

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
§1.13 Contested Case Hearing Procedures

Disclaimer

Attached is a draft of proposed 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13 Contested Case Hearing Procedures, that was approved by the TDHCA Governing Board on February 10, 2022. This action entails the repeal and replacement of the current rule. This document, including its preamble, is expected to be published in the February 25, 2022, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on February 25, 2022
End: 5:00 p.m. Austin local time on March 25, 2022

Comments received after 5:00 p.m. Austin local time on March 25, 2022, will not be accepted.

Written comments may be submitted, in hard copy or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs
Attn: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
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Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13 Contested Case Hearing Procedures

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13 Contested Case Hearing Procedures. The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the procedures to be used in the case of contested case hearings.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be a more clear rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed action affects no other code, article, or statute.

§1.13 Contested Case Hearing Procedures

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13 Contested Case Hearing Procedures

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13 Contested Case Hearing Procedures. The purpose of the proposed rule is to improve clarity, revise how notice will be served, and to denote that a hearing may be initiated at the request of the Board.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the procedures to be used in the case of contested case hearings.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand nor contract an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be a more clear rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

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(a) Purpose. The purpose of this section is to provide procedures for contested case hearings. This section does not apply to matters such as appeals to the Board of staff decisions or waivers, and this section does not in itself create any right to a contested case hearing, but merely provides a the process to be used for contested case hearings that are otherwise expressly provided for by law or rule.

(b) SOAH Designation. The Governing Board (the "Board") of the Texas Department of Housing and Community Affairs (the "Department") designates the State Office of Administrative Hearings ("SOAH") to hold all contested case hearings on the Board's behalf.

(c) Initiation of Hearing.

(1) Upon request from the Board or Upon receipt of a pleading or other document that is intended to initiate a contested case proceeding ~~before the Department~~, the Department shall determine if a contested case hearing is indicated under the relevant statutory provisions and rules. and, if so, staff will mark the file as a pending proceeding and refer the matter to SOAH for hearing generally within 45 calendar days, or such other lesser time as an applicable state or federal statute, rule, or regulation may require. The Department will notify the opposing party of any delay.

(2) SOAH shall acquire jurisdiction over a case when the Department completes and files a Request to Docket Case form or other form acceptable to SOAH, together with the notice of report to the Board required under Tex. Gov't. Code §2306.043 or other pertinent documents giving rise to the case. Once SOAH acquires jurisdiction, all subsequent documents created, sent, or received in connection with the proceeding that SOAH requires to be filed with it are to be filed with SOAH, with appropriate service upon the opposing party in accordance with this ~~section~~ chapter and the rules of SOAH.

(3) Except upon a showing of good cause or as an applicable statute or federal regulation may require, all contested case hearings in which the Department is a party shall be held at the location so determined by SOAH ~~at the offices of SOAH located in Austin, Texas~~.

(4) Nothing in this subchapter shall in any way limit, alter, or abridge the ability of the Department to enter into mediation or alternative dispute resolution at any time prior to or after the holding of the administrative hearing but prior to the adoption by the Board of a final order.

(d) Service of Notice of Hearing, Pleadings and Other Documents on Parties.

(1) Service of a notice of hearing or of pleadings or other documents shall be made electronically using the EFileTexas system (found at efiletexas.gov). If EFileTexas is not available to a party, by hand delivery, courier-receipted delivery, regular first class mail or certified mail to the party's last known address as shown on the Department's records, in accordance with §1.22 of this Title (relating to Providing Contact Information to the Department) shall be used.

(2) Service of pleadings and other documents shall be made in any manner provided for in SOAH rules.

(e) Proposal for Decision.

(1) After the conclusion of a hearing, the Administrative Law Judge ("ALJ") shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law, as modified by the ALJ's addressing of any exceptions and replies to exceptions timely filed with the ALJ in accordance with Tex. Gov't. Code §2001.062 and SOAH rules. The Executive Director shall place the proposal for decision and a proposed final order on the Board's agenda for discussion and possible action at a subsequent meeting of the Board.

(2) At a meeting of the Board where the proposed final order may be adopted, parties may provide testimony based on the record only, for changes to the proposal for decision or the proposed final order. No new evidence shall be submitted at the Board meeting. The Board may, on its own motion, remand to SOAH for any additional fact finding it determines is necessary, or, the Board may change a finding of fact or conclusion of law made by the ALJ, but only for reasons stated in Tex. Gov't. Code §2001.058(e). The Board may adopt a final order if it finds that the findings of fact and conclusions of law are supported by the evidence. Motions for rehearing may be filed and served in accordance with the Tex. Gov't. Code Chapter 2001 and the rules of SOAH.

(f) Disposition of Contested Cases on a Default Basis.

(1) In contested cases where the party not bearing the burden of proof at the hearing fails to appear, the ALJ may issue an order finding that adequate notice has been given, deeming factual allegations in the notice of hearing admitted, if appropriate, conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to TDHCA for disposition on a default basis. Pursuant to SOAH rules, a party has 15 calendar days after the issuance of a conditional order of dismissal and remand to file with SOAH a motion to set aside the order of dismissal and remand. On the sixteenth day after issuance, if no motion to set aside has been timely filed or if such a motion to set aside is not granted within the time limits provided for in SOAH's rules, the conditional order of dismissal and remand becomes final.

(2) When the order of dismissal and remand is final, the Executive Director shall prepare a proposed order for the Board's action containing findings of fact, as set forth in the notice of hearing, conclusions of law, and granting the relief requested by staff. The matter shall be placed on the Board's agenda for discussion and possible action at a subsequent meeting. Although public testimony is allowed, argument and evidence on the merits will not be considered at the Board meeting. Motions for rehearing shall be filed and served in accordance with Tex. Gov't. Code Chapter 2001 and the rules of SOAH.