

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Proposed Rulemaking

**AGENDA REQUESTED:** February 22, 2023

**DATE OF REQUEST:** February 3, 2023

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

**CAPTION:** Docket No. 2022-1697-MIS. Consideration for publication of, and hearing on, proposed amendment to 30 TAC Chapter 9, Training.

The proposed rulemaking would implement House Bill 2063, 87th Texas Legislature, 2021, relating to the establishment of a State Employee Family Leave Pool. The proposed rule establishes the agency's sick leave and family leave pools programs. (Robert Icenogle, Alma Borsheim; Rule Project No. 2023-112-009-AS)



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**Director**



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**Division Deputy Director**



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**Agenda Coordinator**

Copy to CCC Secretary? NO  YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** February 3, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Erin Chancellor, Interim Executive Director

**From:** Kelly Keel, Director *KK 12/27/22*  
Office of Administrative Services

**Docket No.:** 2022-1697-MIS

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 9, Training  
Employee Leave Pool Programs  
Rule Project No. 2023-112-09-AS

**Background and reason(s) for the rulemaking:**

The following statutes require all state agencies to adopt rules relating to the operation of two employee leave pool programs: Texas Government Code, Subchapter A, State Employee Sick Leave Pool, §§661.001, et seq., and Texas Government Code, Subchapter A-1, State Employee Family Leave Pool, §§661.021, et seq.

**Scope of the rulemaking:**

The Texas Commission on Environmental Quality's (TCEQ or agency) established sick leave pool policy is in Operating Policy and Procedure (OPP) 9.06, Sick Leave Pool, and administered in accordance with the statute by the Human Resources and Staff Services Division.

The 87th Legislature, 2021, passed House Bill (HB) 2063 that requires TCEQ to establish a new family sick leave pool program. TCEQ would incorporate this new family leave pool program into OPP 9.06 and follow similar administrative procedures. The proposed rule confirms the establishment of the agency's programs for the sick leave and family leave pools and incorporates by reference the agency's policy and procedure.

**A.) Summary of what the rulemaking would do:**

The rulemaking would retitle Chapter 9 to Training and Employee Programs, and add a new Subchapter C: Employee Leave Pool Programs. New rule §9.20 establishes TCEQ's sick leave pool and family leave pool programs and incorporates by reference the agency's policy and procedures.

**B.) Scope required by federal regulations or state statutes:**

Establish by rule the agency's sick leave pool and family leave pool programs and incorporate by reference the agency's policy and procedure.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

No additional recommendations.

**Statutory authority:**

Texas Government Code, Subchapter A, State Employee Sick Leave Pool, §§661.001, et seq.  
HB 2063, creating Texas Government Code, Subchapter A-1, State Employee Family Leave Pool, §§661.021, et seq.

**Effect on the:**

**A.) Regulated community:**

None.

Re: Docket No. 2022-1603-MIS

**B.) Public:**

None.

**C.) Agency programs:**

The Human Resources and Staff Services Division in the Office of Administrative Services would administer the family leave pool consistent with the policy and procedures of the established sick leave pool. This policy applies only to TCEQ employees.

**Stakeholder meetings:**

There are no planned stakeholder meetings prior to proposal of the rule as the statutory leave pool programs are available only to TCEQ employees.

**Public Involvement Plan**

None.

**Alternative Language Requirements**

None.

**Potential controversial concerns and legislative interest:**

None.

**Would this rulemaking affect any current policies or require development of new policies?**

Rulemaking confirms the agency's established sick leave pool policy and incorporates the new family leave pool created by HB 2063.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

There are no alternatives to rulemaking. State law requires the establishment of a family leave pool and sick leave pool.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** February 22, 2023

**Anticipated *Texas Register* publication date:** March 10, 2023

**Anticipated public hearing date:** April 7, 2023

**Anticipated public comment period:** March 10, 2023 - April 10, 2023

**Anticipated adoption date:** August 2, 2023

**Agency contacts:**

Robert Icenogle, Rule Project Manager, Human Resources and Staff Services Division, (512) 239-0131

Alma Borsheim, Staff Attorney, General Law Division, (512) 239-0688

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

**Attachments:**

HB 2063

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Krista Kyle  
Office of General Counsel

Commissioners  
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February 3, 2023

Re: Docket No. 2022-1603-MIS

Kelly Keel  
Elizabeth West  
Robert Icenogle  
Yen Tran  
Alma Borsheim  
Gwen Ricco

AN ACT

relating to the establishment of a state employee family leave pool.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 661, Government Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. STATE EMPLOYEE FAMILY LEAVE POOL

Sec. 661.021. PURPOSE. The purpose of the state employee family leave program is to:

(1) provide eligible state employees more flexibility

in:

(A) bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and

(B) caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic; and

(2) allow employees to apply for leave time under the family leave pool.

