

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION

The Texas Military Preparedness Commission (TMPC or Commission) within the Office of the Governor (OOG) proposes amendments to 1 TAC §§4.1 - 4.8 and §§4.30, 4.31, 4.34 - 4.36, and 4.39 - 4.40 relating to the Texas Military Value Revolving Loan Fund and the Defense Economic Adjustment Assistance Grant under Chapter 436 of the Texas Government Code.

Explanation of Proposed Amendments

The primary purpose of the proposed amendments to the rules is to implement legislative changes that were enacted by the 84th Legislature, Regular Session.

The Commission was established in 2003 within the Economic Development and Tourism Office of the Office of the Governor. Effective as of September 1, 2015, Senate Bill 1358 establishes the Commission as an agency that is attached to the Office of the Governor for administrative purposes. In this regard, a number of references in the rules to the Economic Development and Tourism Office are updated to refer to the Commission. Senate Bill 1358 also increases from \$2 million to \$5 million the amount of money the Commission can award to a local government entity through its Defense Economic Adjustment Assistance Grant Program (DEAAG).

Senate Bills 318 and 503 amend the eligibility requirements for the Defense Economic Adjustment Assistance Grant Program (DEAAG) program to include eligibility for projects that are "necessary to prevent the reduction or closing of a defense facility" and also to permit the use of program grants to train defense workers to support "retained missions" in addition to those missions that may be adversely affected by a base closure or realignment. Senate Bill 503 also changes the eligibility requirements to include communities affected by actions of the 1995 Base Realignment and Closure Commission (BRAC); this has the practical effect of including communities affected by the closure of Bergstrom and Reese Air Force Bases.

The proposed amendments include some other minor updates throughout to reflect current Commission operating practices and shared duties with the Texas Economic Development Bank and the Texas Public Finance Authority. A substantive change is proposed for the DEAAG grant application in Rule 4.36 to add two new grant scoring criteria to include consideration of BRAC scoring of the proposed military value of proposed projects. The reporting responsibilities for DEAAG grants in Rule 4.40 are also proposed for modification to eliminate the

current reporting requirement for job creation and retention reporting for a two-year period following project completion with a requirement that grantees must provide grant performance reports and project completion reports as required by grant terms.

Fiscal Note

On behalf of the Texas Military Preparedness Commission, Mr. Bryan Daniel, Director of Economic Development and Tourism, Office of the Governor, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. Mr. Daniel has also determined that there may be a positive fiscal impact in an undetermined amount on local economies or overall employment as a result of the proposed amendments.

Public Benefit and Cost

Mr. Daniel has also determined that for each year of the first five years in which the proposed amendments are in effect, the public benefit anticipated as a result of the amendments will be to provide increased opportunities for defense communities that have been, or may potentially be, impacted by a past or future BRAC action, to obtain economic assistance to mitigate or prevent or otherwise positively affect their local economy through funded projects. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

Submittal of Comments

Written comments on the proposed rules amendments may be submitted to Alexandra Taylor, Office of the Governor, Texas Military Preparedness Commission, P.O. Box 12428, Austin, Texas 78711 or to Alexandra.Taylor@gov.texas.gov with the subject line "TMPC Rules." The deadline for receipt of comments is 5:00 p.m. CST on November 9, 2015. All requests for a public hearing on the proposed rules and amendments, submitted under the Administrative Procedure Act, must be received by the Office of the Governor no more than fifteen (15) days after the notice of proposed changes in the sections that have been published in the Texas Register.

SUBCHAPTER A. TEXAS MILITARY VALUE REVOLVING LOAN FUND PROGRAM

1 TAC §§4.1 - 4.8

Statutory Authority

The amendments are proposed under Government Code, §436.101, which provides the Texas Military Preparedness Commission may enact administrative rules necessary to administer its duties.

Cross Reference to Statute

Government Code, Chapter 489, as amended by Senate Bill 318, Senate Bill 503 and Senate Bill 1358, 84th Legislature, Regular Session.

