ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.7

The Texas Ethics Commission (the commission) adopts an amendment to §18.7, relating to timely reports and complete reports. The amendment is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4551) and will not be republished.

The amendment is being made to expressly state that the filing deadline for reports filed electronically with the commission is midnight Central Time Zone.

The amendment will help commission filers who file required reports from a time zone other than the Central Time Zone.

No comments were received regarding the adoption of the amended rule.

The amendment is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2014.

TRD-201404092
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: September 14, 2014
Proposal publication date: June 13, 2014
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.64

The Texas Ethics Commission (the commission) adopts new §20.64, relating to reporting of the forgiveness of a loan. The new rule is adopted without changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1557) and will not be republished.

The new rule clarifies that the forgiveness of a loan and the settlement of a debt are required to be reported as in-kind political contributions unless certain criteria are met. The forgiveness of a loan is NOT reportable if the loan is made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made, and the forgiveness of the loan was made in the due course of business. Similarly, the settlement of a debt is NOT reportable if the settlement reflects the usual and normal business practice of the industry and is typical of the terms the commercial vendor offers to political and non-political persons alike.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. ADMINISTRATION OF THE STATE FRANCHISE TAX CREDITS FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

13 TAC §§13.1 - 13.8

The Texas Historical Commission ("Commission") adopts new rules under 13 TAC Chapter 13, §§13.1 - 13.8, concerning the

Texas Historic Preservation Tax Credit Program, with changes to the proposed text as published in the May 23, 2014, *Texas Register* (39 TexReg 3930).

The adoption of this chapter is needed to implement the Texas Historic Preservation Tax Credit Program which is the agency's responsibility under House Bill 500, 83rd Legislature, which enacted Subchapter S, Tax Credit for Certified Rehabilitation of Certified Historic Structures, Texas Tax Code §§171.901 - 171.909. Section 171.909 states that the commission and the comptroller shall adopt rules necessary to implement this chapter.

During the public comment period, written comments were received on the proposed Chapter 13 rules as follows.

For §13.1(1) a suggestion was received from Stonehenge Capital Company, LLC to add the clause "or for which it has a contract to purchase" to the definition of "Applicant". The Commission will incorporate the suggested change which allows a prospective owner to also be considered an Applicant.

A clarification was requested by Stonehenge Capital Company, LLC as to whether the application fee payment will be required to be made by check or certified funds. Payment protocols will be established in the Commission's application instructions.

Pertaining to the definition of Certificate of Eligibility in §13.1(6), a suggestion was made by Stonehenge Capital Company, LLC that the terms "Applicant" and "Owner" be used in the appropriate context. The term has been changed. In accordance with §171.901 of the Texas Tax Code, the Certificate can be issued only to the Owner upon completion of the project.

Stonehenge Capital Company, LLC suggested that in the definition of certificate of eligibility, §13.1(6), a reference be eliminated including information on the "aggregate eligible costs and expenses...as indicated in the audited cost report". The Commission agrees that the figures included in the audited cost report would be used and verified by the Comptroller and the cost report's submission could be eliminated from our application requirements and certificate. An estimated project cost figure will be required on the Commission's application form for Part B and C to establish the appropriate review fee. The requirement for submission of the audited cost report was also deleted from §13.5(b).

SWCA Consultants noted that the reference to a certified local district is unclear in §13,1(7), the definition for "Certified historic structures". The definition was expanded to include a reference to the federal process in 36 CFR 67.9 which allows districts to be designated locally. There are currently no districts having been certified in this manner in Texas.

Stonehenge Capital Company, LLC, Ramp Development, Cohn Reznick, Tax Incentive Capital LLC, and MacRostie Historic Advisors LLC recommended that the commission issue independent determinations for this program rather than relying on National Park Service determinations for the federal rehabilitation tax credit program. The Commission acknowledges that §171.901(2) of the Texas Tax Code gives the Commission authority to certify projects pursuant to this program. The Commission believes that the applicants will be better served by considering the opinion of the National Park Service with regard to certification of the rehabilitation. This approach provides consistency for applicants seeking both credits. The Texas Tax Code language clearly intends for the basis of eligibility for the state credit to be modeled on the federal program in every way possible including a determination of whether a rehabilitation project meets the Standards for Rehabilitation. Efficiencies are gained by the Commission receiving the National Park Service approval or denial of a Part 2 application, Description of Rehabilitation, and Part 3 application, Request for Certification of Completed Work, prior to the Commission's prior determination for Part B and Part C. This revised process is further outlined in §13.8(2).

