



Appraisal District

DIRECTOR'S MANUAL

February 2002

CAROLE KEETON RYLANDER
Texas Comptroller of Public Accounts



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
111 EAST 17TH STREET
AUSTIN, TEXAS 78774

February 2002

Dear Fellow Public Servant:

As Comptroller, I know the complex nature of our tax laws. Through publications such as this, I am dedicated to helping you to understand them.

This book details all of the constitutional requirements, state laws, and rules that govern the property tax appraisal system. I hope this compilation will help you ensure that your appraisal district conducts its operations fairly and efficiently. That is what the public demands of us, and that is what we must deliver.

If you have any questions, don't hesitate to call my office toll free at 1-800-252-9121. My staff of trained property tax professionals will answer your questions honestly, fairly, and quickly.

As a taxpayer, I share your concerns about how state government spends your hard-earned money. That's why I have pledged to make sure you are receiving full value for each and every dollar you send to Austin. Thanks for all that you do for Texas. I guarantee you will find the Comptroller's office is a lean and efficient operation.

Sincerely,

Carole Keeton Rylander
Texas Comptroller

In compliance with the Americans with Disabilities Act, this document may be requested in alternative formats by calling the Office of the Comptroller at 512/463-4000. From a Telecommunications Device for the Deaf (TDD), our hearing impaired taxpayers may call toll free 1-800-248-4099, or they may call via 1-800-RELAY-TX. In Austin, the local TDD number is 463-4621.

Appraisal District Director’s Manual

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The Appraisal District Director's Manual

Introduction

As an appraisal district director, you participate in governing one of the largest and most progressive property tax systems in the nation. Texas appraisal districts appraise more than 15 million parcels of property annually.

A variety of state laws and rules govern appraisal district operations. The Texas Constitution addresses a number of aspects of property taxation. Article 8, Section 18, specifically requires the Legislature to provide for a system of appraisal for property taxes that produces a single appraised value for use by the taxing units in a county. Other constitutional provisions require appraisal at market value and provide for a number of special property tax exemptions. Finally, it is the Constitution that authorizes the Legislature to create local governments and provide them with taxing power.

The Property Tax Code contains most laws enacted by the Texas Legislature that deal with property taxes. First enacted in 1979, the code was a sweeping revision of the Texas property tax laws. It created appraisal districts, the State Property Tax Board (SPTB) and the modern framework for property tax administration.

Effective September 1, 1991, revisions to the Property Tax Code transferred most SPTB responsibilities to the Comptroller of Public Accounts. The code also authorizes the Comptroller to make further rules governing the operation and administration of appraisal districts. In addition, the Comptroller conducts studies to report on appraisal district levels of appraisal and may conduct performance audits of appraisal districts under certain conditions.

Ultimately, however, the chief appraiser and the appraisal district board of directors bear the responsibility of ensuring that the appraisal district conducts its operations in a fair and efficient manner. As government officials, it is critical that directors be responsive to the public and be aware of the laws and principles that apply to their office. This manual is intended to familiarize you with many of these laws and principles.

Common abbreviations used in this manual are:

ARB – appraisal review board
CAD – county appraisal district
TAC – tax assessor-collector

I. Eligibility Requirements

To be eligible to serve on the board, a person must have resided in the appraisal district for at least two years immediately preceding the date of taking office.

Persons who meet the basic residence test could still be disqualified from serving. These reasons for disqualification ensure directors are not exposed to conflicts of interest.

An employee of a taxing unit that participates in the appraisal district may not serve. However, an elected official or member of the governing body of a participating taxing unit may serve.

Selection Process

Voting taxing units select the appraisal district directors. Voting taxing units are the county, school districts, cities and certain conservation and reclamation districts. **Appendix A** explains the selection of directors.

The Tax Code provides that the county tax assessor-collector (TAC) serves on the appraisal district board of directors. The county TAC automatically will serve as a nonvoting district director, if the county TAC is not appointed to the board of directors under the regular process. If a taxing unit, such as the county commissioner's court, appoints the county TAC to the appraisal district board, then the county TAC serves as a voting member.

The county TAC does not have to meet the residency requirements for serving as a nonvoting director. The county TAC, however, is ineligible to serve as a nonvoting or voting director if the county TAC also serves as the CAD's chief appraiser. The county TAC is ineligible to serve as a nonvoting director if the county has contracted for the assessment and collection of county taxes with another taxing unit or with the CAD.

A school district may have annexed property from another school district in another county. The school district receiving the annexed property participates in selecting directors in each appraisal district in which the school has territory. The eligibility requirement in such situations is different: the individual must reside in the school district, and the school district must nominate the individual as a candidate for the appraisal district board.

Delinquent Taxes

Owing delinquent property taxes disqualifies a person from serving on the CAD board of directors or as chief appraiser. The person must own property on which delinquent property taxes have been owed for more than 60

days, after the date the person knew or should have known of the delinquency.

This disqualification does not apply if the person is paying the delinquent taxes under an installment payment agreement or has deferred or abated a suit to collect the delinquent taxes.

Family Relationships

A person may not be appointed or continue to serve on the board, if related within the second degree of consanguinity (blood) or affinity (marriage) to the following persons:

- an appraiser who appraises property for use in the appraisal district's appraisal review board proceeding, or;
- a tax representative who represents taxpayers for compensation before the appraisal district's appraisal review board.

A director who continues to serve knowing he or she is related in this manner to an appraiser or tax representative commits a Class B misdemeanor.

A director who is related to an appraisal district employee within the second degree by affinity or within the third degree by consanguinity may not serve as long as the relative remains employed by the appraisal district.

Appendix B shows the family relationships that may make a person ineligible to serve as a director. Tax Code Section 6.035(a) does not address whether these prohibitions from serving as a director for family relationships apply to the county TAC who serves as a nonvoting director. No attorney general opinions or court decisions deal with the question of whether a statute that generally makes individuals ineligible to serve on a board applies to an ex officio member of that board. If a county TAC has a relative as described above, the county TAC should seek the advice of legal counsel.

There also are no attorney general opinions or court decisions about whether a nepotism statute applies to the relative of a nonvoting director of a board. If Section 6.05 applies to a relative of the nonvoting county TAC, then the county assessor-collector should consult legal counsel.

Term of Office and Vacancy

Appraisal district directors serve two-year terms. Each term begins on January 1 of an even-numbered year. All directors serve the same two-year terms unless the taxing units have adopted staggered terms. The two-year term of

office does not apply to the county TAC who serves as a nonvoting director. And the following paragraph on vacancy does not apply to the nonvoting county TAC.

If a vacancy occurs on the board, the board notifies the voting units of the vacancy. The voting taxing units nominate by resolution candidates to fill the vacancy. All nominations are submitted to the chief appraiser within 10 days after receiving notice from the board of directors that a vacancy exists. The chief appraiser delivers a list of the nominees to the directors within the next five days. The board of directors selects by majority vote one of the nominees to fill the vacancy.

If the method of selecting directors is changed, the resolution establishing a new selection method may provide a method for filling vacancies. If the resolution does not specify a procedure, vacancies are filled in the manner described above.

Recalling a Director

A taxing unit may ask for the recall of any director the unit voted for in the appointment process. A unit may not ask for the recall of a director if the unit didn't cast any votes for that director in the last election. Recall starts when the unit files a resolution with the chief appraiser stating that the unit is calling for the recall of a named member. Within 10 days after a unit files a recall resolution, the chief appraiser must give written notice of the resolution to the presiding officer of each voting taxing unit.

Next, a recall election takes place. Only the taxing units that voted for the member may vote for the recall. The recall-voting taxing unit has the same number of votes that it cast in electing the member to be recalled. The unit votes by filing a resolution casting its votes in favor of recall. The resolution must be filed with the chief appraiser on or before the 30th day after the original recall resolution is filed.