§4.1. *Introduction and Purpose.*

(a) ~~The [Created by the 78th Legislature and signed into law by Governor Rick Perry, the]~~ Texas Military Value Revolving Loan Fund provides a low cost source of revenue to eligible communities who meet the application criteria. The minimum amount of a loan is \$1,000,000 while the maximum amount of a loan is determined by the availability of funds and the creditworthiness of the applicant. State funding will be obtained through the sale of general obligation bonds. The State may provide up to 100 percent of the cost of the described project, dependent upon the creditworthiness of the applicant.

(b) The Loan is designed to:

(1) assist defense communities in enhancing the military value of a defense facility based on the criteria established in the United States Department of Defense's (DoD) base realignment and closure process;

(2) provide financial assistance to defense communities for job creation ~~[creating]~~ or retention economic development projects that minimize the negative effects of a defense base realignment or closure decision that occurred in 1995 ~~[2005]~~ or later; or

(3) provide financial assistance to defense communities for infrastructure projects to accommodate new or expanded military missions resulting from a base realignment and closure decision that occurred in 1995 ~~[2005]~~ or later.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings unless otherwise indicated.

(1) Applicant--A Defense Community, as defined in paragraph (5) of this subsection, applying for a loan from the Texas Military Value Revolving Loan Fund.

(2) Awardee--The Defense community whose loan application is approved by the Commission ~~[office]~~.

(3) Bank--The Texas Economic Development Bank within the Office of the Governor, Economic Development and Tourism Office.

(4) Commission--The Texas Military Preparedness Commission. The Commission is attached for administrative purposes to the Office of the Governor.

(5) Defense Community--A political subdivision, including a municipality, county, or special district, that is adjacent to, near, or encompasses any part of a defense base.

(6) Defense Facility--A military base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including leased space, that is controlled by, or primarily supports, DoD activities.

(7) Director of the Bank--Director of the Texas Economic Development Bank within the Office of the Governor.

(8) Director of the Commission--Director of the Texas Military Preparedness Commission.

(9) Economic Redevelopment Value Statement--A statement that illustrates specific ways funds are to be used to promote economic development in the community to include that information as provided for in §397.0021 of the Local Government Code.

(10) Chief of Staff--The Chief of Staff of the Office of the Governor ~~[Executive Director--The Executive Director of the Economic Development and Tourism Division of the Office of the Governor (EDT)]~~.

(11) Financial Partners--Federal and state agencies, private and public nonprofit foundations, local taxing authorities, and private investors who agree to provide money for projects eligible for funding under this program.

(12) Fund--The Texas Military Value Revolving Loan Fund (TMVRLF).

(13) Governing Board--Members of the Texas Military Preparedness Commission.

(14) Military Value Enhancement Statement--A statement that illustrates specific ways funds are to be used to enhance the military value of the installation to include that information as provided for in §397.002 of the Local Government Code.

(15) Project--The construction, renovation, or acquisition for which a TMVRLF loan is requested.

(16) Project Costs--The Defense Community's total costs for completing the project, including any and all costs of financing and administration assessed by the Bank in accordance with §489.103 of the Texas Government Code ~~[EDF]~~.

§4.2. *Military Value/Redevelopment Value Review and Pre-Application Assessment for Funds.*

(a) The Defense Community shall submit the following information to the Director of the Commission:

(1) defense communities applying for a loan under §436.153 of the Local Government Code shall submit a Military Value Enhancement Statement; or

(2) defense communities applying for a loan under §436.1531 or §436.1532 of the Local Government Code shall submit a Defense Community Economic Redevelopment Value Statement.

(3) A pre-application assessment.

(b) The ~~[Director of the]~~ Commission shall review the Military Value or Redevelopment Value Statement and perform:

(1) an analysis of the project feasibility; and

(2) an analysis of alternative funding for each project listed.

(3) The Commission, in consultation with the Bank, shall review the applicant's pre-application assessment.

(c) The Bank shall review the applicant's pre-application assessment.

