. 4.08.)*

**Sec. 301.089. CHARGE.** (a) *A charge issued under Section 301.088:*

- (1) *must consist of a short and plain statement of the facts on which the commission finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;*
- (2) *must be based on the final investigative report; and*
- (3) *is not limited to the facts or grounds alleged in the complaint.*

(b) *Not later than the 20th day after the date the commission issues a charge, the commission shall send a copy of the charge with information about the election under Section 301.093 to:*

- (1) *each respondent; and*
- (2) *each aggrieved person on whose behalf the complaint was filed.*

(c) *The commission shall include with a charge sent to a respondent a notice of the opportunity for a hearing under Section 301.111. (V.A.C.S. Art. 1f, Sec. 4.09.)*

**Sec. 301.090. LAND USE LAW.** *If the commission determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action. (V.A.C.S. Art. 1f, Sec. 4.10.)*

**Sec. 301.091. DISMISSAL.** (a) *If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the commission shall promptly dismiss the complaint.*

(b) *The commission shall make public disclosure of each dismissal. (V.A.C.S. Art. 1f, Sec. 4.11.)*

**Sec. 301.092. PENDING CIVIL TRIAL.** *The commission may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action*

commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice. (V.A.C.S. Art. 1f, Sec. 4.12.)

Sec. 301.093. **ELECTION OF JUDICIAL DETERMINATION.** (a) A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by Section 301.131.

(b) The election must be made not later than the 20th day after the date the person having the election receives service under Section 301.089(b) or, in the case of the commission, not later than the 20th day after the date the charge is issued.

(c) The person making the election shall give notice to the commission and to all other complainants and respondents to whom the charge relates. (V.A.C.S. Art. 1f, Sec. 4.13.)

[Sections 301.094 to 301.110 reserved for expansion]

#### SUBCHAPTER F. ADMINISTRATIVE HEARINGS

Sec. 301.111. **ADMINISTRATIVE HEARING.** (a) If a timely election is not made under Section 301.093, the commission shall provide for a hearing on the charge.

(b) Except as provided by Subsection (c), Chapter 2001, Government Code, governs a hearing and an appeal of a hearing.

(c) A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice. (V.A.C.S. Art. 1f, Sec. 4.15.)

Sec. 301.112. **ADMINISTRATIVE PENALTIES.** (a) If the commission determines at a hearing under Section 301.111 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney fees, court costs, and other injunctive or equitable relief.

(b) To vindicate the public's interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:

(1) \$10,000 if the respondent has been found by order of the commission or a court to have committed a prior discriminatory housing practice; or

(2) except as provided by Subsection (c):

(A) \$25,000 if the respondent has been found by order of the commission or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges; or

(B) \$50,000 if the respondent has been found by the commission or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.

(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in Subsection (b)(2) may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(d) At the request of the commission, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section shall be paid to the state treasurer for deposit in the state treasury to the credit of the fair housing fund. (V.A.C.S. Art. 1f, Sec. 4.16.)

Sec. 301.113. **EFFECT OF COMMISSION ORDER.** A commission order under Section 301.112 does not affect a contract, sale, encumbrance, or lease that:

(1) is consummated before the commission issues the order; and

(2) involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter. (V.A.C.S. Art. 1f, Sec. 4.17.)

Sec. 301.114. **LICENSED OR REGULATED BUSINESS.** If the commission issues an order with respect to a discriminatory housing practice that occurs in the course of a

business subject to a licensing or regulation by a governmental agency, the commission shall, not later than the 30th day after the date the order is issued:

- (1) send copies of the findings and the order to the governmental agency; and
- (2) recommend to the governmental agency appropriate disciplinary action. (V.A.C.S. Art. 1f, Sec. 4.18.)

*Sec. 301.115. ORDER IN PRECEDING FIVE YEARS.* If the commission issues an order against a respondent against whom another order was issued within the preceding five years under Section 301.112, the commission shall send a copy of each order to the attorney general. (V.A.C.S. Art. 1f, Sec. 4.19.)