The chief appraiser must count the recall votes within 10 days after the last day to vote. The member is recalled and is no longer a board member if the number of votes cast in favor of recall equals or exceeds a majority of the votes cast for the member. The chief appraiser must immediately notify the board chair and the presiding officer of the governing body of each recall-voting taxing unit of the results. If the chair is the subject of the recall, the board secretary must also be notified.

After a recall, the member's vacancy is filled by the taxing units that voted in the recall election. Each recall-voting taxing unit may nominate by resolution one candidate and is entitled to the same number of votes it used to appoint the recalled member. The recall-voting taxing units must submit the name of each nominee to the chief appraiser on or before the 30th day after the date the chief appraiser notified the unit of the recall election results.

Within 15 days after the last day for nominations, the chief appraiser must prepare and deliver to each recall-voting taxing unit a ballot listing the candidates alphabetically according to their last names. After 15 days, the chief appraiser counts the votes, declares the winner and notifies the chair, each taxing unit and the candidates.

If the method of selecting directors has been changed, the taxing units that voted for the member-to-be-recalled may recall him or her and appoint a new member by any method adopted by resolution of a majority of recall-voting taxing units. The adopted method must provide that each unit voting on the recall and appointment voted for the member being recalled and has the same number of votes it cast for the member being recalled.

Staggered Terms

The taxing units participating in the district may adopt staggered one- and two-year terms. To adopt staggered terms, two events must occur. First, three-fourths of the voting taxing units must adopt resolutions for staggered terms. Second, the voting taxing units must have changed the method for appointing board members to end cumulative voting. These two events may occur simultaneously.

The resolutions proposing staggered terms must be filed with the chief appraiser after June 30 and before October 1 of an odd-numbered year. If the chief appraiser determines that enough taxing units filed resolutions for the change, he or she must notify all taxing units of the change.

Staggered terms take effect on the following January 1. To start staggering terms, all members are appointed at one time as if staggered terms had not been adopted. As soon as possible after January 1, all members draw lots to determine who will serve one- and two-year terms.

The number of one-year and two-year members depends on whether the board has an even or odd number of members. Boards with an even number of members divide the one- and two-year terms in half. Boards with an odd number of members must have one more member with two-year terms than members with one-year terms. For example, a six-member board would choose three members to serve one-year terms. A five-member board would choose two.

Once the one-year terms expire, the voting units appoint members to fill those seats for two-year terms. Thus under staggered terms, the voting units will hold elections for part of the board every year.

The staggered term provision does not apply to the county TAC who serves as a nonvoting director.

Staggered terms may be rescinded if a majority of voting taxing units adopt resolutions rescinding the terms. The procedure for filing a rescission resolution is essential-

ly the same as that for adopting the change, but the rescission resolution must be filed between January 1 and October 1 of odd-numbered years rather than even-numbered years.

After a valid rescission, the terms of all current members expire on the next January 1, even if not completed. Voting units appoint new members.

Staggered terms are automatically rescinded if the district makes a change in the method of selecting directors that returns the selection method to one using cumulative voting.

II. Organization

The first thing the newly selected board must do is organize itself into an effective decision-making body. The board must be properly sworn into office, select officers, assign them responsibilities and schedule public meetings.

Oath of Office

The Texas Constitution requires each director to sign a notarized statement and take an oath of office before beginning a term. January 1 of the year in which the term begins is the earliest date the oath may be administered. Directors must be properly sworn before taking any official action. Board members complete two steps. First, the board member must sign the following statement before a notary public:

STATEMENT OF ELECTED/APPOINTED OFFICER
(Pursuant to Tex. Const. art. XVI, §1(b), amended 2001)

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

Affiant's Signature

Position to Which Elected/Appointed _____ City and/or County _____

Sworn To and subscribed before me by affiant on this _____ day of _____, _____

Signature of Person
Authorized to Administer Oaths/Affidavits

Printed Name _____ Title _____

(seal)

Effective November 30, 2001, appraisal districts should retain the notarized statement. They no longer send them to the Secretary of State in Austin, Texas. The director signs this statement before the oath of office is administered. The Secretary of State's Statutory Documents Division has this form available at:

[www.sos.state.tx.us/statdoc/statforms.shtml#auf\(form#2201\)](http://www.sos.state.tx.us/statdoc/statforms.shtml#auf(form#2201))

Once the oath has been filed, the member may take the oath of office. The oath of office reads as follows:

"I, _____, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of member of the Board of Directors of _____ County Appraisal District of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

This is Form #2204 on the Secretary of States Web page listed above.

The director must take and sign the oath before a notary public, county clerk, judge or other official authorized to administer oaths of office.

Directors are appointed officials of a political subdivision of the state and are bound by constitutional and statutory provisions that apply to appointed officials. Some of these laws are the nepotism statute, Art. 5996a, Tex. Rev. Civ. Stat. and the local officials' conflicts of interest statute, Chapter 171, Local Government Code.

Board Officers

Each year during its first meeting, the board meets to organize and choose officers. The board must choose a chair and secretary at the first meeting, but may also appoint a vice chair and other officers. A quorum of a majority of members must be present before the board takes any official action. The board may meet at any time at the call of the chair or as provided by board rule, but may not meet less than once each calendar quarter.

May the nonvoting county TAC serve as an board officer and be counted in the quorum for a board of directors meeting? Tax Code Section 6.04 addresses the officers and meetings of the appraisal district board. It does not distinguish between voting and nonvoting directors. Since it is not necessary for a chair or secretary to have the right to vote on matters before the board, it is likely that the board may elect its nonvoting county TAC as the board's chair or secretary.

Establishing a quorum is another matter. In an Opinion No. DM-160 (1992) concerning the Texas Board of Licensing for Nursing Home Administrators, the attorney general said that an ex officio, nonvoting member of that board did not count when determining whether there was a quorum. The opinion was based primarily on common law principles because the attorney general did not find any applicable statute.

However, when the Texas Legislature amended the statute concerning the appraisal districts' boards of directors to add a nonvoting member, the Legislature specifically deleted the reference to the board having five members, implying that the Legislature intended for a nonvoting county TAC to have the same status as voting members, except for the power to vote.

Because the law in this area is not clear, the appraisal district board should consult with its legal counsel to determine if the nonvoting county TAC counts in establishing a quorum for a board meeting.

The chair's duties include:

- Presiding over all board meetings;
- Ensuring the board operates according to accepted parliamentary rules of order and other procedures adopted by the board;
- Keeping all members of the board aware of information and materials distributed for the meeting; and
- Signing the minutes of each meeting after board approval.

The secretary's duties include:

- Posting notice of meetings as required by the Open Meetings Act;
- Keeping full and accurate minutes of meetings as required by the Open Meetings Act;
- Filing the minutes of each meeting with the appraisal office for the public inspection required by the Open Meetings Act;
- Sending copies of each meeting to each director; and
- Attesting to the minutes after the board approves and the chair signs them.

Board Meetings and the Open Meetings Act

The board of directors must meet at least once each calendar quarter -- four times each year. It may hold more

meetings. Meetings are held at the chair's call or according to the board's own procedures.

Each director must be notified of the meeting in advance. The secretary should send directors a copy of the minutes of the preceding meeting, a copy of the proposed agenda and other information before the meeting. Advance notice gives the directors time to review issues to be discussed during the meeting.

The meeting agenda should set out the time for starting the meeting, establish that a quorum of directors is present, state that the minutes from the prior meeting will be approved, provide a list of new and unfinished business, schedule reports from staff and list any other discussion or action items.

The board's meetings must allow time for the public to appear and speak about any appraisal district issue, including district and appraisal review board policies. The board also must permit its taxpayer liaison officer (if it has one) to report on the status of any complaint received by the board.