Sec. 661.022. GUIDELINES. (a) The governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer sick or vacation leave earned by the employee to a family leave pool.

(b) The executive head of the state agency or another

1 individual appointed by the governing body shall administer the  
2 family leave pool.

3 (c) The governing body of the state agency shall adopt rules  
4 and prescribe procedures relating to the operation of the agency  
5 family leave pool.

6 Sec. 661.023. CONTRIBUTION TO FAMILY LEAVE POOL. (a) A  
7 state employee may contribute to the family leave pool one or more  
8 days of the employee's accrued sick or vacation leave.

9 (b) The pool administrator shall credit the family leave  
10 pool with the amount of time contributed by a state employee and  
11 deduct a corresponding amount of time from the employee's earned  
12 sick or vacation leave as if the employee had used the time for  
13 personal purposes.

14 (c) A retiring state employee may designate the number of  
15 the retiring employee's accrued sick or vacation leave hours to be  
16 used for retirement credit and the number of the retiring  
17 employee's accrued sick or vacation leave hours to be donated on  
18 retirement to the sick or family leave pool.

19 Sec. 661.024. USE OF TIME IN POOL. (a) A state employee is  
20 eligible to use time contributed to the family leave pool of the  
21 state agency that employs the employee if the employee has  
22 exhausted the employee's eligible compensatory, discretionary,  
23 sick, and vacation leave because of:

24 (1) the birth of a child;

25 (2) the placement of a foster child or adoption of a  
26 child under 18 years of age;

27 (3) the placement of any person 18 years of age or

1 older requiring guardianship;

2 (4) a serious illness to an immediate family member or  
3 the employee, including a pandemic-related illness;

4 (5) an extenuating circumstance created by an ongoing  
5 pandemic, including providing essential care to a family member; or

6 (6) a previous donation of time to the pool.

7 (b) A state employee who applies to use time under  
8 Subsection (a) to care for another person must submit and be listed  
9 on the other person's birth certificate, birth facts, or adoption  
10 or foster paperwork for a child under 18 years of age, including  
11 being listed as the mother, father, adoptive parent, foster parent,  
12 or partner of the child's mother, adoptive parent, or foster  
13 parent, or provide documentation that the employee is the guardian  
14 of a person who is 18 years of age or older and requiring  
15 guardianship.

16 Sec. 661.025. WITHDRAWAL OF TIME FROM POOL. (a) A state  
17 employee may apply to the pool administrator for permission to  
18 withdraw time from the family leave pool.

19 (b) If the state employee is seeking permission to withdraw  
20 time because of a serious illness, including a pandemic-related  
21 illness, of an immediate family member or the employee and does not  
22 qualify for or has exhausted time available in the sick leave pool,  
23 the employee must provide the pool administrator with a written  
24 statement from the licensed practitioner who is treating the  
25 employee or the employee's immediate family member.

26 (c) If the state employee is seeking permission to withdraw  
27 time because of an extenuating circumstance created by an ongoing

1 pandemic, including providing essential care to a family member,  
2 the employee must provide any applicable documentation, including  
3 an essential caregiver designation, proof of closure of a school or  
4 daycare, or other appropriate documentation.

5 (d) If the pool administrator determines the state employee  
6 is eligible, the administrator shall:

7 (1) approve the transfer of time from the pool to the  
8 employee; and

9 (2) credit the time to the employee.

10 Sec. 661.026. LIMITATION ON WITHDRAWALS. (a) A state  
11 employee may not withdraw time from the family leave pool in an  
12 amount that exceeds the lesser of:

13 (1) one-third of the total time in the pool; or

14 (2) 90 days.

15 (b) Subject to Subsection (a), the pool administrator shall  
16 determine the amount of time that an employee may withdraw from the  
17 pool.

18 Sec. 661.027. EQUAL TREATMENT. A state employee absent  
19 while using time withdrawn from the family leave pool may use the  
20 time as sick leave earned by the employee. The employee shall be  
21 treated for all purposes as if the employee is absent on earned sick  
22 leave.

