

The Texas Commission on Environmental Quality (commission) proposes an amendment to §5.13, Meetings.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Texas Water Code (TWC), §5.107, relating to Advisory Councils, authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, public information, or any other matter that the commission or the executive director may consider appropriate.

Chapter 5 governs the procedures applicable to advisory committees created to advise the commission. Currently, §5.13 specifies that all committee and subcommittee meetings shall be open to the public. Some advisory committees assist in the development and review of licensing examination questions and related materials as a part of their advisory function. If committee deliberations involved in development of examination questions and related materials are open to the public, the examination questions can be compromised. This rulemaking proposes to amend §5.13 to allow advisory committees and subcommittees to meet in closed session for the purpose of reviewing and developing licensing examination questions and related materials. The proposal is consistent with the provisions of Texas Government Code, §551.088, which states, “This chapter does not require a governmental body to conduct an open meeting to deliberate a test item or information related to a test item if the governmental body believes that the test item may be included in a test that the governmental body administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity.”

#### SECTION DISCUSSION

The proposed amendment to §5.13 would add an exception that allows a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials. The amendment would allow the commission to utilize the expertise in advisory committees to develop and review licensing examination questions and related materials without exposing the examination questions and related material to possible compromise in a meeting that is open to the public.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendment is in effect, there will be no significant fiscal implications for units of state and local government due to administration and enforcement of the proposed amendment. The proposed amendment is intended to affect the operations of the commission. No other units of state or local government are anticipated to be affected.

This rulemaking is intended to allow a committee or subcommittee to meet in closed session to develop or review licensing examination questions or related materials in order to preclude compromise of the examination.

The proposed amendment is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The amendment is procedural in nature and is only intended to implement procedures to allow a committee or

subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be that the commission can use advisory committees and subcommittees in closed session to develop and review licensing examination questions and related materials, which would preclude compromise of the examinations.

The proposed amendment is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed amendment is in effect, there will be no significant fiscal implications for small and micro-businesses due to administration and enforcement of the proposed amendment. The proposed amendment is intended to affect the operations of the commission.

This rulemaking is intended to allow a committee or subcommittee to meet in closed session to develop or review licensing examination questions or related materials in order to preclude compromise of the examination.

The proposed amendment is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any small and micro-businesses. The amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### 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 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. A “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

amendment is not specifically intended to protect the environment, or reduce risks from environmental exposure and is 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 rule is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The proposed amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials. The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The proposed amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials. This will allow the committees to assist the commission in the development and review of licensing examination questions and related materials without compromising the licensing examinations.

Promulgation and enforcement of the proposed amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed amendment does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally),

nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the regulations.

Because the proposed amendment affects only advisory entities, this action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more.

No exceptions set out in Texas Government Code, §2007.003(b) apply to the proposed amendment.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposed amendment is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in §505.11. Therefore, the proposed amendment is not subject to the Texas Coastal Management Program.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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., November 12, 2002, and should reference Rule Log Number 2002-054-005-AD. For further information, please contact Debra Barber, Policy and Regulations Division at (512) 239-0412.

#### STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive director may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

The proposed amendment implements TWC, §5.107, Advisory Committees, Work Groups, and Task Forces; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

**SUBCHAPTER A: PURPOSE**

**§5.13**

**§5.13. Meetings.**

Advisory committees shall meet at the call of the presiding officer or the commission. All advisory committee and subcommittee meetings, except meetings for the purpose of developing or reviewing licensing examination questions or related materials, shall be open to the public. Meetings for the purpose of developing or reviewing licensing examination questions or related materials may be closed to the public to preclude compromise of the examination questions or related material.