(d) The Governing Board shall take into consideration the Military Value or Redevelopment Value and by a majority vote make its recommendation to approve or disapprove the Military Value or Redevelopment Value Statement

§4.3. *Processing and Review of Applications.*

(a) The Commission, in consultation with the Bank, shall conduct its review of the applicant's creditworthiness based on standard due diligence practices and procedures that are consistent with other Bank lending programs including but not limited to:

(1) review of project description to assess program criteria requirements;

(2) quick assessment project considerations;

- search;
- (3) management assessment and current company news
 - (4) economic/financial analysis;
 - (5) revenue analysis;
 - (6) credit rating review; and
 - (7) financial analysis summary-strengths, weaknesses, exceptions.

(b) In addition, the Commission, in consultation with the Texas Public Finance Authority [Bank], shall also be responsible for developing the loan and security structure including:

- (1) the loan term sheet;
- (2) the loan agreement; and
- (3) the bond sale activities.

§4.4. *Application for Funds.*

(a) The Commission, in consultation with the Bank, [EDF] shall develop a formal application form to be included in the formal application process to assist in the evaluation of a loan submission. The application may require certain attachments and certifications.

(b) At a minimum the application for funds will include:

(1) the full legal name and description of requesting loan Applicant and each participating political subdivision under which debt is being issued;

(2) a description of the governing body and contact information for a person authorized to represent the political subdivision. Include name, title, address, phone, fax number, and e-mail address;

(3) the name, address, phone, fax number, e-mail address, and contact person for legal counsel, financial advisor, contract administrator, project engineer, and any other consultant representing the applicant;

(4) the prior three years audited financial statements, as applicable, and projected financial statements, including loan repayment. The financial documents must include the applicant's income statement, balance sheet and cash flow statement;

(5) documentation of attempts to obtain alternative financing, if applicable;

(6) a statement that financing is necessary because full financing is unavailable in traditional capital markets or credit has been offered on terms that would preclude the success of the project;

(7) a financial plan that shows how loan proceeds will generate income to repay the loan;

(8) the number of jobs to be created and/or retained in the state; and

(9) the project budget, including the most current itemized project cost estimates (include all costs, specifically construction, engineering services, legal, and fiscal costs, and funding sources and percentage contribution in a Sources and Uses Statement format). Identify source of these estimates, (i.e., engineer, finance director, financial advisor); etc].

(c) Applicant shall also include one (1) certified original of:

(1) a resolution/ordinance requesting financial assistance from the Commission [EDF] authorizing the submission of the application, and designating the official representative(s) for submitting the application, executing any necessary documents and appearing before the Commission;

(2) an affidavit executed by the official representative stating that the facts contained in the application are true and correct to the best of their knowledge and belief;

(3) an affidavit executed by the official representative stating that the application was approved by the governing body of the applicant in an open meeting;

(4) a certificate of compliance executed by an official representative which warrants compliance by the participating political subdivision with all representations in the application, all federal (where applicable), state, and local laws, and all rules/published policies of the Commission and EDT; and

(5) a statement of pending claims or litigation against the applicant that might affect the ability of the applicant to issue debt or that could affect the Commission's [EDF's] ability to recover its investment.

(d) Application and closing fee. Applicants [EDF] shall pay a [charge an application] fee provided as prescribed by the Bank for all applications, made payable to the Office of the Governor. In addition, successful applicants may be required to pay, upon financing by the Bank, a closing fee.

§4.5. *Availability of Funds.*

(a) Funds Commitment. If the project is approved by the Commission [office], funds become committed to the awardee subject to the sale of the general obligation bonds by the state.

(b) Letter of Commitment. The applicant will be required to submit a letter of commitment after the final approval of the project by the Commission [executive director].

(c) Upon sale of state-issued bonds, funds are disbursed to the awardee by the Comptroller of Public Accounts.

§4.6. *Awardee Responsibilities.*

In order to receive disbursement of loan funds that have been committed to them, awardees will be required by contract with the Commission [EDF] to:

(1) have a system established in writing to ensure that appropriate officials provide necessary internal reviews and approvals for the expenditure of funds and for monitoring project performance and adherence to state terms and conditions;

(2) have financial management systems that meet the requirements of the Commission [EDF];

(3) retain financial management records, supporting documents, statistical records, and other materials pertinent to the award until the debt is retired and make these records available to the Commission [EDF] upon request;

(4) be responsible for performing the duties and tasks described under all project loan agreements;

