

Chapter 800. GENERAL ADMINISTRATION

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **OCTOBER 31, 2006**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **November 17, 2006**
Estimated End of Comment Period: **December 18, 2006**

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A, General Provisions, §800.3, §800.5, §800.6, and §800.7

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule amendment is to implement Senate Bill (SB) 452, enacted by the 79th Texas Legislature, Regular Session (2005), which amends Texas Government Code, Chapter 552 by transferring all duties relating to the Public Information Act to the Office of the Attorney General (OAG).

SB 452 streamlines the process of providing public information by housing all functions relating to the Public Information Act under one agency. OAG now responds to all questions about compliance with the Public Information Act. As a result, operations are more efficient and the public is better served.

The purpose of the proposed rule amendment is also to conform the language of §800.6(f) regarding de minimis requests to reflect that charges are assessed when permissible under the Public Information Act. Specifically, charges will be assessed for materials, labor, and overhead when the request is fewer than 50 pages and the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§800.3. Historically Underutilized Businesses

Section 800.3(a) is modified to replace the General Services Commission with the Texas Building and Procurement Commission because of the agency's name change.

§800.6. Charges for Copies of Public Records

Section 800.6(a) is modified to replace the outdated reference to the General Services Commission with OAG rules (1 TAC, Chapter 70).

Section 800.6(c) is modified to replace the outdated reference to the General Services Commission with OAG rules (1 TAC, Chapter 70).

Section 800.6(f) is modified to align the rule regarding de minimis requests with Texas Government Code §552.261 et seq. to allow recoupment of the cost of handling open records requests that are under 50 pages. Specifically, the Public Information Act allows recoupment of charges for materials, labor, and overhead in situations where the requested records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

Currently, Chapter 800 waives charges for open records that are 50 pages or less. However, some open records requests result in the production of fewer than 50 pages yet require extensive staff time and resources to fulfill. While the Commission intends to recoup charges where the materials, labor, and overhead charges are applicable under the Public Information Act for requests under 50 pages, the Commission may waive or reduce charges in circumstances in which §552.267 of the Public Information Act apply. Section 552.267 provides that a governmental body shall provide a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public. In addition, §552.267 provides that if the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge. The Commission intends to apply these provisions when such circumstances arise.

§800.7. Agency Vehicles

Section 800.7(a) is modified to replace the reference to the General Services Commission and Internet address with the Texas Building and Procurement Commission because of the agency's name change.

Section 800.7(b)(3) is modified to replace the reference to the General Services Commission with the Texas Building and Procurement Commission because of the agency's name change.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no estimated additional costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There may be economic costs to persons required to comply with changes to Chapter 800 and there may be an adverse economic effect on small businesses or microbusinesses. Persons who request public information from the Agency, where the material, labor, and overhead charges are applicable under the Public Information Act for requests under 50 pages will be required to pay reasonable costs related to reproducing the public information, including costs of materials, labor, and overhead. This provision may have an economic cost to those persons, including small businesses or microbusinesses, estimated at between \$4.50 and \$36 per request. Section 800.6(f) regarding de minimis requests is amended in the proposed rule to provide that no charge will be assessed to any individual or entity for providing copies of records in response to a request for public information under Texas Government Code, Chapter 522 when the total records provided in response to all requests made by that same individual or entity in any given 30-day period consists of fewer than 50 pages of readily available, standard-sized pages maintained as paper documents, except that charges for materials, labor, and overhead may be assessed if the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility. The preamble to the rule explains that while the Commission intends to recoup charges where the material, labor, and overhead charges are applicable under the Public Information Act for requests fewer than 50 pages, the Commission may waive or reduce charges in circumstances in which §552.267 of the Public Information Act apply. Section 552.267 provides that a governmental body shall provide a copy of public information without charge or at a reduced charge if the governmental body determines that the waiver or reduction of the charge is in the public interest because the information primarily benefits the general

public. This section also provides that if the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge. The charges for small or microbusinesses would be the same as the charges for large businesses; however, the Commission may apply the waiver or reduction of charges provisions contained in §552.267 where applicable to respond to small or microbusinesses that fall into the categories described in statute.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure costs are recouped to the extent feasible under the Public Information Act and update citations in the chapter.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Government Code, Chapters 552, 2161, and 2171.

Chapter 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

§800.3. Historically Underutilized Businesses

- (a) The Commission is committed to assisting Historically Underutilized Businesses (HUBs) as defined in Texas Government Code §2161.001, Definitions, in their efforts to participate in contracts to be awarded by the Commission. This includes assisting HUBs to meet or exceed the procurement utilization goals set forth in the Texas Administrative Code at 1 TAC Chapter 111 (relating to Executive Administration Division) incorporated herein by reference. Chapter 111 was promulgated by the Texas Building and Procurement Commission~~General Services Commission~~ and sets out the State's Historically Underutilized Business Certification Program.
- (b) The Commission shall take positive steps to inform HUBs of opportunities to provide identified state services that it determines may better be provided through a competitive process.

