

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Amanda Lavin, Assistant Executive Administrator  
Les Trobman, General Counsel  
Edna Jackson, Deputy Executive Administrator for Operations and Administration

**FROM:** LaDawn Gray, Human Resources Director

**DATE:** August 25, 2016

**SUBJECT:** Agency-Funded Employee Training and Education

## **ACTION REQUESTED**

Consider authorizing the publication of proposed amendments to and repeal of rules in 31 Texas Administrative Code Chapter 353, concerning agency-funded employee training and education.

## **BACKGROUND**

Texas Government Code Chapter 656 requires state agencies to adopt rules requiring that the executive head of an agency authorize tuition reimbursement payments under Texas Government Code §656.047(b).

This section of the Texas Government Code was newly established through House Bill 3337 of the 84<sup>th</sup> Legislature, Regular Session (2015).

## **KEY ISSUES**

The proposed rulemaking would incorporate the statutory requirement that the executive administrator approve tuition reimbursement for courses offered by an accredited institution of higher education. The amendments describe eligibility for employee training and types of training available and outline obligations assumed by administrators and employees after completing an education or training program.

Existing 31 TAC §353.32 and §353.33 are being proposed for repeal, and the language from those rules is being consolidated into a single rule, the amended 31 TAC §353.31.

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To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas	:	Bech Bruun, Chairman   Kathleen Jackson, Board Member   Peter Lake, Board Member
	:	Jeff Walker, Executive Administrator

**RECOMMENDATION**

Authorize publication of proposed amendments to 31 TAC §353.31, and authorize publication of the proposed repeal of 31 TAC §353.32 and §353.33, which are being consolidated into the amended §353.31.

Attachment(s):

Proposed amendments to 31 TAC §353.31 for publication in the Texas Register  
Proposed repeal of 31 TAC §353.32 and § 353.33 for publication in the Texas Register  
Texas Government Code §656.048

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §353.31, concerning agency-funded employee training and education. Existing 31 TAC §§353.32 and 353.33 are being consolidated into the amended §353.31 and are proposed for repeal elsewhere in this issue of the Texas Register.

## BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE PROPOSED AMENDMENTS.

The proposed amendments update the TWDB rule regarding agency-funded employee training and education in compliance with Texas Government Code Chapter 656, Subchapters C and D, and consolidate three rules into a single rule. Texas Government Code Chapter 656 requires state agencies to adopt rules requiring that the executive head of an agency authorize tuition reimbursement payments for courses offered by an accredited institution of higher education.

## SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS

### *Subchapter B. Employee Training and Education*

#### *Section 353.3 Purpose of Employee Training and Education.*

The section name is revised to Agency-Funded Training and Education to reflect the consolidation of §353.32 and §353.33 into the amended §353.31.

The term “training” is defined using the statutory definition in Texas Government Code §656.101.

Employee eligibility for training and the types of job-related training are described.

The requirements for obtaining reimbursement for a course offered by an accredited institution of higher education are outlined, including the requirement that tuition reimbursement be approved by the executive administrator.

Obligations assumed by administrators and employees after completing an education or training program are outlined.

## FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

The Chief Financial Officer has determined that there will be no fiscal implications for state or local governments as a result of the proposed amendments. For the first five years these rule amendments are in effect, there is no expected additional cost to state or local governments resulting from their administration.

The amendments are not expected to result in reductions in costs to either state or local governments. The intent of the rulemaking is to update TWDB policies regarding agency-funded training and education. There is no change in costs because there are no direct costs associated with the proposed amendments. These rule amendments are not expected to have any

impact on state or local revenues. The rule amendments do not require any increase in expenditures for state or local governments as a result of administering the amended rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the amended rule.

## PUBLIC BENEFITS AND COSTS

The Chief Financial Officer has also determined that for each year of the first five years the proposed rulemaking is in effect, the anticipated public benefit will be enhanced capability of participating employees to perform job duties and an effective review and approval process for expenditure of state funds to reimburse eligible employee tuition expenses.

## LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required. The proposed amendments do not adversely affect a local economy in a material way for the first five years that they are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

## DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to update the board's policies regarding agency-funded employee training and education.

Even if the rulemaking being proposed was a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency

or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather is also proposed under authority of Texas Water Code §§6.104 and 6.109. Therefore, these proposed amendments do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code Chapter 2007. The specific purpose of this rule is to update board policies regarding agency-funded employee training and education.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the proposed amendments because this rulemaking is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated the proposed amendments and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these proposed amendments would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed amendments do not affect a landowner's rights in private real property because this rulemaking does not burden or 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 regulation. Therefore, the proposed amendments do not constitute a taking under Texas Government Code Chapter 2007.

#### SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted until 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov) or by fax to (512) 475-2053.

#### STATUTORY AUTHORITY

This rule is proposed under Texas Water Code §6.101, which gives the TWDB authority to adopt rules, and Texas Government Code §656.048, which requires the TWDB to adopt rules relating to employee eligibility for training and education funded by the agency, the obligations of employees upon receiving the training and education, and a requirement that the executive administrator authorize tuition reimbursement payments.