The board is subject to the Open Meetings Act, Chapter 551, Government Code, so all board meetings are open to the public. Some meetings on specific subjects may be closed after the board convenes in an open meeting.

There are three categories of meetings: regularly scheduled, called and emergency. The board, through its secretary, must comply with the Open Meetings Act before each of these meetings. Persons who believe the board violated the Open Meetings Act may sue the board in district court. If the court agrees the Act was violated, actions taken during the meeting are invalid. To protect the board's official actions, all members should be thoroughly familiar with the Act. If any question arises about the application of the Act or compliance with its provisions, the board should consult its attorney.

Posting Meetings

The board must post notice of all board meetings within a specific time and at a specific place before the meeting. The board must post meetings as follows:

Where to post. Post all notices at the appraisal district office in a place open to the public and at the courthouse in each county where the district's or its political subdivisions' administrative offices are located. Appraisal districts that include parts of four or more counties must post an open meeting's notice at the appraisal district office and at each county courthouse in which the district is located. They also must send the notice to the Secretary of State's main office in Austin for publishing in the *Texas Register*,

by mailing to Secretary of State's *Texas Register*, P. O. Box 12887, Austin, Texas 78711-2887.

What to post. State on all notices the date, hour and place of the meeting. They must state the subject to be discussed. Emergency meeting notices must also give the reason for the emergency.

When to post. Post all notices for regular and called meetings at least 72 hours before the meeting. Post notice of emergency meetings at least two hours before the meeting. If members of the media have requested notification by telephone or telegraph of any emergency meetings, the board must do so.

Emergency Meetings

The board may call emergency meetings only when the reason for the meeting is to respond to an imminent threat to public health and safety or to a "reasonably unforeseeable" situation demanding immediate action. Rarely, if ever, will the board deal with matters of public health or safety, so the only reason for an emergency meeting would be the reasonably unforeseeable situation.

"Reasonably unforeseeable" does not mean the board failed to post notice in time for a scheduled meeting or failed to place an item on the agenda. The "reasonably unforeseeable" situation must be one not within the control of the directors and that could not have been anticipated.

The district court may review the reason the board gives in its emergency meeting notice. If the court finds the reason was not a valid emergency, the court may invalidate any action the board takes during that meeting.

Executive Sessions

To hold an "executive" or closed session, the board must give notice of the meeting as required above. The notice must include the subject of the session. A quorum must be present at the meeting, and the board must convene in an open meeting before starting the closed session. The chair must

announce the section of the Open Meetings Act that authorizes closing the meeting and the topic to be discussed and then may close the meeting.

The board should carefully consider which persons it will allow to attend an executive session. The Act permits members of the board to meet, but does not state who, besides members, may be included. Generally, the board should admit only those persons whose attendance is necessary to the specific purpose of the executive session.

An executive session may be held for the following reasons only:

- To consult with an attorney about pending or contemplated court cases, settlement offers or other matters covered by the attorney-client privilege;
- To discuss leasing or acquiring real property, the value of real property or contracts for gifts or donations to the board, if making the discussions public would have an adverse effect on the board's negotiating position; or
- To discuss individual personnel matters. The purpose for closing this type of meeting is to protect the reputation of the employee. The employee to be

BOARD OF DIRECTORS, COYOTE COUNTY APPRAISAL DISTRICT

Notice of Public Meeting of the Appraisal District Directors:

Notice is hereby given that a public meeting of the Board of Directors of the Coyote County Appraisal District will convene at 7:00 p.m. on January 5, 2002, at the appraisal district offices at 901 Lavaca Street, Cactus, Texas, in said county.

The board will consider the following:

1. Call to Order
2. Approval of Minutes
3. Public Comment on Activities of the Appraisal District
4. Approval of Contract for Appraisal of Industrial Properties.

This notice is given pursuant to Texas Open Meetings Act, Chapter 551, Government Code.

 Rowdy Roadrunner
 Secretary
 Coyote County Appraisal District
 Board of Directors

discussed has a right to request that the meeting be open. In this case, the board may not hold an executive session. Because the purpose is to protect individuals, the board may not close a meeting to discuss general personnel matters, such as employee salaries.

The board must keep either a "certified agenda" or tape recording of each closed session. The certified agenda must include the chair's announcement of the beginning and end of the session, show the time and date, state the subject of the discussion and any other matter. The certified agenda should show more than one or two words about the subjects discussed. The courts have not spoken on exactly what should be in a certified agenda, so the Texas Attorney General recommends keeping a tape recording.

The purpose of the certified agenda or tape recording requirement is to aid the district court in determining whether a violation of the Open Meetings Act occurred. If

the session is challenged, the district court will order production and read the agenda or listen to the tape to decide the challenge. The agenda or recording is a closed record unless the court orders its production.

The board may not take any official action during a closed session. All official actions must be taken in an open meeting.

The Open Meetings Act requires the board to keep minutes or tape of all meetings, whether closed or not.

A sample open meetings notice for an appraisal district board is shown on page 9.

Compensation of Directors

Appraisal district directors may not receive a salary, per diem or other compensation for serving on the board. However, the appraisal district may reimburse for reasonable and necessary expenses incurred in the performance of a director's duties if included in the appraisal district budget.

III. Board Policies, Procedures and Duties

The appraisal district's effectiveness requires planning and cooperation between appraisal district directors, the chief appraiser, appraisal staff and taxing units. Groundwork for the system begins with the policies and goals established by the board of directors.

General Statement of Functions

The board of directors has the following primary responsibilities:

- Establish the appraisal district's appraisal office;
- Adopt the appraisal district's annual operating budget;
- Contract for necessary services;
- Hire a chief appraiser;
- Hire a taxpayer liaison officer (districts in counties having a population of over 125,000);
- Appoint appraisal review board members; and
- Make general policy on the appraisal district's operation.

District Policy Manual

Through its policies, the board determines the appraisal district's goals and operates as the decision-making body on appraisal district operations. It evaluates the effectiveness of the chief appraiser and overall appraisal process in reaching the final product -- an approved, certified appraisal roll meeting constitutional and statutory requirements.

The Property Tax Code and other laws require written policies covering some specific areas. But, a detailed written operating policy covering all operational aspects of appraisal district operations is preferable. The code provides broad policy in statutory form, but it does not cover every decision the board of directors or chief appraiser must make.

There are many good reasons to write a policy manual. Written procedures and policy are simply good management tools. Written policy permits the district's operations to continue uninterrupted if key employees leave. A manual explains the law, adapts local policies to meet local needs, answers questions the law leaves open and brings together all the requirements of the Texas Constitution, Property Tax Code, Comptroller rules and local options. A policy manual allows the board to make important decisions carefully and in advance, rather than in response to

crisis situations. A policy manual also helps educate the public and others about appraisal district operations.

Required Written Policies

The law requires the board to have some specific written policies. The board may include these policies in the policy manual.

An appraisal district board must develop a written plan describing how non-English speaking and disabled persons have access to the appraisal district's programs. At a minimum, such a plan should show how the district will obtain foreign language and sign language interpreters, provide access to those in wheelchairs and give telephone services to the deaf.

The board must have a written policy showing citizens how to make complaints and how the board handles and resolves complaints. The board also must prepare and make available to the public written information explaining the board's functions and protest procedures. The board must include in the complaint policy provisions the process for keeping files on all complaints and for notifying the complainant at least quarterly of the status of the complaint until resolved. The district's taxpayer liaison officer (if one is appointed) is required to implement these policies.

Finally, the board must have a policy providing the public an opportunity to appear and speak at board meetings on any subject under the board's jurisdiction. The policy must provide reasonable time for the public to speak about appraisal district and appraisal review board procedures and for a report from the taxpayer liaison, if one is appointed, about complaints. The liaison officer, if one is appointed, is responsible for administering these procedures, too.

