

The Texas Natural Resource Conservation Commission (commission) proposes new §9.1, Purpose; §9.2, Need for Training; §9.3, Scope of Training; §9.4, Certificate of Completion of Training; and §9.5, Reimbursement in new Chapter 9, Training for Commissioners. The commission proposes this new Chapter 9 in order to implement House Bill (HB) 2912, Article I (Administration and Policy), §1.05, as passed by the 77th Texas Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill 2912 amended Subchapter C, Chapter 5, Texas Water Code (TWC), by adding §5.0535, relating to Required Training Program for Commission Members. This new section prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this new section. The section specifies the information which must be provided in the training program. Under the section, a person appointed to the commission is entitled to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Section 18.08(b) of HB 2912 specifies that these provisions apply only to a member of the commission who is appointed on or after January 1, 2002.

SECTION BY SECTION DISCUSSION

Proposed new §9.1, relating to Purpose, would establish the purpose of the chapter which is to govern procedures for the training of commissioners appointed after January 1, 2002.

Proposed new §9.2, relating to Need for Training, would establish the need for training of commissioners as a requirement under TWC, §5.0535, which prohibits newly-appointed commissioners from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the commissioner completes a specified training program.

Proposed new §9.3, relating to Scope of Training, would prescribe the training program required under TWC, §5.0535. The required elements of the program are: 1) the legislation that created the commission; 2) the programs operated by the commission; 3) the role and functions of the commission; 4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority; 5) the current budget for the commission; 6) the results of recent significant internal and external audits of the commission; 7) the requirements of the open meetings law, the public information law, the administrative procedure law, and other laws relating to public officials, including conflict of interest laws; 8) and any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

Proposed new §9.4, relating to Certificate of Completion of Training, would provide for issuance of a certificate to a commissioner upon completion of the required training program to document compliance with the requirement.

Proposed new §9.5, relating to Reimbursement, would provide for reimbursement to a commissioner for the travel expenses incurred in attending the training program, as authorized by TWC, §5.0535.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal impacts to units of state or local government as a result of administration of the proposed rules.

This rulemaking is intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Texas Legislature, 2001. The bill prohibits a person, appointed as a member of the commission, from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with provisions in HB 2912.

House Bill 2912 requires this training program to include the legislation that created the commission, the programs operated by the commission, the role and functions of the commission, the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority, and the current budget for the commission. Additionally, the bill requires the training program to include the results of recent significant internal and external audits of the commission, the requirements of the open meetings law, the public information law, the administrative procedure law, and other laws relating to public officials, including conflict of interest laws, and any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

The proposed rulemaking only affects the agency. No other units of state and local government are affected by this proposal. The commission does not anticipate the proposed rulemaking will result in significant costs to the agency.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from administration of the proposed rules would be a greater assurance that commissioners of the agency are adequately trained to perform their duties.

This rulemaking is intended to implement provisions of HB 2912, which prohibits a person, appointed as a member of the commission, from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with provisions in HB 2912.

The proposed rulemaking only affects the agency; therefore, there will be no costs to individuals and businesses to implement provisions of this proposal.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to small or micro-businesses as a result of the proposed new sections, which are intended to implement provisions of HB 2912, which prohibits a person, appointed as a member of the commission, from voting, deliberating, or being counted as a member in attendance

at a meeting of the commission until the person completes a training program that complies with provisions of HB 2912.

The proposed rulemaking only affects the agency; therefore, there will be no costs to small or micro-businesses to implement provisions of this proposal.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rules are intended to simply implement a training program for newly-appointed commissioners, as mandated by state law.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this

rulemaking is simply to implement a training program for newly-appointed commissioners, as mandated by state law. This action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property. The proposals in this rulemaking also will not be the cause of a reduction in market value of private real property, and will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

Comments must be received by 5:00 p.m., October 8, 2001, and should reference Rule Log Number 2001-067-009-AD. For further information, please contact Debra Barber at (512) 239-0412.

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to

adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed new sections implement TWC, §5.0535, Required Training Program for Commission Members.

CHAPTER 9: TRAINING FOR COMMISSIONERS

§§9.1 - 9.5

§9.1. Purpose.

This chapter governs procedures applicable to the training of commissioners of the Texas Natural Resource Conservation Commission appointed on or after January 1, 2002.

§9.2. Need for Training.

A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this chapter. This training program should be completed as soon as practical after appointment.

§9.3. Scope of Training.

(a) The training program may include, but is not limited to, information provided through staff briefings, written material, seminars/conferences, or internet and intranet resources. The executive director and the general counsel, or their designees, will provide briefings on topics within their scope of authority.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission, including relevant portions of the Texas Water Code and the Texas Health and Safety Code;

(2) the programs operated by the commission, including programs which are federally delegated or authorized;

(3) the role and functions of the commission, including the agency's mission statement and scope of commission's authority;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of recent significant internal and external audits of the commission;

(7) the requirements of:

(A) the open meetings law, Texas Government Code, Chapter 551;

(B) the public information law, Texas Government Code, Chapter 552;

(C) the administrative procedure law, Texas Government Code, Chapter 2001;

and

(D) other laws relating to public officials, including conflict of interest laws;

and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics

Commission.

§9.4. Certificate of Completion of Training.

Upon completion of training by a newly-appointed commissioner, the general counsel shall issue the commissioner a certificate of completion to document that the commissioner is appropriately trained to serve as a commissioner. Such certificate will be kept on file by the general counsel and will be available for public inspection.

§9.5. Reimbursement.

A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.