Stonehenge Capital Company, LLC suggested deleting the reference to the 20% federal rehabilitation tax credit program in §13.1(16) of this chapter since a 10% credit is also available for non-historic buildings. Since the state program is intended for those certified historic buildings that would be eligible only for the 20% credit, the comment was not accepted.

Stonehenge Capital Company, LLC recommended that the definition of "Owner" in §13.1(18) be expanded to include non-taxable entities such as non-profits and governmental entities. The Commission has developed an amendment to the rules to include these parties as eligible applicants. The amendment to Chapter 13.1(18) has been proposed for adoption by the Commission at the July meeting and will be posted in the Texas Register for a 30 day public comment period.

Stonehenge Capital Company, LLC proposed to add "or has a leasehold interest" to the definition of "Owner" in §13.1(18). Our response is that leasehold interest is not acknowledged in the enabling statute.

Section 13.1(20), the "Placed in service" definition was revised to clarify that a certificate of substantial completion is that which is specifically provided by an architect as suggested by Stonehenge Capital Company, LLC.

Stonehenge Capital Company, LLC suggested changes to the definition at §13.1(22) concerning the term "Rehabilitation" that were rejected. The proposed definition is the definition used consistently by the Commission and the National Park Service.

Stonehenge Capital Company, LLC suggested that the terms "Applicant" and "Owner" be used in the accurate context. Pertaining to the qualification for the credit in §13.2(a)(1), according to §171.901 of the Texas Tax Code, it must be claimed by the Owner and an entity that has an ownership interest in the year during which the property was placed in service. The term was changed.

Regarding §13.2(b), Stonehenge Capital Company, LLC proposed to add a reference to the related Internal Revenue Code, §47(c)(2) for the description of eligible costs and expenses. The Commission accepted the suggestion for clarification.

SWCA Consultants stated that costs associated with the preparation of the tax credit application are considered an eligible cost attributable to the credit as per the Internal Revenue Code §47(c)(2). The Commission confirms that statement and has deleted the item from the list of ineligible costs and expenses in §13.2(c).

Stonehenge Capital Company, LLC suggested a change from 48 to 60 months for eligible costs to be incurred under §13.2(d)(1) to align with federal rehabilitation tax credit program requirements. The Commission made the requested change to allow a longer period for eligible costs to be incurred in consideration of projects that are on-going.

Stonehenge Capital Company, LLC's suggestion to change the term used in §13.2(f) from credit "available" to credit "earned" is

not accepted because the new term is not reflected in the applicable section of the Texas Tax Code.

A suggested change of terms by Stonehenge Capital Company, LLC was made in §13.3(b) and 13.4(b) from "Owner" to "Applicant" to reflect that an application (Parts A and B) may be submitted by a prospective owner of the property. The Comptroller specifically requested that the Commission collect ownership information as available in the Commission's application forms. A revision, therefore, has been made to allow the Commission to collect the applicant information if the applicant is not also the owner of the property.

Stonehenge Capital Company, LLC suggested that the signature of the Applicant rather than the Owner be required when requesting a determination of significance. The Commission has determined that the signature of both the current Owner and the Applicant should be obtained to ensure that the project information submitted is not provided unless the Owner's consent has been obtained by the Applicant. Sections 13.3(b)(9), 13.4(b)(8) were revised to reflect this change.

A clarification was requested by SWCA Consultants regarding the timing of the building's certification as a historic structure since the federal program allows a 30 month period after project completion for historical designation to be made. The Texas Tax Code is specific on this issue and clarification was added to §13.3(g) to highlight the requirement that certification as a historic structure must take place before the Commission issues its certificate of eligibility.

A correction was made in §13.3(h) concerning multiple buildings. Redundant text has been eliminated. This issue was raised by Stonehenge Capital, LLC.

A comment received from the City of Fort Worth's historic preservation office requesting that the Commission's reviews are conducted concurrent with the local review. The statute does not give the Commission authority to dictate the local review process nor can the Commission defer to a local review process. The Commission will make every effort to communicate with the local authorities having jurisdiction over the project's compliance with applicable preservation standards.

Stonehenge Capital Company, LLC suggested a timeframe for application review. The Commission is not required by the enabling statute to perform the reviews within a certain time period. Upon implementation of the program, the Commission will be better able to anticipate staffing levels required for the program and will establish by policy a reasonable turn-around for comments to be issued and determinations to be made.