(5) provide the Commission [EDF] with copies of all project documentation required by federal or other financial partners;

(6) provide project demonstrations, site inspections, photo or other documentation, including written materials to substantiate benefit to the community's economy and enhancement of the military value of the facility as may be requested by the Commission [EDF];

(7) agree that the loan may be suspended or terminated if the awardee fails to comply with the [EDF] terms and conditions of the loan, or if the financial partnership is suspended or terminated;

(8) agree that when two or more entities are participating together as an awardee, if one or more of the entities does not fulfill its

loan repayment obligation, then the remaining entity or entities are still liable for repayment of the entire loan amount;

(9) agree that neither the Commission nor the Office of the Governor ~~[EDF]~~ shall ~~[not]~~ be held liable in the event of damages to persons or property which may occur in the course of activities conducted as a result of the award or its cancellation or withdrawal; and

(10) agree to such other terms and conditions as the Commission ~~[EDF]~~ may require.

§4.7. Office and Commission Responsibilities.

(a) In carrying out its duties and responsibilities under the Act, the Commission shall:

- (1) publicize the program to potential applicants;
- (2) work closely with loan applicants to ensure the application is complete and all relevant material is provided;
- (3) establish and conduct the evaluation process in a responsive manner to maximize the opportunity to acquire federal and other funding;
- (4) develop contracts with awardees that include sufficient performance measures, audit requirements, and reporting requirements to ensure prudence and due diligence in the expenditure of state funds; and
- (5) minimize reporting requirements that may be repetitive of reporting required by federal grant agencies or unnecessary for the effective monitoring of the program.

(b) Waiver. The Commission, in consultation with the Chief of Staff or his designee, ~~[executive director]~~ may waive any provision of this chapter upon a finding that the public interest would be furthered by granting the waiver.

§4.8. Reporting Responsibilities.

(a) After completion of the project, the awardee will provide milestones and updates as required by the contract.

(b) Throughout the project period, the awardee must provide copies of all reports required by federal agencies pursuant to the terms of individual federal grants received, within 30 days of their submission to the granting agencies.

(c) Failure to submit reports in a timely and satisfactory manner may result in the withholding of funds due or requested by the awardee. Failure to document post-completion requirements may result in the return of funds to Commission ~~[EDF]~~ as set forth in the contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2015.

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Shane Linkous

Assistant General Counsel

Office of the Governor

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For further information, please call: (512) 475-1475



SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §§4.30, 4.31, 4.34 - 4.36, 4.39, 4.40

Statutory Authority

The amendments are proposed under Government Code, §436.101, which provides the Texas Military Preparedness Commission may enact administrative rules necessary to administer its duties.

Cross Reference to Statute

Government Code, Chapter 489, as amended by Senate Bill 318, Senate Bill 503 and Senate Bill 1358, 84th Legislature, Regular Session.

§4.30. Introduction and Purpose.

(a) Background. The Texas Defense Economic Adjustment Assistance Grant Program (DEAAG) provides ~~[was authorized by the 75th Legislature to provide]~~ state funds to assist defense communities that have been or may be adversely or positively impacted by an anticipated, planned, announced, or implemented action of the United States Department of Defense to close, reduce, increase, or otherwise realign defense worker jobs or facilities. ~~[decreased defense expenditures and defense worker employment. Subsequently, the 79th Legislature amended the program to include defense communities that have been positively impacted and the 81st Legislature amended the program to include job retention.]~~

(b) The goal of the program is to increase and/or retain employment opportunities for dislocated defense workers and residents of adversely affected defense communities and reuse vacated property as efficiently as possible. The goal is to also assist positively affected defense communities that receive new, ~~[or]~~ expanded, or retained military missions as a result of the United States Department of Defense Base Realignment and Closure process.

(c) A local government entity is eligible for a grant if it is:

- (1) a municipality or county that is a defense community;
- (2) a regional planning commission that has a defense community within its boundaries;
- (3) a public junior college district all or part of which is located in a defense community;
- (4) a campus or extension center of the Texas State Technical College system located in a defense community;
- (5) a defense based development authority created under Chapter 379B, Local Government Code; or
- (6) a political subdivision having the power of a defense development authority created under Chapter 379B, Local Government Code.