The outline in **Appendix C** lists items to consider in a policy manual. The Comptroller does not write or suggest any particular local policies other than those required by law, but this review may help directors draft or update a manual.

Statutory Functions

Although Property Tax Code Chapter 6 contains most functions of the board of directors, some functions are located in other chapters. Some specific code functions include:

- The board must establish an appraisal office in the county in which the district is established. The board may create branch offices outside the county for the convenience of persons living outside the

- county, but must be located inside the appraisal district. (Section 6.05(a))
- The board has the power to approve or disapprove the request of a taxing unit that lies in two or more counties to be served only in that appraisal district. (Section 6.02(b))
 - The board is responsible for notifying all taxing units of a vacancy on the board and for selecting a replacement from nominees submitted. (Section 6.03(l))
 - The board may change the number of directors or method of selecting directors, or both, if all voting units agree. (Section 6.031(a))
 - The board elects from its members a chair and secretary at its first meeting of the calendar year. (Section 6.04(a))
 - The board may contract with another appraisal office or taxing unit in the district to perform the appraisal district's duties. (Section 6.05(b))
 - The board must appoint the chief appraiser. (Section 6.05(c))
 - In appraisal districts located in counties having populations of more than 125,000, the board must appoint a taxpayer liaison officer. (Section 6.052(a))
 - The board must provide certain written policies. (Section 6.04(d), (e), (f) and (g))
 - The board must adopt an annual budget before September 15, after holding a public hearing and meeting all requirements of the Property Tax Code. (Section 6.06(b))
 - The board must give public notice of the budget and budget hearing by publishing a budget summary in a newspaper of general circulation in the appraisal district at least 10 days before the public hearing on the budget. (Section 6.062(a))
 - The board may amend the approved operating budget after giving notice to taxing units. (Section 6.06(c))
 - The board must adopt a new budget within 30 days after its budget is disapproved by the taxing units. (Section 6.06(b))
 - The board may authorize the chief appraiser to disburse appraisal district funds. (Section 6.06(f))
 - The board must, through the chief appraiser, refund any unencumbered surplus of taxing unit funds paid in during the year by crediting each taxing unit's budget allocations for the next fiscal year. If a taxing unit that participated in the appraisal district in the prior year is not participating in the district in the year a surplus is to be allocated, the board must refund the proportionate surplus amount to the taxing unit within 150 days after the end of the fiscal year. (Section 6.06(j))
 - The board must give its advice and consent to the chief appraiser's appointments to the agricultural advisory board. (Section 6.12(a))
 - The board must comply with records retention laws for the preservation, microfilming, destruction or other disposition of records. (Section 6.13)
 - The board may change its fiscal year if three-fourths of the taxing units agree. (Section 6.06(i))
 - The board may adopt staggered terms if three-fourths of the taxing units agree. (Section 6.034(a))
 - The board and the taxing unit's governing body must agree to an estimated budget allocation for new taxing units. (Section 6.06(h))
 - The board may change the appraisal district's method of financing with the consent of all taxing units. (Section 6.061(a))
 - The board designates the district depository at least once every two years. (Section 6.09(c))
 - The board receives taxing units' resolutions disapproving board actions. (Section 6.10)
 - The board must follow competitive bidding procedures for contracts requiring expenditure of more than \$15,000. (Section 6.11(a))
 - Through the Interlocal Cooperation Act, the governing body of a taxing unit may contract with the board to assess or collect taxes. (Section 6.24(a))
 - The board of directors must appoint appraisal review board members and has the power to change the number of appraisal review board members. (Section 6.41(b) and (d))
 - The board must also adopt and implement a policy for the temporary replacement of an appraisal review board member. (Section 41.66(g))
 - The board approves contracts with private appraisal firms to perform appraisal services, subject to approval by the chief appraiser. (Section 25.01(b))
 - The board of directors and chief appraiser must establish a plan for reappraising all real property in the district at least once every three years. (Section 25.18(a) and (b))

- The board may purchase or lease real property or construct improvements necessary to establish an appraisal office if approved by three-fourths of the voting taxing units. (Section 6.051(a))
- The board may convey real property owned by the district if approved by three-fourths of the voting taxing units and the proceeds are apportioned to the units according to the taxing unit's budget allocation. (Section 6.051(c))
- The board must have an annual financial audit conducted by an independent certified public accountant and deliver a copy of the audit to each voting taxing unit. (Section 6.063)
- The board may, by resolution, prescribe that particular actions of the chief appraiser concerning appraisal district finances or administration are subject to board approval. (Section 6.06(f))
- The board may approve the chief appraiser's request to appeal an appraisal review board order to district court. (Section 42.02)
- The appraisal district (i.e., board of directors) may be sued by the taxing units to compel the district to comply with the provisions of the Property Tax Code, Comptroller rules or other applicable law. (Section 43.01)

Work Program

To help the chief appraiser develop the appraisal roll, the board may adopt by resolution a work program developed by the chief appraiser. At a minimum, a work program shows the appraisal office tasks or functions and the months to initiate and complete the tasks.

The work program should include at least a one-year projection and should coordinate with Property Tax Code requirements, Comptroller rules, board policies and budget planning. A sample work program appears in **Appendix D**.

Limited Appraisal Authority

The board's authority over appraisals is limited. The board does not appraise property or review values on individual properties. The law assigns these tasks to the chief appraiser and the appraisal review board, respectively.

The board has no authority to officially review appraisal review board decisions. The board has no business reviewing exemptions, qualification for special appraisal or taxability determinations.

The board does have some authority over appraisals through its duties to contract and budget. Through its con-

tracting authority, the board determines how appraisals are performed -- through in-house appraisal, a private appraisal firm or both. The district's operating budget reflects the board's decisions on handling appraisals. The board of directors also exercises its influence when it works with the chief appraiser to establish a plan for reappraising real property at least once every three years.

The board exercises some authority over appraisals when it grants the chief appraiser its approval to appeal appraisal review board decisions to district court. The chief appraiser must have written approval from the board of directors to appeal an appraisal review board order, settle lawsuits and direct litigation.

Through its policy-making power, the board may adopt policies outlining the chief appraiser's authority.

Nepotism

Board members are subject to two nepotism provisions: a law specifically aimed at the appraisal district's board members, Section 6.05, Property Tax Code; and the general nepotism statute, Art. 5996a, Tex. Rev. Civ. Stat.

Section 6.05(f) prohibits relatives of board members from being employed by the appraisal district. The appraisal district may not employ an individual or the spouse of an individual who is related to the district director within the third degree by blood (consanguinity) or the second degree by marriage (affinity).

This rule applies to any of the following relatives of the director or that person's spouse: parent (including adoptive), child (including adoptive), stepparent, stepchild, grandparents, grandchildren, brothers and sisters. In addition, the rule applies to the spouses of the board member's relatives listed previously. Great grandparents, great grandchildren, aunts, uncles, nieces and nephews are also included; however, spouses of these persons are not included in the prohibition.

Section 6.05(f) contains no exception for relatives employed when the board member takes office. If one of these relatives works for the appraisal district, either the relative or the director must resign.

Section 6.05(g) applies to chief appraisers and provides that the appraisal district may not employ or contract with persons related to the chief appraiser or his or her spouse within the first degree by blood or marriage. This includes parents, children (including adoptive), spouse, parents-in-law, stepparents, stepchildren or the spouses of any of these persons.

Appendix B shows family relationships that may affect a director or chief appraiser under the nepotism statute.

Conflicts of Interest

Board members are subject to two conflict of interest statutes. A conflict of interest occurs when a person in government has personal or business interests that may conflict with the interests of the people. Chapter 171, Local Government Code, is a conflict of interest statute that applies to all local officers, including appraisal district directors. The Property Tax Code Section 6.036 also places conflict of interest provisions on directors.