§800.5. Commission Professional Development Program

- (a) Scope and Purpose. The Commission provides training opportunities to enhance job skills and to retain a well qualified, trained, professional workforce dedicated to the Commission's mission. The Professional Development Program training includes instruction, teaching, or other education received by a state employee that is not normally received by other state employees and that is ~~designed~~^{designed} to enhance the ability of the employee to perform the employee's job. This section establishes eligibility and related requirements for employee participation in the Commission's Professional Development Program.
- (b) Eligibility. The executive director or the executive director's designee will determine an employee's eligibility for the professional development program. Factors to be considered include, but are not limited to:
 - (1) ~~an~~^{An} employee's job performance;
 - (2) ~~a~~^A recommendation from the employee's supervisor;
 - (3) ~~the~~^{The} relationship of the training to the employee's position; and
 - (4) ~~any~~^{Any} other factor deemed relevant by the executive director or his designee.
- (c) Restitution from Employees for Training Costs. The employee training is conditional upon all of the following:
 - (1) The employee shall attend and satisfactorily complete the training, including passing tests or other types of performance measures where required.
 - (2) At the discretion of the executive director or the executive director's designee, the employee shall complete and file with the Commission prior to the commencement of the training, on forms prescribed by the Commission, an employee training agreement that sets forth the terms and conditions of the training assistance, including a provision for working for the Agency~~agency~~ for a prescribed period of time or paying back the amount of the assistance.

- (3) For any training paid for by the Commission, where the employee does not perform the employee's regular duties for three or more months due to the training, the employee shall:
- (A) work for the agency following the training for at least one month for each month of the training period, prorated as appropriate; or
 - (B) pay the Commission for all costs associated with the training that were paid before, during, or after the training, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensation leave.

§800.6. Charges for Copies of Public Records.

- (a) General Procedure. Except as otherwise specified in this chapter, the ~~Texas Workforce Commission~~ (Commission) hereby adopts by reference the definitions, methods, procedures, and charges for copies of public records required under set out in the Office of the Attorney General rules (1 TAC, Chapter 70) General Services Commission Rules at 1 TAC §§111.61–111.71, as may be amended.
- (b) Methods of Making Requests. Requests may be submitted in writing to the following mailing address: Officer for Public Information, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001. Requests also may be submitted made by e-mail or facsimile to designated e-mail and facsimile locations. electronic mail (e-mail) shall be submitted to open.records@twe.state.tx.us to be considered a valid request.
- (c) Standard Fees. The Commission may establish a standard fee for the handling of certain types of repetitive requests when the costs of responding to such requests are substantially similar in most cases. The standard fee will be the average costs of handling that type of request. The average cost is calculated using the personnel, resource, and overhead charges set forth in the Office of the Attorney General rules (1 TAC, Chapter 70) governing charges for copies of public records General Services Commission rules and will be based upon a survey of a representative sample of requests.
- (d) Adjustments for Actual Cost. In the event that the actual costs of responding to a given request are significantly lower or higher than the standard fee charged for that type of request, actual costs will be charged in lieu of the standard fee.
- (e) Program-Related Requests. No charge will be assessed to an individual or an employing unit for copies of records pertaining to that individual or employing unit when the provision of records is deemed by the Commission to be reasonably required for the proper administration of the Texas Unemployment Compensation Act, found at the Texas Labor Code, Title 4, Subtitle A.
- (f) De Minimis Requests. No charge will be assessed to any individual or entity for providing copies of records in response to a request for public information Public Information under Texas Government Code, Chapter 552 .261 et seq. when the total records provided in response to all requests made by that same individual or entity in any given 30-day period consist of fewer than 50 pages of readily available, standard-size pages maintained as paper documents, except that charges for materials, labor, and overhead may be assessed if the records are located in

two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

- (g) Requests by Other Governmental Entities. Notwithstanding any other provision in this section, provision of information to other governmental agencies for purposes other than the administration of the Texas Unemployment Compensation Act will be made only on a cost reimbursable basis, with all costs being calculated in accordance with OMB Circular A-87, as required by federal law at 20 Code of Federal Regulations §603 *et seq.* Charges to other governmental entities can only be waived when the request is of an isolated or infrequent nature and when the costs of responding to a particular request are negligible.
- (h) Certified Records. In addition to the fees the Commission may charge for providing copies of records, the Commission shall charge a fee of \$5.00 for preparation of a certification instrument which may be attached to one or more pages of records covered by the certification instrument.

§800.7. Agency Vehicles.

- (a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas Government Code ~~Section~~ §2171.1045. The intent of the Commission is to ensure that the use and management of vehicles by the Agency is consistent with the State Vehicle Fleet Management Plan (Plan) as adopted by the Office of Vehicle Fleet Management of the Texas Building and Procurement Commission ~~General Services Commission~~. The Plan may be viewed on the Internet at ~~http://www.tbpc.state.tx.us/fleet-~~ http://www.gsc.state.tx.us/fleet, or a copy may be requested from the Agency ~~Texas Workforce Commission~~.
- (b) The Commission adopts by reference and shall implement the provisions contained in the ~~State Vehicle Fleet Management Plan~~ as referenced in subsection (a) of this section including the following general provisions on use of vehicles by the Agency.
 - (1) Vehicles, with the exception of vehicles assigned to field employees, are assigned to the Agency motor pool and may be available for checkout.
 - (2) The Agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if there is a documented finding that the assignment is critical to the needs and mission of the Agency.
 - (3) The Agency will work with the Texas Building and Procurement Commission ~~GSC~~ to identify, apply for, and if possible, utilize any waiver or exemption provisions where the recognition of conditions specific to the Agency would further the general purpose of fiscal efficiency and good business practices.