(d) Grant Criteria:

- (1) To meet a matching money or investment requirement in order to receive from the United States Government assistance that is provided to allow the government entity to respond to or recover from an event listed in §486.003 of the Government Code;
- (2) Acquiring federal grant assistance or for sharing in the costs of purchases of property from the Department of Defense or its designated agent, new construction, rehabilitation, renovation or demolition of facilities;

(3) Construct infrastructure and other projects necessary to accommodate a new, expanded or retained [~~or expanded~~] military mission(s) at a military facility located in or near the local governmental entity;

(4) Construct infrastructure and other projects necessary to reduce the impact of an action of the Department of Defense that will adversely impact a defense facility located in or near the local governmental entity;

(5) [(4)] If the grantee is a public junior college or a technical college, grant proceeds may be used to purchase or lease equipment to train defense workers whose jobs have been threatened, lost, gained or retained; or to train workers to support military installations or defense facilities.

(e) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless indicated otherwise.

(1) Awardee--The local governmental entity whose application is approved by the governing board.

(2) Defense worker--

(A) An employee of the United States Department of Defense, including a member of the armed forces and government civilian workers;

(B) An employee of a government agency or private business, or entity providing a Department of Defense related function, who is employed on a defense facility;

(C) An employee of a business that provides direct services or products to the Department of Defense and whose job is directly dependent on defense expenditures; or

(D) An employee or private contractor employed by the United States Department of Energy working on a defense or Department of Energy facility in support of a Department of Defense related project.

(3) Defense worker job--A Department of Defense authorized permanent position or a position held or occupied by one or more defense workers for more than 12 months.

(4) Defense Installation [~~Facility~~]--A military base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including leased space, that is controlled by, or primarily supports, DoD's activities.

(5) Defense community--A political subdivision, including a municipality, county, or special district, that is adjacent to, is near, or encompasses any part of a defense base.

(6) New direct permanent job--A new employment position created by a qualified business that provides at least 1,820 hours of employment a year after the completion of the project and whose position is within the governmental entity's defense community and can be verified. A new direct permanent job can also include subcontractors to a qualified business so long as those jobs relate directly to the work being performed as defined in the DEAG application and who perform no less than 50 percent of the person's service for the qualified business in the government entity's defense community and can be verified.

(7) Retained jobs--A defense worker employed within the government entity's defense community before a Department of Defense action and is retained as a qualified employee by a qualified employer after the date on which the project is completed, employed at

1,820 hours annually and is located within the government entity's defense community and can be verified.

(8) Office--~~The~~ [~~Texas Economic Development and Tourism Division,~~] Office of the Governor.

(9) Commission--Texas Military Preparedness Commission. The Commission is attached to the Office of the Governor for administrative purposes.

(10) Director--The Director of the Texas Military Preparedness Commission or his designee.

(11) Financial partners--Federal and state agencies, private and public non-profit foundations, local taxing authorities, and private investors who agree to provide money for a project eligible for funding under this grant.

(12) Fiscal year--The State of Texas fiscal year, September 1st through August 31st.

(13) Application Deadline--Not later than 5:00 PM Central Time on the closing date indicated in the grant solicitation.

(14) Governing Board--The Commissioners of the Texas Military Preparedness Commission.

(15) Review Panel--The Defense Economic Adjustment Assistance Review Panel, a group of at least three and not more than five professional full-time employees from within the Office of the Governor, who evaluate grant applications and make grant award recommendations to the governing board.

(16) Qualified Business--A business that is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business within the government entity's defense community.

§4.31. Program Coverage.

State funds provided under the Defense Economic Adjustment Assistance Grant Program must be expended not later than the end of the state fiscal biennium [~~second full fiscal year after the fiscal year~~] in which the grant was awarded.

§4.34. Maximum and Minimum Awards.

(a) Amount. The minimum amount of award will be \$50,000. The maximum amount of award will be \$5 [~~\$2~~] million.