Local Officials' Conflict of Interest

Under Chapter 171, Local Government Code, appraisal district directors are prohibited from knowingly participating in a vote or decision on any matter involving a business entity or real estate in which the member has a substantial interest. The law defines a "substantial interest."

Interest amount. A "substantial interest" is defined as an interest, held by members or their relatives in the first degree by blood and marriage, that is:

- 10 percent or more of the voting shares or stock in a business entity;
- \$15,000 or more of the fair market value of a business entity;
- 10 percent or more of the member's gross income for the previous year is from the business entity; or
- a legal or equitable ownership of real property worth at least \$2,500 of the fair market value of the property.

Business entities include corporations, partnerships, holding companies, sole proprietorships, joint-stock companies, receiverships, trusts or any other entity recognized in law, including non-profit corporations.

Substantial interests also include any interest held by relatives by affinity (marriage) and by consanguinity (blood) in the first degree in business entities and real estate. A member is in conflict as to relatives' interests only if the member knows about the interest. The law does not require a member to procure financial statements from the member's relatives.

When a member has a substantial interest in a business entity, Chapter 171 applies only if the board's action will have a special economic effect on the business entity that is different from its effect on the public. For example, if the matter involves all commercial business in the district and the member has an interest in one of these businesses, the effect of the board's action will be felt by all the businesses in town. The member having an interest in the business may vote in this case. If the matter involves only the member's business, the board's decision will not touch the rest of the public and the member may not vote on the matter.

If the interest involved is in real property, a member should consider whether it is reasonably foreseeable that the action would have a special economic effect on the value of the property that is different from its effect on the public. If the action would not have a special economic effect on the member's real property, the member may vote on the matter.

Conflicts with Tax Code. Directors must be cautious when using the special economic effect provision to vote on a contract involving a business entity because the exception may conflict with the Property Tax Code. The Code prohibits a director from being on the board if the board enters into a contract with a business entity and the member has a "substantial interest" in the business as defined by Section 6.036, Property Tax Code (see next section). The code provision overrides the general rule.

Chapter 171 conflicts with the Property Tax Code in another respect. Chapter 171 allows a governing body to contract for services or personal property with a business entity in which a member of the body has a substantial interest if that business is the only one that could provide the needed services or product or is the only one bidding on the contract.

This provision could conflict with Section 6.036, which prohibits a member having a substantial interest under that section from serving on the board. Again, the more specific code provision controls. Even if the business is the only one in the county, the board may not contract with it if a member of the board or appraisal review board has a substantial interest in the business as defined by Section 6.036.

Affidavit and no participation. Under the Chapter 171 conflict law, a member who has a substantial interest in a matter before the board of directors must do two things to avoid committing a crime:

- File an affidavit declaring the extent and nature of the interest in the entity or property with the appraisal district's record keeper; and
- Abstain from voting or participating in discussions on any issue involving the interest.

Discussions include any talk about the subject in which the member has a substantial interest. For example, if the board of directors is involved in a lawsuit involving land in which a member has a substantial interest, the member may not sit in on settlement discussions. When abstaining, the member should leave the board table and sit in the audience or leave the meeting room.

A board member who has a substantial interest in a business or real estate is also barred from acting as a surety on any official bond required of the appraisal district or as a surety for a business that has a contract, work or other business with the district.

Violation. A violation is a Class A misdemeanor. In addition to criminal penalties, the district's action involving a conflict of interest may be rendered void if the action would not have been adopted without the vote of the person who violated the act.

Rulings. The Texas Attorney General in Opinion DM-259 (1993) found no conflict of interest for a registered property tax consultant to also serve as an appraisal district director. The opinion also held that Section 171.004(a), Local Government Code, concerning a substantial interest in a matter before the board, applies if a consultant performs property tax consulting services in the same appraisal district. The opinion held that no statute limits an appraisal district director from performing property tax consulting services in another appraisal district.

Property Tax Code Conflicts of Interest

Directors are also subject to Section 6.036, Property Tax Code. Under Section 6.036, directors may not serve or be appointed if they have a substantial interest in a business entity that contracts with the appraisal district. The board member may not contract with a participating taxing unit involving the performance of activities governed by the Property Tax Code. Contracts relate to performance of activities governed by the code if the activity is required or regulated by the code.

A "substantial interest" is defined in Section 6.036 as:

- The combined ownership of the member and the member's spouse is at least 10 percent of the voting stock or shares of the business entity or
- The member or member's spouse is a partner, limited partner or officer of the business entity.

"Business entity" is defined the same for Chapter 171. Section 6.036 does not apply to real estate.

The code also prohibits the appraisal district from contracting with a member of the board or with a business entity in which a member has a substantial interest. Taxing units that participate in the appraisal district may not contract with a board member or with a business entity in which the member has a substantial interest if the contract relates to the performance of activities governed by the Property Tax Code.

Members may wish to compare Chapter 171's definition of a "substantial interest" with Section 6.036's definition. While the two definitions are similar, they are not identical. A member may have an interest in a business that requires the member to file an affidavit and abstain from voting, but the same interest would disqualify the member from serving under the Section 6.036 definition. When a question arises about the application of Chapter 171 and

Section 6.036, the board should consult with its attorney before acting on the matter.

Appendix B describes relatives covered by conflict of interest provisions.

Disapproval of Board Actions

Although board members may have been elected by specific voting taxing units, each director serves all taxing units in the appraisal district. At times, the board may take an action with which the majority of voting taxing units disagree.

A majority of voting taxing units may veto any action by the board of directors. In addition, a majority of voting taxing units may veto the board's budget.

To veto a board action, the governing bodies of a majority of voting taxing units must adopt resolutions disapproving the action. The voting taxing units must file the resolutions with the board's secretary within 15 days after the action is taken. The board action is revoked effective the day after the day on which the required number of resolutions are timely filed.

To veto the board's budget, the governing bodies of a majority of voting taxing units must adopt resolutions disapproving the budget. The voting units must file the resolutions with the board secretary within 30 days of the budget adoption. The budget then does not take effect. The directors have 30 days after the disapproval date to adopt a new budget.

One of the board's most difficult tasks is establishing good relationships with all parties involved in the property tax system -- the chief appraiser, appraisal office staff, taxing units, media and the public. The board will receive a great deal of feedback about the appraisal district and its operations, especially in years when a reappraisal is completed.

The board's handling of both good and bad feedback will affect overall appraisal district operations. The district will be totally effective only if it establishes good lines of communication.

The Property Tax Code requires the board to have written procedures on how complaints and criticisms are handled -- who will receive the complaint first, who will gather any additional information, how the complaint will be presented to the board and what types of remedies may be available to the board. The policy must include having the taxpayer liaison officer, if one is appointed, report monthly to the board on the status of complaints. The board must also inform complainants at least quarterly of the status of their complaint until it is resolved. In districts having a taxpayer liaison officer, the liaison officer will handle most of these duties.

Selecting a Chief Appraiser

One of the board's most critical decisions is the selection of a chief appraiser. As the appraisal office's chief administrative officer, the chief appraiser coordinates and implements goals and objectives set by board policy, the Property Tax Code, Comptroller rules and other laws.

Appointed by the board of directors, the chief appraiser serves at the pleasure of the board and is directly accountable to the board. All other appraisal district personnel are employed by and accountable to the chief appraiser.

The board of directors appoints the chief appraiser to serve for a term set by the board. However, future boards are not bound by the employment of a chief appraiser because the Texas Constitution does not permit the current board to bind future boards.

Chief Appraiser's Qualifications

The board sets the chief appraiser's qualifications -- necessary qualifications differ depending on the appraisal district. Large districts and those with complex property or a number of taxing units may require a chief appraiser with advanced administrative abilities who is knowledgeable about appraisal, but is not expected to appraise property. Smaller districts with less complex properties may require a chief appraiser with broad appraisal experience.