[Sections 301.116 to 301.130 reserved for expansion]

### SUBCHAPTER G. ENFORCEMENT BY ATTORNEY GENERAL

*Sec. 301.131. ATTORNEY GENERAL ACTION FOR ENFORCEMENT.* (a) If a timely election is made under Section 301.093, the commission shall authorize and not later than the 30th day after the date the election is made the attorney general shall file in a district court a civil action seeking relief on behalf of the aggrieved person.

(b) Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur.

(c) An aggrieved person may intervene in the action.

(d) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under Subchapter H.

(e) If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court. (V.A.C.S. Art. 1f, Sec. 4.14.)

*Sec. 301.132. PATTERN OR PRACTICE CASE.* (a) On the request of the commission, the attorney general may file a civil action in district court for appropriate relief if the commission has reasonable cause to believe that:

(1) a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter; or

(2) a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.

(b) In an action under this section the court may:

(1) award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter;

(2) award other appropriate relief, including monetary damages, reasonable attorney fees, and court costs; and

(3) to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed:

(A) \$50,000 for a first violation; and

(B) \$100,000 for a second or subsequent violation.

(c) A person may intervene in an action under this section if the person is:

(1) a person aggrieved by the discriminatory housing practice; or

(2) a party to a conciliation agreement concerning the discriminatory housing practice.

(V.A.C.S. Art. 1f, Sec. 6.01.)

*Sec. 301.133. SUBPOENA ENFORCEMENT.* The attorney general, on behalf of the commission or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court. (V.A.C.S. Art. 1f, Sec. 6.02.)

[Sections 301.134 to 301.150 reserved for expansion]

#### SUBCHAPTER H. ENFORCEMENT BY PRIVATE PERSONS

**Sec. 301.151. CIVIL ACTION.** (a) An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.

(b) The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.

(c) An aggrieved person may file an action whether a complaint has been filed under Section 301.081 and without regard to the status of any complaint filed under that section.

(d) If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.

(e) An aggrieved person may not file an action with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the charge. (V.A.C.S. Art. 1f, Sec. 5.01.)

**Sec. 301.152. COURT-APPOINTED ATTORNEY.** On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person. (V.A.C.S. Art. 1f, Sec. 5.02.)

**Sec. 301.153. RELIEF GRANTED.** If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff:

- (1) actual and punitive damages;
- (2) reasonable attorney fees;
- (3) court costs; and

(4) subject to Section 301.154, a permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action. (V.A.C.S. Art. 1f, Sec. 5.03.)

**Sec. 301.154. EFFECT OF RELIEF GRANTED.** Relief granted under this subchapter does not affect a contract, sale, encumbrance, or lease that:

- (1) is consummated before the granting of the relief; and
- (2) involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter. (V.A.C.S. Art. 1f, Sec. 5.04.)

**Sec. 301.155. INTERVENTION BY ATTORNEY GENERAL.** (a) On request of the commission, the attorney general may intervene in an action under this subchapter if the commission certifies that the case is of general public importance.

(b) The attorney general may obtain the same relief as is available to the attorney general under Section 301.132(b). (V.A.C.S. Art. 1f, Sec. 5.05.)

**Sec. 301.156. PREVAILING PARTY.** A court in a civil action brought under this chapter or the commission in an administrative hearing under Section 301.111 may award reasonable attorney fees to the prevailing party and assess court costs against the nonprevailing party. (V.A.C.S. Art. 1f, Sec. 8.01.)



[Sections 301.157 to 301.170 reserved for expansion]

### SUBCHAPTER I. CRIMINAL PENALTY

**Sec. 301.171. INTIMIDATION OR INTERFERENCE.** (a) A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force intentionally intimidates or interferes with a person:

(1) because of the person's race, color, religion, sex, disability, familial status, or national origin and because the person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

(2) because the person is or has been or to intimidate the person from:

(A) participating, without discrimination because of race, color, religion, sex, disability, familial status, or national origin, in an activity, service, organization, or facility described by Subdivision (1); or

(B) affording another person opportunity or protection to so participate; or

(C) lawfully aiding or encouraging other persons to participate, without discrimination because of race, color, religion, sex, disability, familial status, or national origin, in an activity, service, organization, or facility described by Subdivision (1).