(b) Percentage. The governing board may provide up to:

(1) 50 percent of the amount of matching money or investment that the local governmental entity is required to provide for acquiring federal grants; or

(2) 50 percent of the local governmental entity's investment for qualifying redevelopment projects; or

(3) 80 percent of the amount of matching money or investment required in cases where the local governmental entity demonstrates to the Commission that resources are not available because of a limited local governmental entity budget; or

(4) 100 percent to a public junior college, a campus or extension center as defined in §486.003(a)(3) or (4) of the Government Code.

(5) The Commission may make a grant to an eligible local governmental entity without regard to the availability or acquisition of matching money in accordance with §436.202(d) of the Government Code.

(c) Certification.

(1) Local governmental entities are encouraged to acquire financial assistance for eligible development projects from a variety of sources including federal, state, local and private/public foundations. The Chief Financial Officer of the local governmental entity or the local governing body submitting the application will provide adequate certification showing reasonable local community efforts to acquire funding from other sources when the state is the only other financial partner.

(2) In submitting an application under subsection (b)(3) of this section, the Chief Financial Officer or the local governing body will certify that local community budget and resources are not adequate or available and shall provide specific information on local efforts to secure adequate funding. Justification should include an overview of the status of development sales tax efforts and bond authority.

(d) Community Support.

(1) Applicants shall provide a minimum matching money investment of 50 percent of the amount of DEAAAG funding being requested.

(2) The Commission may waive the 50 percent requirement to a 20 percent matching money investment of the amount of DEAAAG funding being requested where the local governmental entity demonstrates to the Commission that resources are not available because of a limited local governmental entity budget.

(3) When submitting an application under paragraph (2) of this subsection, the Chief Financial Officer or the local governing body making application will certify that local community budget and resources are not adequate or available and provide specific information on local efforts to secure adequate funding. Justification should include an overview of the status of development sales tax efforts and bond authority.

§4.35. *Application for Funds.*

(a) The Commission shall develop a formal application form to be included in the formal application process to assist in the evaluation of the grant submission. The application may require certain attachments and certifications.

(b) At a minimum the application for funds will include:

(1) A detailed overview of the project and the use of the funds;

(2) An overview of the event(s) that qualify the local government, under the eligibility criteria described in §4.32 of this title (relating to Eligibility for Funds), to apply for the grant program;

(3) An impact statement detailing the adverse, ~~or~~ positive, or proposed effect caused by the event(s) described in §4.32(a) of this title on the local governmental entity;

(4) Information on the community's efforts to secure other funding sources;

(5) A detailed financial plan for the project;

(6) A summary of the extent to which the local governmental entity has used its existing resources to promote local economic development and to promote private investment to create or retain jobs in the area;

(7) Efforts made by the government entity to retain or recruit qualified businesses;

(8) The amount of any previously awarded funds under this program and the number of jobs created from this award; and

(9) The anticipated number of new direct permanent jobs to be created or retained and the economic benefit to the community if the application is successful and the project is funded.

§4.36. *Processing and Review of Application.*

(a) The local governing body will submit applications for the program to the ~~Director of the~~ Texas Military Preparedness Commission.

(b) Applications or additional information received after the application deadline will not be considered.

(c) The Texas Military Preparedness Commission will:

(1) Publicize the program to potential applicants and provide grant solicitation information; and

(2) Evaluate each application for completeness.

(d) The Commission may assist a local government entity in applying for a grant.

(e) The Director will:

(1) Appoint a review panel consisting of himself and two to four full-time employees from the Office of the Governor evaluate applications; and

(2) Appoint a review panel chairman.

(f) The Review Panel will:

(1) Review applications, score, and make recommendations to the governing board;

(2) Provide evaluations and recommendations for grant awards for all grant applications received based on but not limited to the following criteria:

(A) If the effect on the local governmental entity is adverse or positive;

(B) If the effect on the local governmental entity is positive and if that affect was a result of the United States DoD base realignment and closure process;

(C) The significance of the number of jobs lost, gained or retained in relation to the workforce in the local governmental entity's jurisdiction and the effect on the area's current and/or projected economy and tax revenue;

(D) The extent to which dislocated defense workers will be retrained and/or retained as qualified employees within the defense community;

(E) The extent to which the local governmental entity has used its existing resources to promote local economic development;

(F) The amount of any grant(s) that the local governmental entity has previously received under this subchapter;

(G) The anticipated number of jobs to be created or retained in relation to the amount of the grant sought;

(H) The extent to which the grant will affect the region in which the local governmental entity is located; and

(I) If the project will have a negative effect on the encroachment of a defense base within the governmental entity's defense community.