Owing delinquent property taxes disqualifies a person from serving as chief appraiser. The person must own property on which delinquent property taxes have been owed for more than 60 days, after the date the person knew or should have known of the delinquency. This disqualification does not apply if the person is paying the delinquent taxes under an installment payment agreement or has deferred or abated a suit to collect the delinquent taxes.

The chief appraiser is required by law to register with the Board of Tax Professional Examiners (BTPE) and have attained or be working toward a Registered Professional Appraiser (RPA) designation. BTPE certification requirements are discussed in Section IX.

Chief Appraiser's Duties and Responsibilities

The chief appraiser has statutory and administrative responsibilities. The primary statutory duty is to discover, list, review and appraise all taxable property in the appraisal district using generally accepted appraisal techniques. These tasks involve:

- Appraising all taxable property at market value;

- Determining eligibility for exemptions;
- Determining eligibility for special appraisal and establishing both a market and special value on qualified property;
- Studying property values and sales to determine prevailing market prices;
- Creating appraisal records -- appraisal cards, tax maps, property identification system, lists, forms, applications and other items;
- Creating procedures for equitable and uniform taxation of inventory;
- Sending notices of appraised value when required by the Property Tax Code;
- Determining whether property qualified for agricultural or timber appraisal has undergone a change of use and sending a notice of change of use to the owner;
- Submitting complete appraisal records of all property to the appraisal review board;
- Testifying before the appraisal review board on proposed values or exemptions and other actions taken by the chief appraiser;
- Presenting supplemental records and other items for appraisal review board consideration;
- Correcting records as ordered by the appraisal review board;
- Certifying an appraisal roll and other listings to each taxing unit participating in the appraisal district;
- Handling truth-in-taxation requirements for taxing units in adopting tax rates, if required by contract;
- Handling collection of taxes for taxing units, if required by contract;
- Issuing statements of delinquent taxes on manufactured homes, unless contracted with county tax office;
- Issuing permits for "going out of business sales" and sending notices of such sale to other entities;
- Appointing an agricultural advisory board, with approval of the board of directors;
- Contracting, if necessary, with the county TAC to handle delinquent tax statements for manufactured housing; and
- Handling other various duties in the Tax Code or as assigned by the board of directors.

Relationship With Chief Appraiser

Both the board of directors and chief appraiser need to be fully informed of appraisal district operations. Open communication between the chief appraiser and the board is a must. The chief appraiser must know about the board's goals and policies to implement them. The directors need to know about the district's operations to assure themselves that the chief appraiser is implementing their policies and working to achieve their goals.

Normally, the board will direct the chief appraiser to handle preparations for board meetings, including notifying members, setting the agenda, posting open meetings notices and sending information to members. The board should establish clear working relationship on preparations for board meetings with the chief appraiser.

The board will call on the chief appraiser for information, reports and opinions. If the board does not accept the chief appraiser's recommendations, the board should discuss the reasons for its decision with the chief appraiser. The final decision should be a compromise workable for all parties.

Public Access Functions

In an attempt to improve communications between the appraisal district and taxpayers, the Property Tax Code requires the appraisal district board of directors to adopt policies for public access to the board, to inform the public of the board's duties and to provide procedures for resolving complaints. Boards of larger appraisal districts must employ a "taxpayer liaison officer" to assist in handling complaints from taxpayers.

Access to the Board

The board must develop and implement policies to provide the public with a reasonable opportunity to appear before the board and speak on any issue within its jurisdiction. To comply, the board must provide a reasonable time during each board meeting for public comment on appraisal district and appraisal review board activities. The board must also allow time for the taxpayer liaison officer, if appointed, to report to the directors on complaints received from property owners.

Some boards designate on the agenda a time when the public may speak. This session may be listed on the agenda as "public comments on activities of the appraisal district." Boards should have a sign-in sheet at their meetings for persons wishing to speak.

Handling Complaints

The board must make information available to the public and to taxing units on its procedures for handling

and resolving complaints. The procedures should state who receives written complaints, how the complaint will be handled by the board and any other action the board deems necessary. The board may want to incorporate the complaint procedures in its policy manual.

The board should encourage persons or entities with complaints to put them in writing. When the board receives a written complaint that it has authority to resolve, the law requires the board to notify the parties to the complaint of the complaint's status at least quarterly until the complaint is resolved. The board may forego giving this notice if it would jeopardize an undercover investigation. The taxpayer liaison officer, if one is appointed, is responsible for handling complaints and reporting on the status to the board.

Potential complainants should receive a complete listing of the board's responsibilities to show what issues are within the board's jurisdiction. It may be helpful to include other issues, such as the open meetings and open records laws, taxpayer rights, the appraisal review process, exemption application procedures and where to go for problems with tax payments.

Access for Disabled Persons

The board must have a written plan for providing reasonable access to the board by persons with physical and/or mental disabilities. The board or its taxpayer liaison officer should determine if the board's meeting facility and the appraisal district office are barrier-free or accessible to the physically impaired. The district needs to address barriers in the physical environment, such as stairs, unreachable elevator controls, revolving doors, doors that are difficult to open and the provision of disabled designated parking.

Texas has accessibility laws for buildings and facilities. All public facilities constructed or substantially renovated with public funds after 1969 must be accessible to the physically disabled. Cities, counties and other public entities that lease facilities are now required to lease accessible facilities because the Americans with Disabilities Act (ADA) requires that all services available to the general public must also be made available to disabled individuals.

The Elimination of Architectural Barriers Section of the Texas Department of Licensing and Regulation in Austin enforces state architectural accessibility laws and can provide information on architectural accessibility issues. Contact the section at 512/463-3211.

To obtain more information on providing access to the disabled, contact the Texas Governor's Committee on People with Disabilities at 512/483-4380.

At a minimum, the appraisal district directors should provide access to their meetings through designated disabled parking spaces and ground-floor meeting rooms or

easily accessible elevators. The board should also plan for persons with hearing disabilities by making contingency plans for obtaining a sign-language interpreter, when necessary, and by allowing seeing-eye dogs and other attendant animals to come into their public buildings. Additionally, the board may consider recording all its general property value protest written instructions on audio cassettes for use by sight impaired individuals.

For more about the Americans with Disabilities Act, see **Appendix G**.

Access to Non-English Speaking Persons

The law requires the board to have a plan for dealing with persons who do not speak English. Property Tax Code Section 6.04 says "reasonable access," but does not define "reasonable." In this context, "reasonable access" might be related to the particular ethnic make-up of the area served by the appraisal district. Appraisal district officials should be aware of significant populations of non-English speaking ethnic groups in the area.

The board should locate translators to help non-English speaking members of these ethnic communities. The board should first survey appraisal district employees to determine if any of them speak a foreign language. Non-English speaking persons could also be asked to bring a friend or relative who can translate. Other possible sources for translators are foreign-language instructors in area schools, churches with non-English speaking congregations, community clubs with a foreign interest, taxing units or an immigration office.

The board should also provide the Spanish version of ***Texas Property Taxes: Taxpayers' Rights, Remedies and Responsibilities*** for Spanish-speaking persons. In addition, the appraisal district may direct Spanish-speaking persons to the Comptroller for information. Remember the Comptroller does not have authority to mediate conflicts between taxpayers and appraisal districts.

Public Information Materials

The law requires boards to prepare information of public interest that describes the board's functions and the procedures it has set up for filing and resolving complaints. Other issues that taxpayers commonly raise may also be covered. The information should be stated in simple terms without jargon.

Before developing any material for public distribution, the board may wish to set policies that clearly define what the public interest material should contain.