Commerce Bank requested that changes be made in §13.6 and new language be added regarding tax credit certificates that would be issued by the Commission. Section 171.904(2)(b) of the Tax Code specifically states that the Commission may issue only a certificate of eligibility for the credit. By agreement between the Commission and the Comptroller, the establishment of the credit; the sale, assignment or allocation of the credit; and the right to audit the report are responsibilities of the Comptroller rather than the Commission. Rules will be established by the Comptroller in §3.598 of the Franchise Tax rules which will consider these issues. No changes were made to the Commission's rules.

Stonehenge Capital Company, LLC suggested a change regarding the eligibility requirements and proposed the term "separately" rather than "individually". Comment accepted.

The adoption of these rules implements Texas Government Code §442.005(q) and Texas Tax Code §§171.901 - 171.909.

No other statutes, articles, or codes are affected by these new rules.

§13.1. Definitions.

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--The entity that has submitted an application for a building or structure it owns or for which it has a contract to purchase.

(2) Application--A fully completed Texas Historic Preservation Tax Credit Certification Application form submitted to the Commission, which includes three parts:

(A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;

(B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and

(C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.

(3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows:
Figure: 13 TAC §13.1(3)

(4) Audited cost report--Such documentation as defined by the Comptroller in 34 TAC Chapter 3, Tax Administration.

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of eligibility--A document issued by the Commission to the Owner, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under §442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; §21.6 and §26.3(63) - (64) of this title; or

(C) certified by the Commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a certified local district as per 36 CFR §67.9.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 C.F.R. §67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit it must be reviewed by the National Park Service prior to a determination that it meets the requirements for a certificated rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission. For the purpose of notifications or filing of any applications or other correspondence, delivery shall be made via postal mail to: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276; or by overnight delivery at: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, 1700 North Congress Avenue, Suite B-65, Austin, Texas 78701.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United States Department of the Interior at 36 C.F.R. Part 60 and applicable National Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 171, Subchapter S of the Texas Tax Code.

(14) District--A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by §47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 C.F.R. §1.48-12(c), incurred during the project.

(16) Federal rehabilitation tax credit--A federal income tax credit for 20% of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in §47, Internal Revenue Code; 26 C.F.R. §1.48-12; and 36 C.F.R. Part 67.

(17) National Park Service--The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(18) Owner--A person, partnership, company, corporation, or other entity holding an ownership interest in a property, which can include full or partial ownership in fee simple.

(19) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by United States Treasury Regulation 26 C.F.R. §1.48-12(b)(2)(v). Each phase of a phased development can independently support an Application for a credit as though it was a stand-alone rehabilitation. If any completed phase of the rehabilitation project does not meet the requirements of a certified rehabilitation, future applications by the same owner for the same certified historic structure will not be considered.

(20) Placed in service--A status obtained upon completion of the rehabilitation project when the building is ready to be reoccupied and any permits and licenses needed to occupy the building have been issued. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or an architect's certificate of substantial completion.

(21) Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(22) Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(23) Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(24) Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined in 36 C.F.R. §67.7.

(25) Structure--A building; see also certified historic structure.

§13.2. Qualification Requirements.

(a) Qualification for credit.

(1) An Owner is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure if:

(A) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(B) the Owner has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation; and

(C) the total amount of the eligible costs and expenses incurred exceeds $5,000.

(2) A property for which eligible costs and expenses are submitted for the credit must meet Internal Revenue Code §47(c)(2) which includes:

(A) non-residential real property; or

(B) residential rental property.

(b) Eligible costs and expenses. Eligible costs and expenses means those costs and expenses allowed pursuant to Internal Revenue Code §47(c)(2). Such eligible costs and expenses, include, but are not limited to:

(1) expenditures associated with structural components as defined by United States Treasury Regulation §1.48-1(e)(2) including walls, partitions, floors, ceilings, windows and doors, stairs, elevators, escalators, sprinkling systems, fire escapes, components of central air conditioning, heating, plumbing, and electrical systems and other components related to the operation or maintenance of the building;

(2) architectural services;

(3) engineering services;

(4) construction management and labor, materials, and reasonable overhead;

(5) subcontracted services;

(6) development fees;

(7) construction period interest and taxes; and

(8) other items referenced in Internal Revenue Code §47(c)(2).

