

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 Bearse, 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. Bearse 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 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

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. 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. 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.