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 1f, Sec. 9.01.)

**SECTION 41. CONFORMING AMENDMENT.** Subsection (e), Section 151.429, Tax Code, is amended to read as follows:

(e) In this section:

(1) "Enterprise project" means a person designated by the Texas Department of Commerce as an enterprise project under Chapter 2303, Government Code.

(2) "Enterprise zone", ~~"enterprise project," "enterprise zone," "new permanent job,"~~ and "qualified employee" have the meanings assigned to those terms by Section 2303.003, Government Code [~~Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes)~~].

(3) "New permanent job" means a new employment position created by a qualified business as described by Section 2303.401, Government Code, that:

(A) has provided at least 1,040 hours of employment a year to a qualified employee; and

(B) is intended to exist during the period that the qualified business is designated as an enterprise project under Chapter 2303, Government Code.

**SECTION 42. CONFORMING AMENDMENT.** Subsection (e), Section 151.431, Tax Code, is amended to read as follows:

(e) In this section:

(1) "Enterprise zone", ~~"enterprise zone," "governing body," "qualified business,"~~ and "qualified employee" have the meanings assigned to those terms by Section 2303.003, Government Code [~~Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes)~~].

(2) "Governing body" means the governing body of a municipality or county that applied to have the area designated as an enterprise zone under Section 2303.105, Government Code.

(3) "Qualified business" means a person that is certified as a qualified business under Section 2303.401, Government Code.

**SECTION 43. CONFORMING AMENDMENT.** Subsection (f), Section 171.1015, Tax Code, is amended to read as follows:

(f) In this section:

(1) "Enterprise project" means a person designated by the Texas Department of Commerce as an enterprise project under Chapter 2303, Government Code.

(2) "Enterprise zone" has the meaning assigned to that term by Section 2303.003, Government Code [~~"enterprise project" and "enterprise zone" have the meanings assigned to those terms by Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).~~].

SECTION 44. CONFORMING AMENDMENT. Subsection (e), Section 171.501, Tax Code, is amended to read as follows:

(e) In this section:

(1) "Enterprise zone" [~~"enterprise zone," "governing body," "new job," "qualified business,"~~] and "qualified employee" have the meanings assigned to those terms by Section 2303.003, Government Code [~~Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).~~].

(2) "Governing body" means the governing body of a municipality or county that applied to have the area designated as an enterprise zone under Section 2303.105, Government Code.

(3) "New job" means a new employment position created by a qualified business as described by Section 2303.401, Government Code, that:

(A) has provided at least 1,040 hours of employment a year to a qualified employee; and

(B) is intended to exist during the period that the qualified business is designated as an enterprise project under Chapter 2303, Government Code.

(4) "Qualified business" means a person that is certified as a qualified business under Section 2303.401, Government Code.

SECTION 45. CONFORMING AMENDMENT. Section 2, Article 5996g, Revised Statutes, is redesignated as Section 2, Chapter 427, Acts of the 70th Legislature, Regular Session, 1987.

SECTION 46. REPEALER. The following laws are repealed:

(1) the following articles and acts, as compiled in Vernon's Texas Civil Statutes: 1f; 12; 13; 14; 16; 16a; 16b; 17; 18; 19; 19a; 20; 21; 22; 23a; 25; 26; 27; 28a; 28a-1; 29; 29a; 29b; 29c; 29d; 29e; 601e; 601f; 601g; 601h; 664-4; 689a-1; 689a-2; 689a-4; 689a-4a; 689a-4b; 689a-4c; 689a-6; 689a-8; 689a-8a; 689a-20; 689a-21; 695g; 695h; 842a-2; 842g; 999e; 1269l-5; 1269t; 1939a; 2529b-1; 2529c; 2529d; 2568; 2569; 3904; 3905; 3907; 3908; 3909; 3910; 3913; 4345a; 4348e; 4413(29aa-3); 4413(31); 4413(32j); 4413(33); 4413(33a); 4413(33b); 4413(34b); 4413(34c); 4413(34d); 4413(47e); 4413(55); 4413(56); 4413(57); 4413(203); 4413(501); 4591; 4591.2; 4591.3; 4591.5; 4591.6; 4591b; 4591b-1; 4591b-2; 4591e; 5154c; 5160; 5165; 5165.1; 5165.2; 5165.3; 5165.6; 5165a; 5190.7; 5221g; 5221g-2; 5240; 5241; 5242; 5243; 5244; 5245; 5246; 5247; 5248d-1; 5248f; 5248g; 5248g-1; 5248h; 5248i; 5248j; 5961; 5962; 5963; 5964; 5967; 5972; 5986; 5996a; 5996b; 5996c; 5996d; 5996e; 5996f; 5996g; 5996h; 5996i; 5997; 5998; 5999; 6000; 6001; 6002; 6003; 6003a; 6003b; 6003c; 6049h; 6228f; 6252-1; 6252-2; 6252-3; 6252-3d; 6252-3e; 6252-3g; 6252-4a; 6252-4b; 6252-4c; 6252-5a; 6252-5b; 6252-5c; 6252-5d; 6252-5e; 6252-5f; 6252-6b; 6252-6c; 6252-6d; 6252-7; 6252-8; 6252-8a; 6252-8b; 6252-8c; 6252-8d; 6252-8e; 6252-9a; 6252-9b; 6252-9d.1; 6252-9e; 6252-9f; 6252-9aa; 6252-10a; 6252-11; 6252-11a; 6252-11b; 6252-11c; 6252-11e; 6252-11f; 6252-11g; 6252-12; 6252-13a; 6252-13b; 6252-13b.1; 6252-13e; 6252-13f; 6252-15; 6252-16a; 6252-16b; 6252-16c; 6252-17; 6252-17a; 6252-17b; 6252-17c; 6252-18; 6252-18a; 6252-19a; 6252-20; 6252-20b; 6252-21; 6252-22; 6252-23; 6252-24; 6252-27; 6252-29a; 6252-30; 6252-31; 6252-32; 6674v.2, Sec. 5(c); 6813; 6813a; 6813b; 6813c; 6813d-1; 6813e; 6813f; 6813g; 6822; 6822a; 6823a; 6823b; 6824; 6825; 6826; 6827; 6828; 6829; 6829a; 6889-3; 6889-3a; and 8309-1; and

(2) Section 492.006(c), Government Code.

SECTION 47. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE. This Act is enacted under Article III, Section 43, of the Texas Constitution. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

**SECTION 48. SAVING PROVISION.** (a) For the purposes of Section 403.094, Government Code, the revision and codification by this Act of a statute relating to a fund in existence on or before August 31, 1993, does not re-create the fund and does not constitute the reenactment of a dedication of revenue.

(b) A fund or account, the existence of which is derived from a statute revised by this Act and which is abolished under Section 403.094, Government Code, before the effective date of this Act is not revived or re-created by this Act.

(c) The application of Sections 403.094 and 403.095, Government Code, to a fund or to the permissible uses of revenue or fund balances is not affected by this Act.

(d) The revision by this Act of a statute that conflicted with an applicable provision of former Article 6252-31, Revised Statutes, as added by Section 35, Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991, and revised in this Act as Chapter 2103, Government Code, does not prevail over that article unless the law from which the revised provision was derived prevailed over that article.

(e) The repeal of Article 6252-20b, Vernon's Texas Civil Statutes, by Section 46 of this Act and the codification of that article as Chapter 659, Government Code, by Section 1 of this Act does not affect a state employee who received hazardous duty pay based on total state service performed before May 29, 1987, and the employee is entitled to receive hazardous duty pay based on those services if, on or after May 29, 1987, the employee holds a position that requires the performance of hazardous duty. Any other state employee who before May 29, 1987, received hazardous duty pay based on the terms of any law enacted by the legislature of this state is entitled to continue to receive hazardous duty pay for services performed on or after May 29, 1987, in any position designated under that law as eligible for the pay.

**SECTION 49. EFFECTIVE DATE.** This Act takes effect September 1, 1993.

**SECTION 50. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on February 11, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 4, 1993, by a viva-voce vote; passed the House, with amendments, on April 30, 1993, by a non-record vote.

Approved May 22, 1993.

Effective Sept. 1, 1993.