(c) Ineligible costs and expenses. Eligible costs and expenses as defined in Internal Revenue Code §47(c)(2) do not include the following:

(1) the cost of acquiring any interest in the property;

(2) the personal labor by the applicant;

(3) any cost associated with the enlargement of an existing building;

(4) site work expenditures, including any landscaping, sidewalks, paving, decks, outdoor lighting remote from the building, fencing, retaining walls or similar expenditures; or

(5) any cost associated with the rehabilitation of an outbuilding or ancillary structure unless it is certified by the Commission to contribute to the historical significance of the property.

(d) Eligibility date for costs and expenses.

(1) If the rehabilitated certified historic structure is placed in service on or after September 1, 2013, but before January 1, 2015, the Application may include eligible costs and expenses for the project incurred up to 60 months prior to the date the property is placed in service.

(2) If the rehabilitated certified historic structure is placed in service on or after January 1, 2015, Part A of the Texas Historic Preservation Tax Credit Certification Application must be submitted prior to the building being placed in service.

(3) While the credit may be claimed for eligible costs and expenses incurred prior to the filing of an application, potential applicants are urged to file Parts A and B of the application at the earliest possible date. This will allow the Commission to review the application and provide guidance to the applicant that will increase the chances that the application will ultimately be approved and the credit received.

(e) Phased development. Part B applications for rehabilitation of the same certified historic structure may be submitted by the same owner only if they describe clearly defined phases of work that align with a cost report that separates the eligible costs and expenses by phase. Separate Part B and C applications shall be submitted for review by the Commission prior to issuance of a certificate of eligibility for each phase.

(f) Amount of credit. The total amount of credit available is twenty-five percent (25%) of the aggregate eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

§13.3. Evaluation of Significance.

(a) Application Part A - Evaluation of Significance. Part A of the application requires information to allow the Commission to evaluate whether a building is a certified historic structure and shall be completed for all buildings to be included in the project. Part A of the application is evaluated against criteria for significance and integrity issued by the National Park Service.

(b) Application Requirements. Information to be submitted in the Part A includes:

(1) Name, mailing address, telephone number, and email address of the property owner(s) and Applicant if different from the Owner;

(2) Name and address of the property;

(3) Name of the historic district, if applicable;

(4) Current photographs (not smaller than 4"x6", printed at 300 ppi if digital) of the building and its site, showing exterior and interior features and spaces adequate to document the property's significance;

(5) Date of construction of the property;

(6) Brief description of the appearance of the property, including alterations, characteristic features and estimated date or dates of construction and alterations;

(7) Brief statement of significance summarizing why a property is:

(A) eligible for individual listing in the National Register of Historic Places;

(B) contributes to a historic district listed in the National Register of Historic Places or a certified local district; or

(C) contributes to a potential historic district, accompanied by:

(i) a map showing the boundary of the potential historic district and the location of the property within the district;

(ii) photographs of other properties in the district; and

(iii) justification for the district's eligibility for listing in the National Register of Historic Places;

(8) A map showing the location of the historic property;

(9) Signature of the Owner, and Applicant if different from the Owner, requesting the determination; and

(10) Other information required on the application by the Commission.

(c) Consultation with Commission. Any person may informally consult with the Commission to determine whether a property is:

(1) listed individually in the National Register of Historic Places;

(2) designated as a Recorded Texas Historic Landmark or State Antiquities Landmark; or

(3) certified by the Commission as contributing to the historic significance of a historic district listed in the National Register of Historic Places or a certified local district.

(d) Automatic qualification as certified historic structure. If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, then it is a certified historic structure and should be indicated as such on Part A of the application.

(e) Preliminary determination of significance. An Applicant for a property not listed in the National Register of Historic Places, neither individually nor as a contributing element to a historic district; not designated a Recorded Texas Historic Landmark nor State Antiquities Landmark; and not listed in a certified local district may obtain a preliminary determination from the Commission as to whether the property is individually eligible to become a certified historic structure

or is eligible as a contributing structure in a potential historic district by submitting Part A of the application. Determination will be based on criteria for listing in the National Register of Historic Places. Applications for a preliminary determination of significance must show how the property meets one of the following criteria for listing in the National Register of Historic Places and any applicable criteria considerations from the National Park Service.

(1) National Register of Historic Places criteria. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and one or more of subparagraphs (A) - (D) of this paragraph:

(A) Properties that are associated with events that have made a significant contribution to the broad patterns of our history; or

(B) that are associated with the lives of persons significant in our past; or

(C) that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(D) that have yielded, or may be likely to yield, information important in prehistory or history.