(J) The added military value of the project in accordance with the guidelines established by the Department of Defense.

(K) The installation's most recent BRAC score, with preference given to those scoring below the national average.

(g) The Governing Board will:

(1) Review and score applications using the same criteria as the Review Panel;

(2) Ensure that one defense community is not favored over another in approving or disproving funding;

(3) Review and take into consideration those recommendations of the Review Panel and the governing board's own score;

(4) Review and approve or disapprove the award of the grant by a roll call majority vote; and

(5) Provide a statement of explanation for each application approved or disapproved that is not in agreement with the Review Panel recommendations.

§4.39. Commission and Office Responsibilities.

(a) In carrying out its duties and responsibilities under the Act, the Commission shall:

(1) Solicit grant applications and publicize application deadlines;

(2) Establish and conduct the evaluation and award process in a responsive manner to maximize the opportunity to acquire federal and other funding;

(3) Develop contracts with awardees that include sufficient performance measures, audit requirements, and reporting requirements to ensure prudence and due diligence in the expenditure of state funds; and

(4) Minimize reporting requirements that may be repetitive of reporting required by federal grant agencies or unnecessary for the effective monitoring of the program.

(b) Waivers. The Commission, in consultation with the Chief of Staff or his designee [executive director] may waive any provision of this subchapter upon a finding that the public interest would be furthered by granting the waiver.

§4.40 Reporting Responsibilities.

(a) Disbursement of funds will be made in accordance with the terms of the contract.

(b) After completion of the project, the awardee will provide the following milestones and updates as required by the contract.

(c) Throughout the project period, the awardee must provide copies of all reports required by federal agencies pursuant to the terms of individual federal grants received, within 30 days of their submission to the granting agencies.

(d) The awardee must provide all reports to the Commission as required by the terms of the grant contract, including, but not limited to, reports on any performance measures, milestone reports, and project completion reports. [As a performance measure to demonstrate economic benefit to the State of Texas, for two years upon completion of the project the governmental entity shall submit quarterly reports indicating the number of qualified jobs created or retained and the average annual salary for each position.]

(e) Failure to submit reports in a timely and satisfactory manner may result in the withholding of funds due or requested by the awardee. Failure to document post-completion requirements may result in the return of funds to the Commission as set forth in the contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2015.

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Shane Linkous

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: November 1, 2015

For further information, please call: (512) 475-1475



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.1

The Texas State Securities Board proposes an amendment to §113.1, concerning qualification of securities. The amendment adds a reference to §114.4, relating to filings and fees for federal covered securities, to the section that discusses state registration of Regulation A offerings. Section 114.4(a) operates to require a notice filing, payment of the fee that would have been paid if the securities had been registered, and, if applicable, a consent to service for federal covered securities that are offered and sold pursuant to Tier 2 of Regulation A.

Earlier this year, the Securities and Exchange Commission (SEC) adopted final rules that updated and expanded Regulation A, an existing federal exemption from registration for smaller issuers of securities. These rules provide for two tiers of offerings: Tier 1, for offerings of securities of up to \$20 million in a 12-month period; and Tier 2, for offerings of securities up to \$50 million in a 12-month period. The SEC rules operate to preempt state securities law registration and qualification requirements for securities offered or sold to "qualified purchasers" in Tier 2 offerings. The SEC defined "qualified purchasers" as all offerees and purchasers in a Regulation A, Tier 2 offering. Accordingly, securities offered and sold in a Regulation A, Tier 2 offering would be federal covered securities, as that term is defined elsewhere in the Board's rules, and would be subject to the filing and fee requirements in Chapter 114 of the Board's rules.

Patricia Louterback, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to apprise readers that some Regulation A offerings may involve federal covered securities, rather than registered securities in Texas, and direct the reader to the provisions that relate to filings and fees for federal covered securities. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.