The board may use brochures, booklets, leaflets, fact sheets, newsletters, exhibits, special events, advertisements or direct mailings to provide information to taxpayers and

taxing units. The information may be included with other material the district normally mails out, such as letters of appraised value.

The public information materials should explain the board's statutory duties in a simple, straightforward manner.

The board's complaint procedures must also be available in written form to taxpayers and taxing units. The material should clearly explain how to file a complaint, how the board resolves complaints and what types of complaints are within the board's jurisdiction. If the board is required to hire a taxpayer liaison officer, the information should detail the officer's duties and how to contact him.

Taxpayer Liaison Officer

Boards for districts in counties having a population of more than 125,000, according to the most recent federal census, must appoint a taxpayer liaison officer. The liaison officer is responsible only to the board, with the salary set by the budget.

The board should remember that the Texas Legislature created the taxpayer liaison position to improve the appraisal district's relationship with the public. If the board appoints a liaison who is not able because of other interests to be responsive to the public, the legislature's objective will not be achieved.

The liaison officer's statutory duties are to handle complaints in the manner required by the board's written policy and to report to the board monthly on the status of complaints. The Property Tax Code also requires the liaison to develop and implement the public access functions the board is required to adopt. These functions are the policies insuring access to non-English speaking and handicapped persons, giving the public the opportunity to speak at board meetings and providing a system for handling complaints. The liaison officer is not responsible for resolving property protests arising under Property Tax Code Section 25.25 or Chapter 41.

The liaison officer is not necessarily the only person charged with public assistance responsibilities. Many districts have personnel responsible to the chief appraiser for providing information and assistance to property owners. Even if the district is not required by law to have a liaison officer, the board and chief appraiser should provide for training staff to handle the types of public contacts contemplated for the liaison officer.

Open Records Act

The appraisal district's records and information maintained for the appraisal district are generally open to public inspection under the Open Records Act, Chapter 552, Government Code. Information maintained for the district

is open only if the district either owns the record or has a right of access. With some specific exceptions, the act requires the appraisal district to make all records available to citizens during normal business hours.

Access to Records. The purpose of the Open Records Act is to open government up to the citizens it serves. For this reason, records and information are usually made confidential only when disclosure would harm an individual's reputation or safety, create difficulty in negotiation for contracts or sales, violate the attorney-client privilege or obstruct the district's ability to carry out its duties. The Open Records Act provides 33 exceptions to the rule of disclosure, but other laws and judicial decisions create additional exceptions.

As the appraisal district's governing body, the board of directors is responsible for insuring that the district complies with the Open Records Act. To best ensure compliance, the board should develop written policies for handling open records requests.

When the district receives a written request for disclosure, the district has 10 business days to respond. The board, through the chief appraiser, must either provide the records for inspection or request an open records decision from the attorney general, unless there has already been a decision that the records are confidential. If the district believes a record is confidential, but does not request an open records decision within 10 business days and no prior decision on the issue exists, the record is presumed open after 10 business days.

The burden of proving a record is confidential is on the district. The board's request for a decision must explain why it believes the record is confidential and be accompanied by the requested records. The attorney general will not disclose the records unless he determines they are open.

To request an attorney general open records decision, write: Office of the Attorney General, Attn: Opinions Committee, P. O. Box 12548, Austin, Texas 78711-2548. For information on requesting an opinion, go to the Texas Attorney General's Web site at <www.oag.state.tx.us>

Violation of the Open Records Act is a criminal offense of official misconduct. Persons who deliberately or negligently fail to give access to open records or who disclose confidential records are subject to six months confinement in jail, a fine of up to \$1,000 or both.

Records Custodian. The chief appraiser is the custodian of appraisal district records. The appraiser may delegate responsibilities to staff, but remains accountable for the preservation and care of district records. The custodian's responsibilities are to:

- Ensure that records are available for public inspection and copying;
- Protect and preserve records from deterioration, loss, theft, alteration and destruction;
- Repair, renovate and rebind records when necessary;
- Provide public access to public appraisal district records without asking the person making the request for any information other than personal identification and a description of the records being requested;
- Provide a reasonably comfortable place for persons to use while inspecting the records; and
- Give access to the requested records for 10 business days and extend that period for another 10 business days on the written request of the person inspecting the records. Records in use or in storage must be made available within a reasonable time and at a date set in writing and given to the requesting person.

The chief appraiser's duties as custodian of the records should be set out in written procedures.

Charging for Public Records. The Texas Building and Procurement Commission (formerly the General Services Commission) has established the following guidelines for charging for public information records. The cost of providing public information is not necessarily the same as the charges made for providing copies of that information. By state law, the Texas Building and Procurement Commission (TBPC) must publish prices for state and local government agencies to use when charging for copies of public information.

TBPC's Rule Sections 111.61 to 111.70 outline copy charges of public information. The Public Information Act provides that governmental bodies -- other than state agencies -- may determine their own charges for producing public information but shall not charge more than a 25-percent variance from the amount specified in the TBPC rules. The TBPC rules do not apply to charges for specific kinds of public information that other laws address.

A governmental body may request in writing to TBPC that it be exempt from part or all of the TBPC rules, stating the reason for the exemption and its proposed charges. The TBPC must decide if good cause exists for the exemption. TBPC exemptions are not automatic or retroactive. The TBPC is required to publish annually in the Secretary of State's *Texas Register* a list of the governmental bodies that have TBPC authorization to adopt modified charges.

A governmental body may choose to follow Section 552.267 of the Public Information Act, which mandates

providing a copy of public information without a charge or at a reduced charge if the governmental body determines that is in the public interest not to charge. Finally, the governmental body may waive a public information charge if the cost of processing the payment received for the information will exceed the charge.

Different Types of Information. The TBPC has established open records charges for different types of information. The TBPC price schedules set reasonable fees that cover the actual cost of providing the information. The fees are not set so high that access to public information is restricted. The TBPC charges are based on estimated average costs of providing information by governmental bodies across the state.

The rules set out the costs of two types of public information requests -- standard paper copy and nonstandard copy. A standard copy is "a printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches." Each side of a piece of paper is counted as a single copy; paper printed on both sides is counted as two copies.

A nonstandard copy is a copy of public information in a form other than a standard paper copy. Examples include microfiche, microfilm, diskettes, magnetic tapes, CD-ROM and paper copies larger than 8 1/2 by 14 inches.

Definitions of items or services and charges include the following:

Actual cost is the sum of all direct costs plus a proportional share of overhead, or indirect, costs. To determine actual costs, governmental bodies may utilize the cost methodology adopted by the Council on Competitive Government.

Mainframe computers are located in a controlled environment and serving large applications with a large number of users. Mainframes include IBM and UNISYS mainframes, Digital VAX 9000 and VAX Clusters.

Midsized computers are smaller than a mainframe and include IBM AS/400 and Digital VAX/VMS.

Client/server system is a combination of two or more computers that serve a particular application through sharing processing, data storage and end-user interface presentation. Personal computers (PCs) located in a LAN environment and applications running in an X-window environment on a UNIX based system fall into this category.

Computer resource charge is the utilization charge for computers, based on the amortized cost of acquiring, leasing, operating and maintaining computer resources. The charges are averages based on a survey of governmental bodies and excludes programming or printing time. The time, called CPU time, is the actual time required for the computer to execute a program.

Programming personnel charge is for a request that requires the services of a programmer to execute an existing program or create a new program. Any personnel time spent in performing services other than programming should be charged under other personnel charges. The hourly rate includes fringe benefits.

Other personnel charge includes the actual personnel time to locate, compile and reproduce the requested information. Personnel time is recovered for time spent blacking out or obscuring confidential information mixed in with public information on the same page. Other personnel charges, however, do not apply to requests that are for 50 or fewer pages of paper records, unless the records are located in more than one building or a remote storage facility. Attorney or legal time spent to review requests for exceptions from the Public Information Act or to prepare requests to the attorney general's office are not recovered as other personnel charges.