(2) Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(A) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(B) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(C) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.

(D) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(E) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(F) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(G) A property achieving significance within the past 50 years if it is of exceptional importance.

(3) Issuance of a preliminary determination of significance does not bind the Commission to the designation of an individual historic structure or district. Applicants proceed with rehabilitation projects at their own risk. If a structure is ultimately not listed in the National Register of Historic Places, designated as a Recorded Texas Historic Landmark, or certified as a contributing element to a local district pursuant to 36 C.F.R. §67.9, the preliminary determination does not become final, and the owner will not be eligible for the credit. The Commission shall not issue a certificate of eligibility until or unless the designation is final.

(f) Determination of contributing structures in existing historic districts. If a property is located in a district listed in the National Register of Historic Places or in a certified local district, an Applicant or an Owner of the property shall request that the Commission determine whether the property is of historic significance contributing to the district by submitting Part A of the application. The Commission evaluates properties located within historic districts listed in the National Register of Historic Places or certified local districts to determine whether they contribute to the historic significance of the district by applying the following standards:

(1) A property contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development.

(2) A property does not contribute to the historic significance of a district if it does not add to the district's sense of time and place and historical development, or if its location, design, setting materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Generally, buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old at the date of application.

(4) Certification of significance will be made on the basis of the appearance and condition of the property before beginning the rehabilitation work.

(5) If a nonhistoric surface material obscures a building's façade, it may be necessary for the owner to remove a portion of the surface material so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the significance of the historic district, it will be considered eligible to be a certified historic structure.

(g) Subsequent Designation. If a property is not automatically qualified as a certified historic structure, an owner of a property shall request that the Commission determine whether the property is of historic significance by submitting Part A of the application in accordance with subsections (e) and (f) of this section. Upon listing in the National Register of Historic Places, designation as a Recorded Texas Historic Landmark, or certification as a contributing element to a local district pursuant to 36 C.F.R. §67.9, a revised Part A should be submitted as stated in subsection (d) of this section. A building must be a certified historic structure prior to the issuance of the certificate by the Commission as required by §171.904(b)(1)(A) of the Texas Tax Code.

(h) Multiple buildings. If a property contains more than one building and the Commission determines that the buildings have been functionally related historically to serve an overall purpose (such as a residence and a carriage house), then the functionally related buildings will be treated as a single certified historic structure, regardless of whether one of the buildings is separately listed in the National Register of Historic Places or as a Recorded Texas Historic Landmark or is

located within a historic district. Buildings that are functionally related historically are those that have functioned together to serve an overall purpose during the property's period of significance.

(i) Portions of buildings. Portions of buildings, such as single condominium apartment units, are not independently eligible for certification. Two or more buildings or structures located on a single tract or parcel of land (or contiguous tracts or parcels), which are operated as an integrated unit (as evidenced by their operation, management and financing), may be treated as a single building or structure for the purposes of certification.

(j) Relocation of historic buildings. Relocation of a historic building from its original site may disqualify the building from eligibility or result in removal of designation as a certified historic structure. Applications involving buildings that have been moved or are to be moved will be evaluated on a case-by-case basis under the applicable criteria for designation as provided in this section. For a building listed in the National Register of Historic Places, the applicant will be responsible for updating the National Register of Historic Places nomination for the property or district, or the relocated building will not be considered a certified historic structure for the purpose of this credit. For a building designated as a Recorded Texas Historic Landmark, the applicant will be responsible for notifying the Commission and otherwise complying with the requirements of §21.11 of this title prior to undertaking any relocation.

§13.4. Description of Rehabilitation.

(a) Application Part B - Description of Rehabilitation. Part B of the application requires information to allow the Commission to determine whether the proposed rehabilitation work is consistent with the Standards for Rehabilitation and shall be completed for all projects and phases of projects. Part B may only be submitted with Part A of the application or after the Part A of the application has been submitted to the Commission.

