Disclaimer

Attached is a draft of proposed 10 TAC §1.10, Public Comment Procedures, that was approved by the TDHCA Governing Board on September 5, 2019. This action will entail the repeal of the current rule at 10 TAC §1.10, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the September 20, 2019, 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 September 20, 2019
End: 5:00 p.m. Austin local time on October 21, 2019

Comments received after 5:00 p.m. Austin local time on October 21, 2019, 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.
Preamble, including required analysis, for proposed repeal of 10 TAC §1.10, Public Comment Procedures

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.10, Public Comment Procedures. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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.

1. Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the public comment procedures at the Department’s Board meetings.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule’s applicability.

8. The proposed repeal will not negatively 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 this proposed 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 proposed repeal does not contemplate nor 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 proposed repeal is in effect, the
public benefit anticipated as a result of the repealed sections would be elimination of an outdated rule while proposing a new updated rule under separate action. 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 proposed repeal is in effect, enforcing or administering the repealed sections 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 September 20, 2019, to October 21, 2019, to receive input on the proposed repeal. 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 brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

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 amended sections affect no other code, article, or statute.

§1.10, Public Comment Procedures
Preamble, including required analysis, for proposed new 10 TAC §1.10, Public Comment Procedures

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.10, Public Comment Procedures. The purpose of the proposed rule is to clarify when the registration form method of comment can be used. These forms had been intended to allow those present at a public meeting, but not wishing to actually speak, to have their comment noted. A person who is not present at a Board meeting but wishes to present comment on an agenda item has always been able to submit a written comment in accordance with the rule. However, because of lack of clarity in the rule on the purpose of the registration form, in several instances the forms are being submitted by a third party, on the day of the board meeting and often in large numbers, purporting to be the opinions of persons who are not present at the meeting. The rule is being amended to make clear when registration form method of comment will be accepted. Other changes being reflected in the new rule include clarifying that deference may be provided to reading written communications from elected officials; clarifying that no new materials may be provided to the Board when the item for consideration is part of a competitive award process; and making other minor administrative and technical revisions.

Tex. Gov't Code §2001.0045(b) does apply to the new rule, as no exceptions are applicable, however, there are no costs associated with this action that would have warranted a need to be offset.

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


Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule governing the public comment process at meetings of the Department’s Board of Directors.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule 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 rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand, or repeal an existing regulation but merely revises procedures within a rule.

7. The new rule does technically increase the number of individuals to whom this rule applies, as there are those who may have attempted to utilize the registration form of public comment while not being present at a meeting of the Board and will no longer be able to do so; this rule change
will not permit the registration forms to be presented to the Board by persons not in attendance at the meeting.

8. The new rule will not negatively nor 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, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov’t Code Chapter 2306, Subchapter E.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.
2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.
3. The Department has determined that because this rule relates only to the public comment process used at meetings of the Department’s Board, there will be no economic effect on small or micro-business or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The new rule does not contemplate nor 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the public comment process used at meetings of the Department’s Board.

Texas Gov’t Code §2001.022(a) states that this “impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule...” Considering that the rule only relates to the public comment process used at meetings of the Department’s Board, there are no “probable” effects of the new rule on particular geographic regions.

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 sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for how public comment will be accepted at meetings of the Department’s Board. There will be no expected economic cost to any individuals required to comply with the proposed new rule.

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 sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.
REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the proposed new rule. 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 brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

§1.10. Public Comment Procedures.

(a) Purpose. The purpose of this section is to establish procedures for hearing public comment at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov't Code.

(b) Procedures for taking public comment.

(1) At each meeting open to the public the Governing Board (“Board”) shall provide opportunity for members of the public to make:

(A) General public comment after the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business, or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection; and

(B) Specific public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff’s presentation to be staff’s written presentation in the Board’s meeting book and posted on the Department’s website, or additional printed materials. It is the prerogative of the Board Chair to place reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application. The opportunity for any such testimony is to be limited to the appointed time when action on such matter is requested to be formally considered as a posted agenda item as described in paragraph (1)(B) of this subsection.

(3) At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak, or this may be directed by the Board Chair. If a large number of speakers wish to testify, the Chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.

(4) Individuals present at the meeting, not speaking who wish to register their positions for or against a posted agenda item, but do not wish to speak, may register their positions, for or against, do so by submitting a comment registration form with the secretary of the meeting, or another person designated by the Board Chair. The comment registration form, which the person wishing to register must sign, stating their commenter's name, whom they represent, the action item to which their comment relates, and their position, and must be signed by the
 commenter. At the end of the public comment on the item the Board Chair will have registered positions for and against read into the record. It is the Board Chair’s discretion to determine if similar comments submitted are aggregated and reported as a total number providing their position, as opposed to reading all names into the record.

(5) Additional limits on public comment.

(A) The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

   (i) the number of persons wishing to give public comment;
   (ii) the number of agenda items to be heard;
   (iii) the time available for the meeting; and
   (iv) the risk of losing a quorum of Board members.

(B) If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances. Deference to elected officials may include, but is not limited to reading letters from elected officials to the Board into the record.

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five (5) business days prior to the meeting at which they are to be. This is to enable staff to post them on the Department’s website not later than the third day before the date of the meeting, as provided for in Tex. Gov’t Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department’s website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

   (i) they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;
   (ii) they are not so voluminous as to cause inordinate delay while members of the Board and public review them;
   (iii) they are provided in hard copy format to all members of the public in attendance;
   (iv) they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department’s website; and
   (v) if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(7D) Persons seeking allowance of written materials under paragraph (6)(C) of this subsection should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

(E) If materials submitted relate to a competitive Application under any Department program, including Chapters 11 and 13 of this Title, such materials provided under either subparagraph (6)(A) or (6)(C) of this paragraph may be prohibited from presentation to the Board under applicable rules or statute.
(c) To the extent that subsection (b) of this section, or the Board Chair, place limitations on the amount of time that a member of the public may address the Board, a member of the public who addresses the Board through a translator will be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the Board.