

SUBCHAPTER CC. Advisory Committees
28 TAC §1.2828

1. INTRODUCTION. The Texas Department of Insurance (Department) proposes new Subchapter CC, §1.2828, relating to the Department's advisory committees. The new section is proposed pursuant to the Insurance Code §32.151 and §32.152, which require the Commissioner of Insurance (Commissioner) to adopt rules, in compliance with §39.003 of the Insurance Code and Chapter 2110 of the Government Code, regarding the purpose, structure, and use of advisory committees, and to establish by rule a process by which the Department shall periodically evaluate an advisory committee to ensure its continued necessity.

2. FISCAL NOTE. David Durden, deputy commissioner, Public Affairs Division, has determined that, for each year of the first five years the proposed new section will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposed section. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Durden also has determined that, for each year of the first five years the new section is in effect, the anticipated public benefit will be the routine evaluation of Department advisory committees to

ensure they continue to serve a purpose, and that the Department will be able to retain or develop committees to meet its changing needs.

There is no economic cost to persons required to comply with the section, and therefore there is no need to consider less costly alternatives to the new rule. There is no expected difference in cost of compliance between small and large businesses as a result of the new rule.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

In accordance with the Government Code §2006.002(c), the Department has determined that this proposal will not have an adverse economic effect on small or micro businesses because small or micro businesses are not subject to the proposal. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

5. TAKINGS IMPACT ASSESSMENT.

The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on April 2, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to David Durden, Public Affairs, Mail Code 113-3C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The new section is proposed under the Government Code Chapter 2110 and the Insurance Code §§32.151, 32.152, and 36.001. Chapter 2110 of the Government Code deals with state agency advisory committees.

Sections 32.151 and 32.152 of the Insurance Code provide that the Commissioner shall adopt rules regarding the purpose, structure, and use of advisory committees as well as a process by which the Department shall evaluate an advisory committee to ensure its continued necessity.

Section 36.001 of the Insurance Code provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Government Code Chapter 2110 and the Insurance Code Chapter 32, Subchapter E.

9. TEXT.

§1.2828. Advisory Committees.

(a) The department may create advisory committees as it deems necessary in accordance with Government Code Chapter 2010 to assist, advise, and provide expertise to the department, or as required by statute. Committees are not responsible for rulemaking or policymaking.

(b) The following provisions apply to an advisory committee established by the department, unless different requirements are imposed by statute:

(1) Role and responsibility.

(A) An advisory committee will review department issues and provide advice to the department.

(B) An advisory committee may make recommendations to the department.

(2) Composition.

(A) The commissioner or the commissioner's designee may appoint one or more department staff in a non-member position to assist each advisory committee. Such non-member positions are non-voting.

(B) The commissioner or the commissioner's designee will appoint a reasonable number of members, not to exceed 24, to each advisory committee.

(C) An advisory committee will be composed of members from diverse geographical areas who have demonstrated expertise in the area of the particular advisory committee.

(D) The committee members must select from among its members a presiding officer who presides over the advisory committee, establishes meeting agendas, and reports to the department.

(3) Membership.

(A) Members will be appointed for terms not to exceed four years. The commissioner or the commissioner's designee may appoint members for staggered terms. Members may serve after expiration of their term until the commissioner or the commissioner's designee appoints a replacement.

(B) If a vacancy occurs, the commissioner or the commissioner's designee will appoint a qualified replacement to serve the unexpired portion of that term.

(C) Membership is voluntary.

(D) Members serve on an advisory committee without compensation. Travel reimbursement and per diem expenses incurred in performing official duties of membership will be permitted only if authorized by the Legislature in the General Appropriations Act or through the budget execution process under the Government Code Chapter 317 if the advisory committee is created after it is practicable to address the existence of the committee in the General Appropriations Act.

(4) Meetings.

(A) An advisory committee must meet at least quarterly unless otherwise directed by the commissioner or designee.

(B) A meeting of the advisory committee may be called by the presiding officer, the commissioner, or the commissioner's designee.

(C) A simple majority of advisory committee members will constitute a quorum. An advisory committee may transact official business only when a quorum is present.

(D) An advisory committee must comply with the Open Meetings Act, Government Code Chapter 551.

(5) Training.

(A) Each member of an advisory committee must receive training regarding the Open Meetings Act.

(B) Each member of an advisory committee must receive training as to the department's mission, organizational structure, and goals.

(C) Each member of an advisory committee must receive training necessary to perform his or her official duties as a committee member.

(6) Evaluation.

(A) An advisory committee will regularly report to the commissioner or designee its recommendations.

(B) When requested by the commissioner or the commissioner's designee, an advisory committee must file a report with the department containing:

(i) the minutes of all meetings;

(ii) an executive summary including details as to the committee's work and usefulness; and

(iii) a list of recommendations.

(7) Duration.

(A) Unless an abolishment date is set by rule, an advisory committee will operate as long as the commissioner or the commissioner's designee deems necessary based on an annual evaluation of the need and usefulness of each committee.

(B) If an abolishment date for a committee is set by rule, the committee will be abolished on its abolishment date.