Cross reference to statute: Texas Water Code §6.101, Texas Government Code §656.048

<rule>

§353.31. [Purpose of] Agency-Funded Employee Training and Education.

(a) The agency may use state funds, when available, to provide training or education for its administrators and full- or part-time employees, including salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials and other necessary expenses of an instructor, student or other participant in a training or education program. The training must be related to the duties or prospective duties of the administrator or employee.

(b) "Training" as used in this rule means instruction, teaching, or other education received by a state employee that is not normally received by other state employees and that is designed to enhance the ability of the employee to perform the employee's job. The term includes a course of study at an institution of higher education or a private or independent institution of higher education as defined by Section 61.003, Education Code, if the agency spends money to assist the state employee to meet the expense of the course of study or pays salary to the employee to undertake the course of study as an assigned duty. The term does not include training required either by state or federal law or that is determined necessary by the agency and offered to all employees of the agency performing similar jobs.

(c) All administrators and active employees are eligible to participate in job-related training or education programs supported by the agency, including training inside or outside the agency, seminars and conferences, college and university coursework and online training.

(d) When an administrator or employee seeks reimbursement for a training or education program offered by an institution of higher education, the agency may only reimburse the tuition expenses for a program course successfully completed by an employee at an accredited institution of higher education. Reimbursement for such program courses requires the approval of the executive administrator.

(e) After completing an education or training program sponsored by the agency, an administrator or employee will be required, if applicable, to:

(1) Discuss information obtained and share materials with other agency employees, to the extent that sharing does not violate copyright laws;

(2) Assume additional job duties for which the training or education program prepared the employee; and/or

(3) Conduct training for other department employees based on the information or skills taught at the training or education program.

(f) The executive administrator will adopt policies and procedures to obtain training and/or education for administrators and employees that include eligibility requirements and procedures for reimbursement that are in conformity[conformance] with these rules and Texas Government Code Chapter 656, Subchapters C and D.[Chapter 656 of the Texas Government Code.]

The Texas Water Development Board (TWDB) proposes to repeal 31 Texas Administrative Code (TAC) §§353.32 and 353.33.

#### BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE PROPOSED REPEAL.

The TWDB proposes to repeal §§353.32 and 353.33 because both sections are incorporated into amendments to 31 TAC §353.31 being proposed elsewhere in this issue of the Texas Register.

#### DISCUSSION OF THE PROPOSED REPEAL

31 TAC §353.32, relating to eligibility for training and education, and §353.33, relating to eligible expenses of a training or education program, are being incorporated in proposed amendments to 31 TAC §353.31.

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

The Chief Financial Officer has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeals. For the first five years the repeals are in effect, there is no expected additional cost to state or local governments.

The repeal of these rules is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed repeals. These repeals are not expected to have any impact on state or local revenues. These repeals do not require any increase in expenditures for state or local governments. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these repeals.

#### PUBLIC BENEFITS AND COSTS

The Chief Financial Officer has also determined that for each year of the first five years the proposed repeals are in effect, there will be no impact to the public.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required. The proposed repeals do not adversely affect a local economy in a material way for the first five years that they are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these repeals. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the repeals as proposed. Therefore, no regulatory flexibility analysis is necessary.

## DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeals are not subject to Texas Government Code §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the proposed repeals is to update the board's policies regarding agency-funded employee training and education.

Even if the proposed repeals affected a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather is also proposed under authority of Texas Water Code §§6.104 and 6.109. Therefore, these proposed repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

## TAKINGS IMPACT ASSESSMENT

The board evaluated these proposed repeals and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these repeals is to update and consolidate board policies regarding agency-funded employee training and education.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the proposed repeals because this rulemaking is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated the proposed repeals and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these proposed repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed repeals do not

affect a landowner's rights in private real property because this rulemaking does not burden or 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 regulation. Therefore, the proposed repeals do not constitute a taking under Texas Government Code Chapter 2007.

#### SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted until 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov) or by fax to (512) 475-2053.

#### STATUTORY AUTHORITY

This repeal is proposed under Texas Water Code §6.101.

Cross reference to statute: Texas Water Code §6.101.

<rule>

§353.32. Eligibility for Training and Education.

§353.33. Eligible Expenses.

Sec. 656.047. PAYMENT OF PROGRAM EXPENSES. (a) Except as provided by this section or other law, a state agency may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(b) For an administrator or employee of a state agency who seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by Section 61.003, Education Code, the agency may only pay the tuition expenses for a program course successfully completed by the administrator or employee at an accredited institution of higher education.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 366 (H.B. 3337), Sec. 2, eff. September 1, 2015.

Sec. 656.048. RULES RELATING TO TRAINING AND EDUCATION.

(a) A state agency shall adopt rules relating to:

(1) the eligibility of the agency's administrators and employees for training and education supported by the agency; and

(2) the obligations assumed by the administrators and employees on receiving the training and education.

(b) A state agency shall adopt rules requiring that before an administrator or employee of the agency may be reimbursed under Section 656.047(b), the executive head of the agency must authorize the tuition reimbursement payment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 16(g), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 366 (H.B. 3337), Sec. 3,  
eff. September 1, 2015.