

**TO:** Board Members

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

**FROM:** Nathalie Antenor, Human Resources Specialist IV (Discipline Lead)

**DATE:** April 16, 2018

**SUBJECT:** Sick Leave Pool Administration

### **ACTION REQUESTED**

Consider adopting 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**

The Texas Water Development Board (TWDB) authorized publication of proposed new 31 TAC § 353.32 relating to operation of the agency sick leave pool and administrative renaming of the subchapter on January 22, 2018. The proposals were published in the *Texas Register* on February 9, 2018, and the comment period ended on March 12, 2018. No comments were received, and no changes have been made to the proposed rule and subchapter renaming.

### **KEY ISSUES**

The proposed rulemaking would outline procedures for the agency sick leave pool as required by Texas Government Code §661.002, and would rename Subchapter B as Employment Practices to allow for inclusion of multiple employment-related rules within a single chapter. The subchapter is currently titled Employee Training and Education.

### **RECOMMENDATION**

Authorize adoption of 31 TAC §353.32 as required by statute and the renaming of 31 TAC Chapter 353 Subchapter B as referenced above.

### Attachment(s)

- Preamble Chapter 353
- Texas Government Code §661.002

The Texas Water Development Board (“TWDB” or “board”) adopts new 31 Texas Administrative Code (TAC) §353.32, relating to the agency sick leave pool program, and renames 31 TAC Chapter 353 Subchapter B, as published in the February 9, 2018 issue of the Texas Register (43 TexReg 718) without changes.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED 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 renamed Employment Practices to allow for inclusion of multiple employment-related rules within a single subchapter.

#### SECTION BY SECTION DISCUSSION OF THE ADOPTED 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 new 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 new rule authorizes the sick leave pool administrator to prescribe procedures relating to operation of the sick leave pool program.

#### REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the 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 rule 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 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 rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

## TAKINGS IMPACT ASSESSMENT

The board evaluated this 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 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 rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject 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 rule does not constitute a taking under Texas Government Code, Chapter 2007.

## PUBLIC COMMENTS

The proposed rule was open for public comment, and the comment period ended on March 12, 2018. No comments were received, and no changes to the rule as proposed have been made.

## STATUTORY AUTHORITY

This rule is adopted 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.