

OFFICE OF GENERAL COUNSEL

OVERVIEW

OFFICE OF GENERAL COUNSEL provides advice and counsel for the following:

- Board
- Executive Administrator
- Agency Staff

relating to the powers, authority, and responsibilities of the agency.

RESPONSIBILITIES

- Reviews and provides legal counsel on all matters that come before the Board;
- Drafts and reviews legal documents related to financial applications, contracts, and grants;
- Drafts rulemaking (new rules, amendments, repeals) and coordinates with the Texas Register;
- Analyzes and drafts proposed legislation;
- Interprets agency duties related to Open Meetings Act and Public Information Act;
- Advises staff about employment and human resources issues;

RESPONSIBILITIES (cont'd)

- Advises Board and staff on ethics issues
- Acts as liaison with outside bond and tax counsel for bond issuance and related matters;
- Acts as liaison with the Office of the Attorney General regarding litigation matters and advises and examines strategies regarding pending litigation;
- Board meeting planning and coordination; and
- Researches and advises on various legal and policy issues.

RESPONSIBILITIES (cont'd)

- Some attorneys in OGC are team members on the six WSI-RWPD teams to review financial assistance applications and closings.
- This team structure and the duties of WSI as a whole are addressed in more detail in WSI's training section.

COORDINATION WITH THE OFFICE OF THE ATTORNEY GENERAL

- Personnel actions and other lawsuits involving the Board;
- Petitions to review, set aside, modify, or suspend acts of the Board or to compel the Board or the EA to act on a matter; must be filed in Travis County court within 30 days; service is on the Executive Administrator. (Texas Water Code §§ 6.241 – 6.247); and
- Actions by the TWDB to compel a borrower to remedy a default. (Texas Water Code §§ 6.114 and 6.115)

REQUIRED TRAINING FOR TWDB BOARD MEMBERS

REQUIRED TRAINING:

Texas Water Code § 6.062

Administrative Procedure Act

Open Meetings Act

Public Information Act

Ethics and Conflicts of Interest

Public Funds Investment Act

OVERVIEW

State agencies are governed by many different provisions of law. Each state agency is initially created and defined by its enabling statute. Additionally, the Administrative Procedure Act, the Texas Public Information Act, and the Texas Open Meetings Act govern each agency's administrative law practices and open government laws:

- The Administrative Procedure Act provides general legal requirements that agencies must adhere to when adopting or amending rules.
- The Texas Open Meetings Act requires that all governmental bodies deliberate in public meetings, unless a closed or executive session is expressly authorized.
- The Public Information Act specifies that documents or records of a state agency are open, unless an express exception to disclosure applies to a particular record.

OVERVIEW

The Texas Water Development Board
is created in the Texas Constitution.

Article III, Section 49-c

RULEMAKING

A RULE:

- Must be authorized by statute;
- Has the force of law;
- Implements statutes enacted by the Legislature or prescribes procedures for applicants and petitions (e.g., desired future conditions), and others; and
- Must be adopted according to proper procedure.

RULEMAKING

The Administrative Procedure Act, Texas Government Code Chapter 2001, governs the procedures for proposing and adopting agency rules.

- Rule Proposal: Public comment period required.
- Rule Adoption: Summary of public comments and reasoned justification for adoption.

TWDB Rules

Adopted TWDB rules are published under [Title 31, Part 10 of the Texas Administrative Code](#) on the Secretary of State's website at <http://www.sos.state.tx.us/tac/index.shtml>.

- [Chapter 353](#) - Introductory Provisions - pertains to employee training and education, Historically Underutilized Business Program, public hearings, vehicle fleet services, Board/donor relationships, Texas Natural Resources Information System partnerships, collecting delinquent obligations, ethics/conflicts of interest, and enhanced contract monitoring.
- [Chapter 354](#) - Memoranda of Understanding - the Board is authorized to enter into Memoranda of Understanding (MOUs) pursuant to Texas Water Code § 6.104 and is also required to adopt by rule any MOU between the board and any other state agency.
- [Chapter 355](#) - Research and Planning Fund - pertains to funding for water research, flood control planning, and regional facility planning. These rules are authorized under Texas Water Code § 6.101, Chapter 15, Subchapter F, relating to Research and Planning, and Chapter 16, Subchapter C, relating to Planning.

TWDB Rules (cont'd)

- [Chapter 356](#) - Groundwater Management - pertains to designation of groundwater management areas and plan approval, submittal of and appealing approval of desired future conditions, and data collection and training. These rules are authorized under Texas Water Code § 6.101 and Chapters 35 and 36.
- [Chapter 357](#) - Regional Water Planning - pertains to designation of regional water planning areas and groups, consideration of existing planning efforts by regional water planning groups, development and format of regional water plans, adoption of regional water plans by regional water planning groups, and approval by the Board. These rules are authorized under Texas Water Code §§ 6.101, 16.051, and 16.053.
- [Chapter 358](#) - State Water Planning Guidelines - pertains to the Board's preparation, development, formulation, and adoption of the state water plan. Chapter 358 also includes requirements for water use surveys and water loss audits. These rules are authorized under Texas Water Code §§ 6.101, 16.051, and 16.053.