(b) Application Requirements. If a property is a certified historic structure or receives a preliminary determination of significance, an Applicant or Owner of the property shall request that the Commission determine whether the rehabilitation plan is in conformance with the Standards for Rehabilitation. Information to be submitted in the Part B includes:

(1) Name, mailing address, telephone number, and email address of the Owner and Applicant if different from the Owner;

(2) Name and address of the property;

(3) Current photographs (not smaller than 4"x6", printed at 300 ppi if digital) of the building and its site, showing exterior and interior features and spaces adequate to document the property's condition immediately prior to commencement of work;

(4) A rehabilitation plan including drawings of the site plan and the building floor plans showing existing conditions and all proposed work with elevation drawings if applicable to illustrate any new construction, alterations, or additions. Drawings of the existing building condition and drawings of the proposed project are required to substantiate the scope of the project. If the project is a phased development, a description of all phases of work with the associated timeline shall be provided;

(5) Additional photos as necessary to completely illustrate all areas of the building that will be affected by the rehabilitation;

(6) A timeframe by which all work included in the project will be completed with a projected starting date and completion or placed in service date;

(7) An estimate of the aggregate eligible costs and expenses;

(8) Signature of the Owner, and Applicant if different from the Owner, requesting the review; and

(9) Other information required on the application by the Commission.

(c) Determination of certified rehabilitation. Part B rehabilitation plans are reviewed by staff of the Commission for consistency with the Standards for Rehabilitation as set forth below:

(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

§13.5. Request for Certification of Completed Work.

(a) Application Part C - Request for Certification of Completed Work. Part C of the application requires information to allow the Commission to certify the completed work follows the Standards for Rehabilitation and the rehabilitation plan as approved by the Commission in the Part B review. Part C may be submitted when the project is placed in service.

(b) Application requirements. Information to be submitted in the Part C includes:

(1) Name, mailing address, telephone number, and email address of the property owner(s);

(2) Tax identification number(s);

(3) Name and address of the property;

(4) Photographs (not smaller than 4"x6", printed at 300 ppi if digital) of the completed work showing similar views of the photographs provided in Parts A and B;

(5) Evidence of the placed in service date, such as a certificate of occupancy issued by the local building official or a certificate of substantial completion; and

(6) Other information required on the application by the Commission.

§13.6. Application Review Process.

(a) Application form. The Commission staff will develop the application and may modify it as needed over time. All required forms, including application Parts A, B, C, and amendment forms, are available from the Commission at no cost.

(b) Delivery. Applications will be accepted beginning on January 1, 2015 and continuously thereafter. Applications should be delivered to the Commission by mail, hand delivery, or courier service. Faxed or emailed applications will not be accepted.

(c) Application Part A - Evaluation of Significance. Part A of the application will be used by the Commission to confirm historic designation or to determine if the property is eligible for qualification as a certified historic structure.

(1) If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, the property is qualified as a certified historic structure.

(2) The applicant will be responsible for providing sufficient information to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a building is eligible for designation as a certified historic structure, the staff may request additional information from the applicant. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff review of Part A of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part A of the application.

(4) There is no fee to review Part A of the application.

(d) Application Part B - Description of Rehabilitation. Part B of the application will be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation.

(1) The applicant will be responsible for providing sufficient information, including photographs taken prior to the project, to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, staff may request additional information from the applicant, usually required to be submitted within 30 days. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(2) The Commission staff will review Part B of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part B of the application. In reviewing Part B of the application, the Commission shall determine if Part B is approved or not as follows:

(A) Consistent with the Standards for Rehabilitation as determined by the Commission. If all aspects of the Part B of the application meet the standards for rehabilitation, no additional information is required, and no conditions are imposed on the work, Part B is approved.

(B) Consistent with the Standards for Rehabilitation with specific conditions of work required. The Commission may determine that the work described in the plan must be performed in a specific manner or with specific materials in order to fully comply with the Standards for Rehabilitation. In such cases, the Part B may be approved with specific conditions required. For applications found to be consistent with the Standards for Rehabilitation with specific conditions required, the applicant shall provide written acceptance to the Commission of all specific conditions required. Otherwise the application will be determined to be not consistent with the Standards for Rehabilitation; applications found to be consistent with the Standards for Rehabilitation with specific conditions required may proceed with the work but will only be eligible for the credit if the conditions listed are met as part of the rehabilitation work. Failure to follow the conditions may result in a determination by the Commission that the project is not consistent with the Standards for Rehabilitation; or

(C) Not consistent with the Standards for Rehabilitation. Applications found not to be consistent with the Standards for Rehabilitation will be considered to be ineligible applications; the Commission shall make recommendations to the applicant that might bring the project into conformance with the Standards for Rehabilitation, however no warranty is made that the recommendations will bring the project into compliance with the Standards for Rehabilitation; the applicant may reapply and it will be treated as a new application and will be subject to a new application fee.

