

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
TDHCA Governing Board Approved Draft of  
10 TAC §1.12. Negotiated Rulemaking

Disclaimer

Attached is a draft of proposed new 10 TAC §1.12, Negotiated Rulemaking, that was approved by the TDHCA Governing Board on June 28, 2018. This action will entail the repeal of the current rule addressing this issue found at 10 TAC §1.17, Alternative Dispute Resolution and Negotiated Rulemaking, and two contemporaneous new rules being proposed to replace it (this rule at 10 TAC §1.12, and a rule for Alternative Dispute Resolution at 10 TAC §1.17). This document, including its preamble, is expected to be published in the July 13, 2018, 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 July 16, 2018  
End: 5:00 p.m. Austin local time on August 16, 2018

Comments received after 5:00 p.m. Austin local time on August 16, 2018, will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats 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](mailto:brooke.boston@tdhca.state.tx.us)

Written comments may be submitted in hard copy or email formats within the designated public comment period. 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  
Street Address: 221 East 11th Street, Austin, TX 78701  
Mailing Address: PO Box 13941, Austin, TX 78711-3941  
Main Number: 512-475-3800 Toll Free: 1-800-525-0657  
Email: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us) Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

## Preamble for proposed new 10 TAC §1.12. Negotiated Rulemaking

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §1.12, Negotiated Rulemaking. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code 2306.082 and Chapter 2008, to provide greater clarity by considering the issue of Negotiated Rulemaking separately from that of Alternative Dispute Resolution, and to make minor changes for clarity, improved readability and corrected citations.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;
6. The proposed rule will not expand an existing regulation;
7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and
8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 will be ensuring a rule that provides for clear guidelines for the Department's negotiated rulemaking procedures. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. 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, by fax to (512) 475-0220, or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time AUGUST 16, 2018.

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

## §1.12. Negotiated Rulemaking.

(a) Purpose. In accordance with Tex. Gov't Code §2306.082, the Department encourages the use of negotiated rulemaking procedures for the adoption of Department rules. Tex. Gov't Code Chapter 2008 describes the procedures for negotiated rulemaking including appointment of a convener; publishing notice of proposed negotiated rulemaking and requesting comments on the proposal; appointing a negotiated rulemaking committee; appointing an impartial third party facilitator; and proposing the resulting draft rule for public comment.

### (b) Request for Negotiated Rulemaking Process.

(1) Any person or organization that would like for the Department to use negotiated rulemaking for the adoption of a Department rule may submit such a request to the Department's Board Secretary. The proposal must identify: the rule proposed for negotiated rulemaking, potential participants for the negotiated rulemaking committee, possible third party facilitators, and a suggested timeline for the process. The Department may also on its own propose to use negotiated rulemaking.

(2) In determining whether a proposed negotiated rulemaking is appropriate in a particular situation, the Department and interested parties may consider any relevant factors, including:

(A) The number of identifiable interests that would be significantly affected by the proposed rule;

(B) The probability that those interests would be adequately represented in a negotiated rulemaking;

(C) The probable willingness and authority of the representatives of affected interests to negotiate in good faith;

(D) The probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule;

(E) The probability that negotiated rulemaking will not unreasonably delay notice and eventual adoption of the proposed rule;

(F) The adequacy of agency and public resources to participate in negotiated rulemaking; and

(G) The probability that the negotiated rulemaking committee will provide a balanced representation among all interested and affected parties. (Tex. Gov't Code §2008.052(d)).

(3) The Department generally will respond to the request within seven calendar days. If the negotiated rulemaking is not pursued, the Department will provide the party making the request with an explanation for the basis of the decision.

(c) If the Department decides to proceed with a negotiated rulemaking, it shall follow the process outlined in Tex. Gov't Code Chapter 2008 and costs associated with the negotiated rulemaking process will be handled as specified in Tex. Gov't Code §2008.003.