TWDB Rules (cont'd)

- [Chapter 359](#) - Water Banking - adopted under Texas Water Code Chapter 15, Subchapter K to establish the Texas Water Bank and facilitate water transactions to provide sources of adequate water for the State of Texas
- [Chapter 360](#) - Designation of River and Coastal Basins - delineates the boundaries of Texas' river basins and coastal basins, as required by Texas Water Code § 16.051(c).
- [Chapter 363](#) - Financial Assistance Programs - establishes the application procedures and requirements of the Board's state financial assistance programs. These rules are authorized under § 6.101 and applicable provisions of Texas Water Code Chapters 15, 16 and 17.
- [Chapter 364](#) - Model Subdivision Rules - prescribe minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions. These rules are authorized under Texas Water Code § 16.343 and must be adopted and enforced by counties and/or political subdivisions for EDAP funding.

TWDB Rules (cont'd)

- [Chapter 367](#) - Agricultural Water Conservation Program - implements Texas Water Code Chapter 17, authorizing the Board to provide grants, linked deposits, and loans to conserve and protect the state's water resources and provide resulting benefits to all of the state's citizens.
- [Chapter 371](#) - Drinking Water State Revolving Fund - pertains to the creation, capitalization by federal grants and state match, purposes and administration of the drinking water state revolving fund. These rules are authorized under Texas Water Code §§ 6.101 and 15.605.
- [Chapter 375](#) - Clean Water State Revolving Fund - pertains to the creation, capitalization by federal grants and state match, purposes and administration of the clean water state revolving fund. These rules are authorized under Texas Water Code §§ 6.101 and 15.605.
- [Chapter 377](#) - Hydrographic Survey Program - pertains to the program of technical assistance for hydrographic surveys established by Texas Water Code Chapter 15, Subchapter M.

TWDB Rules (cont'd)

- [Chapter 380](#) - Alternative Dispute Resolution - adopted to comply with Texas Government Code § 2260.052(c), requiring that the board adopt rules to establish negotiation and mediation provisions and the process of resolving claims for breach of contract asserted by a contractor against the board.
- [Chapter 384](#) - Rural Water Assistance Fund - pertains to financial assistance to rural areas so that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions can be met. These rules are authorized under Texas Water Code § 6.101 and Chapter 15, Subchapter R.

TEXAS OPEN MEETINGS ACT

Texas Government Code Chapter 551

- Board meetings must be open to the public.
- The Board must provide seven days' public notice of the date, time, location and subjects (i.e., agenda) for the meeting
- The Board may take official action ONLY in an open meeting.
- Board deliberations must occur in an open meeting unless clearly authorized and noticed for executive session.

TEXAS OPEN MEETINGS ACT

Texas Government Code Chapter 551

- “Meeting” --Deliberation by a quorum during which public business or policy is discussed, considered, or acted upon
- “Quorum” --A majority of the Board (2 members)
- A quorum may be present at the same time and location and not be considered a “meeting” when attendance is at any of the following and when there is no formal action, or if discussion about Board business is incidental to the function or event:
 - a social function unrelated to the Board’s public business;
 - a regional, state, or national convention or workshop;
 - a ceremonial event or press conference; or
 - a candidate forum, appearance, or debate to inform the electorate.

TEXAS OPEN MEETINGS ACT

Texas Government Code Chapter 551

- Board members must refrain from deliberating on public business outside the public meeting.
- Board members must take the required OAG training within 90 days.

TEXAS PUBLIC INFORMATION ACT

Texas Government Code Chapter 552

Definition of Public Information § 552.002(a)

“Public information” – Any information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body, and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body .

TEXAS PUBLIC INFORMATION ACT

Texas Government Code Chapter 552

Definition of Public Information § 552.002(a)

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

TEXAS PUBLIC INFORMATION ACT

Texas Government Code Chapter 552

- Individuals have the right to request public information from the Board.
- The Board is required to provide information as soon as possible (statute provides deadlines).
- Board staff handles these matters and is required to produce all relevant records and information requested.
- There is a legal process if Board staff believes certain requested information is excepted from disclosure.

STATUTORILY REQUIRED TRAINING

Open Meetings Act and Public Information Act

- Elected and appointed public officials are required by state law to receive training in Texas open government laws. The Office of the Attorney General offers free video training courses.
- The Attorney General of Texas web site contains links and information designed to assist public officials and public information coordinators in complying with the open government training requirement and Texas open government laws.

<https://www.texasattorneygeneral.gov/og/open-government-training>

REQUIRED TRAINING: ETHICS, STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

See Attachment 2 for information on the TWDB Ethics Policy. See Attachments 3 (a)-(e) for information from the Texas Ethics Commission regarding standards of conduct, conflicts of interest and personal financial statements and an outline of revolving door statutes.