(3) An application fee is required to be received by the Commission before Commission review of Part B of the application. The fee is based on the estimated amount of eligible costs and expenses listed by the applicant on Part B of the application.

(A) Applicants must submit the fee with their Part B application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the estimated aggregate eligible costs and expenses indicated in the Part B application and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments to a pending application or approved project do not require additional fees.

(4) Amendment Sheet. Changes to the project not anticipated in the original application shall be submitted to the Commission on an amendment sheet and must be approved by the Commission as consistent with the Standards for Rehabilitation before they are included in the project. The Commission shall review the amendment sheet and issue a determination in writing regarding whether or not the proposed change in the project is consistent with the Standards for Rehabilitation.

(5) Scope of Review. The review encompasses the building's site and environment as well as any buildings that were functionally related historically. Therefore, any new construction and site im-

provements occurring on the historic property are considered part of the project. Individual condominiums or commercial spaces within a larger historic building are not considered individual properties apart from the whole. The scope of review for a project is not limited to the work that qualifies as an eligible expense. Likewise, all work completed by the current owner twenty-four (24) months before the submission of the application is considered part of the project, as is the cumulative effect of any work in previously completed or future phases.

(e) Application Part C - Request for Certification of Completed Work. Part C of the application will be used by the Commission to review completed projects for compliance with the work approved under Part B.

(1) The applicant shall file Part C of the application after the building is placed in service.

(2) The applicant will be responsible for providing sufficient information, including photographs before and after the project, to the Commission by which the Commission staff may verify compliance with the approved Part B. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, the application is incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff will review Part C of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part C of the application.

(A) If the completed project is found to be in compliance with the approved Part B and any required conditions and consistent with the Standards for Rehabilitation, and the building is a certified historic structure at the time of the application, the Commission shall approve the project. The Commission then shall issue to the applicant a certificate of eligibility that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(B) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project cannot, in the opinion of the Commission, be brought into compliance, or if the building is not a certified historic structure at the time of the application, then the Commission shall deny Part C of the application and no certificate of eligibility shall be issued.

(C) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project can, in the opinion of the Commission, be brought into compliance, the Commission may issue remedial conditions that will bring the project into compliance. The applicant shall complete the remedial work and file an amended Part C. If the remedial work, in the opinion of the Commission, brings the project into compliance, then the Commission shall issue a certificate of eligibility.

(4) An application fee is charged before Commission review of the Part C of the application based on the amount of eligible costs and expenses listed by applicant on Part C of the application.

(A) Applicants must submit the fee with their Part C application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the eligible costs and expenses as indicated in the audited cost report and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments do not require additional fees.

§13.7. Inspection.

(a) Inspection. The Commission may conduct an inspection of a project for which an application has been submitted to review current conditions, work completed in association with the current application, or previously executed phases of work.

(b) Notice. The Commission must give reasonable notice of not less than 48 hours to the applicant of its intent to inspect the property.

(c) Eligibility for the credit. Completed phases of work that do not meet the Standards for Rehabilitation are not eligible for the credit, and future phases of work performed by the same owner on the same building shall not be eligible for a credit under this program.

§13.8. Relationship with the Federal Rehabilitation Tax Credit Program.

(a) Projects seeking federal and state credits. Projects seeking certification for both the federal rehabilitation tax credit and the Texas Historic Preservation Tax Credit must meet eligibility requirements for each program separately.

(1) Applicants for both programs shall submit the first page of the Part A, B, and C application forms, accompanied by the Part 1, 2, and 3 application forms for the federal rehabilitation tax credit program, respectively.

(2) A project also submitted for the federal rehabilitation tax credit will be reviewed and approved or rejected by the National Park Service before the Commission issues its determinations under this chapter. The Commission will consider National Park Service decisions in rendering its determinations. A project that receives certification for the purposes of the federal rehabilitation tax credit will receive a certification of eligibility pursuant to the Texas Historic Preservation Tax Credit, provided that the building is a certified historic structure at the time the credit is taken.

(3) The review fees required per §13.6 of this title, Application Review Process, must be paid before the Commission will issue any determinations or certifications pursuant to the Texas Historic Preservation Tax Credit, even if the project has previously received certification by the National Park Service for the federal rehabilitation tax credit.

