

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Edna Jackson, Deputy Executive Administrator for Operations and Administration

FROM: LaDawn Gray, Human Resources Director

DATE: January 8, 2018

SUBJECT: Rules concerning Sick Leave Pool administration

ACTION REQUESTED

Consider authorizing publication of proposed new 31 Texas Administrative Code (TAC) §353.32 related to the agency sick leave pool program and renaming 31 TAC Chapter 353 Subchapter B to broaden the scope of its subject matter.

BACKGROUND

TAC §661.002 requires state agencies to adopt rules relating to the operation of agency sick leave pools. The current Chapter 353 Subchapter B, Employee Training and Education, is proposed to be renamed Employment Practices to allow for inclusion of multiple employment-related rules within a single subchapter.

KEY ISSUES

The proposed rulemaking would incorporate the statutory requirement relating to procedures for the operation of the agency sick leave pool as outlined in Texas Government Code §661.002.

RECOMMENDATION

Authorize publication of proposed 31 TAC §353.32 as required by statutory requirements and the renaming of 31 TAC Chapter 353 Subchapter B to broaden the scope of its subject matter.

Attachment(s):

- Preamble Chapter 353 Amendments
- Texas Government Code §661.002

The Texas Water Development Board (“TWDB” or “board”) proposes adding new 31 Texas Administrative Code (TAC) §353.32, relating to the agency sick leave pool program, and renaming 31 TAC Chapter 353 Subchapter B to broaden the scope of its subject matter.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE AND SUBCHAPTER RENAMING.

Texas Government Code §661.002 requires state agencies to adopt rules relating to the operation of agency sick leave pools. The current Chapter 353 Subchapter B, Employee Training and Education, is proposed to be renamed Employment Practices to allow for inclusion of multiple employment-related rules within a single subchapter.

SECTION BY SECTION DISCUSSION OF THE PROPOSED RULE.

Subchapter B. Employee Training and Education

Section 353.32. Agency Sick Leave Pool

The subchapter name is revised from Employee Training and Education to Employment Practices to allow for inclusion of multiple rules related to TWDB employment within the subchapter.

The proposed rule outlines the TWDB sick leave pool program and appoints the TWDB Human Resources Director or other employee designated by the Executive Administrator as sick leave pool administrator. The proposed rule authorizes the sick leave pool administrator to prescribe procedures relating to operation of the sick leave pool program.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

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

This proposed rule is not expected to result in a reduction in costs to either state or local governments. There is no expected reduction in costs for state and local governments because the proposed rule applies only to employees of TWDB. This proposed rule is not expected to have any impact on state or local revenues. Administering the rule will not require any increase in expenditures for state or local governments because the rule applies only to employees of TWDB. Additionally, there are no foreseeable implications relating to state or local governments’ costs or revenue resulting from this proposed rule.

Because this rule will not impose a cost on regulated persons, the requirement included in Texas Government Code §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because this rule is necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Treviño also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no public benefit or cost from the rulemaking because it is only applicable to internal TWDB policy and procedure.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has 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 it is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities 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 it 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 outline the TWDB sick leave pool program.

Even if the proposed rule were 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 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 or federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Government Code §661.002. Therefore, this proposed rule does 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 rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to outline the TWDB sick leave pool program.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this 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). State agencies are required by Texas Government Code §661.002 to adopt rules relating to the operation of agency sick leave pools.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed 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 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 regulation. In other words, this rule requires TWDB to operate a sick leave pool program for employees. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect the state's economy. The proposed rule outlines the internal TWDB sick leave pool program.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Mr. Todd Chenoweth, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512)

475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101 and Texas Government Code §661.002.

<rule>

SUBCHAPTER B. EMPLOYMENT PRACTICES~~[EMPLOYEE TRAINING AND EDUCATION]~~

§353.32 Sick Leave Pool

(a) A sick leave pool program is established to help alleviate the hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all accrued leave time and to lose compensation from the state.

(b) The Human Resources Director or other employee designated by the Executive Administrator will act as Sick Leave Pool Administrator.

(c) The Sick Leave Pool Administrator, with the advice and consent of the Executive Administrator, will prescribe and implement a policy and procedures for operation of the sick leave pool program and include the policy in the Employee Handbook. The policy and procedures must be consistent with Texas Government Code Chapter 661.

(d) Employee donations to the sick leave pool are strictly voluntary and must be made in writing.

Sec. 661.002. SICK LEAVE POOL. (a) The governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer to a sick leave pool sick leave earned by the employee.

(b) The executive director of the agency or another individual appointed by the governing body shall administer the sick leave pool.

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

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