BOARD MEMBER

Requirements for Office

Board member or spouse may not:

- Be employed by or participate in management of any entity receiving TWDB funds;
- Own, control, or have, directly or indirectly, more than 10% interest in a business that receives TWDB funding;
- Use or receive a substantial amount of goods, services or funds from TWDB; and/or
- Be an officer, employee, or paid consultant of a Texas trade association in the field of water planning or water financing, or be married to someone who is

Texas Water Code §§ 6.053 and 6.057

BOARD MEMBER

Requirements for Office

Board members must not:

- Have unexcused absences for more than half of the regularly scheduled meetings in a calendar year; Board can excuse absence by vote; or
- Be required, because of other employment, to be a registered lobbyist on behalf of professions related to operation of TWDB.

Texas Water Code §§ 6.054 and 6.058

STANDARDS OF CONDUCT

Board members, as employees, may not:

- Accept gifts that might influence or are intended to influence official conduct.
- Engage in business or other employment that would:
 - Require disclosing confidential information of the agency; or
 - Impair their independence of judgment in official duties.

Tex. Gov't Code § 572.051 (a) (1)-(3)

STANDARDS OF CONDUCT (*cont'd*)

Board members may not:

- Make or have personal investments that could reasonably be expected to create a substantial conflict between private and public interests
- Knowingly solicit or accept benefits for exercise of official powers or duties in favor of another.

Tex. Gov't Code § 572.051 (a) (4)-(5)

CONFLICT OF INTEREST

If a Board Member or spouse, or a person from whom the Board Member receives remuneration, has a financial or management interest in an entity appearing before the Board, the Board Member shall:

- Disclose the general nature of the interest in an open meeting; and
- Not participate in or vote on the matter.

Tex. Gov't Code § 572.058

CONFLICTS OF INTEREST

A Board Member:

- cannot hold another public office of emolument;
- may not hire or appoint a relative (nepotism)

Tex. Const. art. 16, § 40;

Tex. Gov't Code §573.041

ACCEPTANCE OF BENEFITS: Honoraria

- May not accept a benefit in consideration for services requested only because of their official position or duties (honoraria)
- May accept:
 - Food, lodging, and transportation for an event related to official business if the Board member is there for more than a perfunctory reason, such as to give a speech

Tex. Penal Code § 36.07

ACCEPTANCE OF BENEFITS: Gifts

- Never as consideration for official act
- Unless exception applies, no benefits or gifts from persons:
 - Subject to investigation by agency
 - Interested in contracts, payments, purchases transactions with the TWDB

Tex. Penal Code § 36.08

ACCEPTANCE OF BENEFITS: Gifts from Non-Lobbyists

- May accept:
 - Non-cash items less than \$50 value
 - Food, beverages, lodging, or transportation in any amount if:
 - Donor present
 - Board Member (or lobbyist, if applicable) reports on personal financial statement
 - If relationship exists independent from official status
- Tex. Penal Code § 36.10*

ACCEPTANCE OF BENEFITS: Gifts from Lobbyists

- Special restrictions for gifts by lobbyists including:
 - No transportation or lodging by lobbyists for pleasure trips
 - Transportation or lodging ONLY if related to official business of the agency

Tex. Gov't Code §§ 305.024, 305.025

FINANCIAL REPORTING

- FILE within 30 days of appointment
- Report gifts of more than \$250 unless from immediate family or from a lobbyist required to report gift
- Report transportation, meals, lodging in connection with a speech or other official business (applies to gifts received by spouse and dependent children)
- Filing can be electronic on State Ethics Commission web site

ABUSE OF OFFICE

- Use government property only for governmental purposes
- Frequent flyer miles may be used by individual members
- Do not use state time, money, or equipment:
 - For political campaigns
 - For passage or defeat of legislation
 - To influence results of election

Tex. Gov't Code §§ 556.004(b), 2113.013, 2203.004; Texas Penal Code § 38.02 (d)

REQUIRED TRAINING: PUBLIC FUNDS INVESTMENT ACT

STATUTORILY REQUIRED TRAINING

Public Funds Investment Act

Texas Government Code § 2256.007

- Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to the person's responsibilities within six months after taking office or assuming duties.
- Training is to include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Texas Government Code Chapter 2256.

REQUIRED TRAINING: CONTRACT TRAINING

STATUTORILY REQUIRED TRAINING

Contract Training for Governing Bodies

Texas Government Code § 656.053

- Comptroller required to adapt training program for Contract Managers and make it available to governing bodies
- Covers the requirements and goals contained in the State of Texas Contract Management Guide
- Identifies state agency requirements to comply with statutes, administrative rules and audit procedures regarding procurement method and contract source selection

APPENDICES

- Attachment 1: [2018 Administrative Law Handbook \(excerpts\)](#)
- Attachment 2: [TWDB Ethics Policy](#)
- Attachment 3:
 - 3a: [“A Guide to Ethics Laws for State Officers and Employees”](#)
 - 3b: [“Can I Take It?” brochure](#)
 - 3c: [“Can I Take This Trip?” brochure](#)
 - 3d: [“Personal Financial Statement” brochure and guide](#)
 - 3e: [Revolving Door Provisions](#)