(b) Projects seeking state credit exclusively. If the applicant is eligible to claim a state credit exclusively, then the application forms for the Texas Historic Preservation Tax Credit provided by Commission shall be used. Determinations by the Commission that a project includes a certified historic structure and/or a certified rehabilitation apply only to the Texas Historic Preservation Tax Credit Program and are not binding on any other local or federal tax credit program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Historical Commission
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 76, §§76.1, 76.20 - 76.22, 76.24 - 76.26, 76.30, 76.62, 76.65, 76.70 - 76.72, 76.74, 76.76, 76.101 - 76.106, 76.108, 76.110, and 76.111, the repeal of current §76.100, and new §76.100, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3937). The amendments to §76.10 are adopted with changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3937). The rule will be republished.

The adopted amendments are necessary to implement the changes recommended by the Texas Department of Licensing and Regulation (Department) staff and the Water Well Drillers Advisory Council (Council) as a result of the 2012 rule review of 16 TAC Chapter 76, which included the appointment of a four member Council workgroup for this purpose. A summary of the justification was included in the notice of proposed rules published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3937).

The amendments to §76.10 add a definition for "injurious water," correct technical errors, and remove obsolete definitions.

Amendments to §§76.1, 76.20, 76.22, 76.24, 76.25, 76.30, 76.62, 76.65, 76.71, 76.72, 76.74, and 76.110 revise the rules in a non-substantive way to clarify a meaning or utilize plain language.

Amendments to §76.21 require an applicant for a driller or installer license to have two years of experience.

The amendments to §76.26 add the eligibility requirements for persons who supervise an unlicensed driller or installer assistant and add subsection (h) to include limitations on duties an unlicensed assistant can perform.

Amendments to §76.70 require geographic coordinates and longitude and latitude of each well on the State of Texas Water Well Report and Plugging Report.

The amendments to §76.76 update the Department's website address.

Amendments to §76.100 repeal the current §76.100 and reorganize and streamline the technical requirements of new §76.100.

Amendments to §§76.101, 76.102, 76.103, and 76.104 clarify language and procedures when encountering injurious water.

The amendments to §76.105 remove the option for a variance for a well-head below ground.

Amendments to §76.106 clarify requirements for venting wells.

The amendments to §76.108 clarify the procedures for disinfecting a well and when to install a check valve.

Amendments to §76.111 update references to the Texas Occupations Code.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3937). The deadline for public comments was June 23, 2014. The Department received comments from four interested parties regarding the proposed rules during the 30-day public comment period.

Public Comment: One individual believes there are apparently too many rules relating to drilling a well.

Department Response: The rules are required by statute, and are necessary to regulate the program effectively.

Public Comment: One individual was concerned that in new rule §76.100(c), the word "potable" water is used.

Department Response: In the past there was a requirement to chlorinate. The Department is of the opinion that it should not require how the water becomes potable.

Public Comment: One individual was concerned that the exemption to the licensing requirement in §76.30 should be reconsidered in light of current business practices, and that this rule is outdated.

Department Response: The basis for this rule is contained in Texas Occupations Code, §1901.052(b) and §1902.052(b). No regulation of the installation of well pumps and equipment is required of a landowner on his own property or property a person "controls for the person's own use" which has been interpreted to be "leasing". Additionally no license is required for an employee of a landowner or lessee. The Department takes the position that a statutory change to these sections would be required before the rule could be changed.

Public Comment: The Panola County Groundwater Conservation District (Panola GCD) expressed concern regarding three rule sections: §76.26(d)(2) regarding the rule's definition of "direct supervision" which allows unlicensed persons to be performing the activities of a well driller without a licensed well driller being onsite at all times; §76.101 regarding how a driller determines the meaning of, and whether he has encountered "injurious water"; and §76.104 regarding a driller's ability to follow the water well completion requirements of a 10-foot atmospheric barrier, then leaving the annular space open.

Department Response: The basis for §76.26(d)(2) is found in Texas Occupations Code, §1901.001(15) and §1902.001(5). The Department has the authority to clarify or define the term "direct supervision". To require a licensed driller to be onsite at all times is not reasonable, and would significantly negatively impact a driller's business. The GCD may enact rules which are more restrictive than TDLR's. The basis for §76.101 is found in Texas Occupations Code, §1901.254(a), and is intended to mean water injurious to vegetation, land, or other water. The Department has added a definition for "injurious water" to §76.10. Additionally, a driller uses his knowledge of the area and geology, and water tables and zones to determine where