23 Sec. 661.028. NO ENTITLEMENT TO ESTATE. The estate of a  
24 deceased state employee is not entitled to payment for unused time  
25 withdrawn by the employee from the family leave pool.

26 SECTION 2. This Act takes effect September 1, 2021.



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President of the Senate

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Speaker of the House

I certify that H.B. No. 2063 was passed by the House on May 5, 2021, by the following vote: Yeas 135, Nays 10, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2063 was passed by the Senate on May 27, 2021, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend Chapter 9, Training, by adding Subchapter C: Employee Programs, and retitling Chapter 9 to Training and Employee Programs.

### **Background and Summary of the Factual Basis for the Proposed Rules**

The following statutes require all state agencies to adopt rules relating to the operation of two employee leave pool programs: Texas Government Code, Subchapter A, State Employee Sick Leave Pool, §§661.001, et seq., and Texas Government Code, Subchapter A-1, State Employee Family Leave Pool, §§661.021, et seq.

The Texas Commission on Environmental Quality’s (TCEQ or agency) established sick leave pool policy is in Operating Policy and Procedure (OPP) 9.06, Sick Leave Pool, and administered in accordance with the statute by the Human Resources and Staff Services Division. TCEQ is revising OPP 9.06 to establish a family sick leave pool program and follow similar administrative procedures to the sick leave pool program to incorporate House Bill (HB) 2063 87th Texas Legislature, 2021.

The proposed rule confirms the establishment of the agency’s programs for the sick leave and family leave pools and incorporates by reference the agency’s policy and procedure.

### **Section by Section Discussion**

The commission proposes to amend the title of Chapter 9 from “Training” to “Training and Employee Programs.”

The commission proposes new Subchapter C, Employee Programs, and new §9.20, Employee

Leave Pool Programs, to establish by rule the agency’s sick leave pool and family leave pool programs and incorporate by reference the agency’s policies to administer these programs.

**Fiscal Note: Costs to State and Local Government**

Jené Bears, Deputy Director in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

**Public Benefits and Costs**

Ms. Bears determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law and an additional leave option for agency employees who have exhausted their leave due to a qualifying event. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

**Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

**Rural Communities Impact Assessment**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have

the same effect in rural communities as in urban communities.

#### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

#### **Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### **Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

**Draft Regulatory Impact Analysis Determination [if full RIA not required]**

The commission reviewed the proposed new rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed new rule is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a “major environmental rule” as defined by statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.” The intent of the proposed rulemaking is to conform to Texas Government Code, §661.002 and §661.022, and to provide an internal family leave pool program and sick leave pool program to TCEQ employees. Because the changes are not expressly to protect the environment and reduce risks to human health and environment, the rulemaking does not meet the definition of a “major environmental rule.”

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

**Takings Impact Assessment**

The commission evaluated the proposed new rule and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this new rule is to conform to Texas Government Code, §661.002 and §661.022, and to provide an internal family

leave pool program and sick leave pool program to TCEQ employees. Promulgation and enforcement of this proposed new rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation 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 otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

#### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### **Announcement of Hearing**

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on April 7, 2023, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior

to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Wednesday, April 5, 2023. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Thursday, April 6, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NDE3ZTk1NWUtOWZlYy00NjM4LWE2MDctYzU4YjU1MGRkYWlW%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDE3ZTk1NWUtOWZlYy00NjM4LWE2MDctYzU4YjU1MGRkYWlW%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at:

<https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-112-009-AS. The comment period closes on April 10, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Robert Icenogle, Human Resources and Staff Services, (512) 239-0131.



### **SUBCHAPTER C: Employee Programs**

#### **§9.20**

##### **Statutory Authority**

The new rule is proposed under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The proposed new rule implements Texas Government Code, §661.002 and §661.022, which governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool and family leave pool.

##### **§9.20. Employee Leave Pool Programs**

(a) Sick Leave Pool. A sick leave pool is established to allow eligible agency employees to use time contributed to the sick leave pool, if the employee has exhausted their sick leave due to a catastrophic illness or injury;

(b) Family Leave Pool. A family leave pool is established to allow eligible agency employees to use time contributed to the family leave pool, to allow for more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee's own serious illness, including pandemic-related illnesses or complications caused by a pandemic; and,

(c) Administration of both pools programs is delegated to the deputy director for the Human Resources and Staff Services Division and shall be implemented by policy and procedures that are consistent with Texas Government code, Chapter 661, as amended.