Overhead charge is to recover any direct or indirect charge, such as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. An overhead charge may be computed at 20 percent of the charge made to cover any personnel costs. An overhead charge may not be made for requests of 50 or fewer pages of standard paper records.

Microfiche and microfilm charges may not exceed the cost of reproduction. The Texas State Library and Archives Commission has the capability to reproduce microfiche and microfilm.

Remote document retrieval charge may be added if the governmental body must pay a charge to locate, retrieve, deliver and return to storage needed records.

Miscellaneous supplies charge is the actual cost of labels, boxes and other supplies used to produce the requested information.

Postal and shipping charges are those expenses to transmit the reproduced information.

Electronic format. A governmental body must provide public information on a computer-compatible medium, such as a diskette, if a person requests information in such a way. The governing body's technological capability determines the extent that the person's request is filled.

The governmental body does not have to purchase any hardware, software or programming services to accommodate a request. If the governmental body cannot comply with a request for public information in a requested electronic medium, it must provide a paper copy or a copy in another medium acceptable to the requesting person. Governmental bodies may use their own supplies and are not required to use those of the requesting person.

If programming or data manipulation is needed to complete the request, the governmental body shall explain

that requirement in writing to the requesting person within 20 days of the request. The written statement shall state if the request is not feasible or interferes substantially with on-going operations or if the information will be at a charge that covers programming and data manipulation costs. Other items on the written statement include what formats the information is available in currently and the necessary services, estimated cost and anticipated time to give the information in the requested form. The governmental body can take another 10 days to prepare this statement, if within the 20 days it tells the person that more time is needed. The requesting person must respond in writing if the information is wanted at a charge and in what form.

Providing a copy of public information in a requested electronic medium must not violate any copyright agreement of the governmental body and another party.

The governmental body must maintain a file of all written statements issued to people requesting information that requires programming or data manipulation.

Complaint process. Section 552.269 of the Public Information Act includes a complaint process for persons who believe that governmental entities have overcharged for copies of public information.

A person may file a written complaint with TBPC about an alleged overcharge, stating the reasons why the person believes the charges are excessive. The TBPC will review each complaint and issue a written decision as to the correct charge for the public information.

Governmental bodies have 10 days to respond in writing to TBPC questions about an overcharge complaint.

If the TBPC determines that a governmental body has overcharged, the governmental body must adjust its charges and refund the difference between the charges. A person who overpays because a governmental body refuses or fails to follow TBPC rules may recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the charges.

Texas Building and Procurement Commission (TBPC) Charges:

Item or Service	Charge		
Standard paper copy	\$.10 per page	Personnel charge	
Nonstandard size copy		Programming personnel	\$26.00 per hour
Diskette	\$ 1.00 each	Other personnel	\$15.00 per hour
Magnetic tape		Overhead charge	20 % of personnel charge
4 mm.	\$13.50 each	Microfiche or microfilm charge	
8 mm.	\$12.00 each	Paper copy	\$.10 per page
9 track	\$11.00 each	Fiche or film copy	Actual cost
Data Cartridge		Remote document	
2000 series	\$17.50 each	retrieval charge	Actual cost
3000 series	\$20.00 each	Computer resource charge	
6000 series	\$25.00 each	Mainframe	\$10.00 per minute
9000 series	\$35.00 each	Midsize	\$ 1.50 per minute
600A	\$20.00 each	Client/server	\$ 2.20 per hour
Tape Cartridge		PC or LAN	\$ 1.00 per hour
250 MB	\$38.00 each	Miscellaneous supplies	Actual cost
525 MB	\$45.00 each	Postage and shipping	
VHS video cassette	\$ 2.50 each	charge	Actual cost
Audio cassette	\$ 1.00 each	Photographs	Actual cost
Oversized paper copy	\$. 50 each	Other costs	Actual cost
Mylar (36", 42" and 48")		Outsourced or	
3 mil.	\$.85 / linear foot	contacted services	Actual cost
4 mil.	\$ 1.10 / linear foot		
5 mil.	\$ 1.35 / linear foot		
Blueline/blueprint paper	\$.20 / linear foot		
Other	Actual cost		

Points to remember. Several points that local government officials should remember when charging for copies of public information are:

- The governmental body may not make a profit when filling a request for public information.
- The governmental body may not charge sales tax for public information requests.
- The public information charge may not include any personnel charges or overhead charges when complying with requests that are for 50 or fewer pages of standard paper copies, unless the exceptions provided in Section 552.261 apply.
- Types of media on which to record public information include paper, film, tape, mylar, linen, silk, vellum and any magnetic, optical or solid state device that can store an electronic signal.
- The governmental body may not charge for a request to inspect public information in a standard paper form. A charge is permitted when a person asks to inspect information that contains confidential information to cover the editing or marking out of the confidential information, limited to the charge of the paper copy. Regardless of the number of copies, no other charge is allowed.

More information. The TBPC's Open Records Administrator, at 512/475-2497, can provide more information on the TBPC charges and exemption from TBPC rules. Send fax requests to TBPC at 512/463-3311. For more information, view the TBPC's Web site at <www.gsc.state.tx.us>

Other Items to Note. The Public Information Act, Chapter 552, Government Code, addresses how to handle requests for information from prisoners.

Section 552.027 of the Act states in part: "A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility."

Section 552.024 of the Act also allows public officials and employees the option to choose whether to grant access to their social security numbers and information revealing whether they have family members.

The Act limits the information available to the public from a governmental entity's personnel files. Section 552.117 lists as exceptions to public disclosure certain addresses, telephone numbers, social security numbers and personal family information.

Exceptions to the Open Records Act

The numerous exceptions to the Open Records Act listed in Government Code Chapter 522, Subchapter C, but

they are not all relevant to appraisal district operations. The following is a discussion of exceptions that could apply to appraisal districts:

Information Made Confidential by Law -- Constitutional Law, Statutes or Judicial Decisions. Information is confidential under either constitutional law or judicial decisions when release of the information would violate either constitutional or common-law privacy doctrines. The test for determining if constitutional or common-law privacy is violated is provided by judicial decisions and is difficult to apply. If the custodian believes records are exempted because release would violate privacy rights, the board should consult its attorney.

Information Made Confidential by Tax Code. Several statutes provide for confidentiality in addition to the Open Records Act exceptions. These records are closed under this exception. For appraisal districts, the most important of these laws are Sections 22.27 and 23.45, Property Tax Code.

Section 22.27 provides that rendition statements, real and personal property reports, income and expense information related to a property and information about real or personal property sales prices voluntarily given to the district after the district promises to keep it confidential are not subject to disclosure. Attachments to renditions, and other information that a property owner provides to the appraisal district about a property's appraisal after a promise by the appraisal district for confidentiality, are confidential information. This information may only be disclosed:

- in an administrative (example: appraisal review board hearing) or judicial proceeding after a legal subpoena;
- to the person who gave the information or the owner of the property that is the subject of the report or the person's agent;
- to the Comptroller or authorized staff or to an assessor or chief appraiser, if requested in writing;
- in a property tax related hearing or judicial proceeding in which the person who gave the information or who owns the subject property is a party;
- for statistical purposes in a form that does not disclose a specific property or property owner; or
- to the extent the information is required to be in a public record the district is required to maintain.

A person who has access to Section 22.27 confidential information commits a Class B misdemeanor if he or she permits an unauthorized person to see confidential records or gives confidential information to an unauthorized person.

An exception to Section 22.27 is Property Tax Code Section 25.195. A property owner or the owner's agent may have access to appraisal records and other data that was used in appraising the owner's property. In Open Records Decision No. 500 (1988), the attorney general determined that Section 25.195 gives an owner access to confidential sales information used in appraising his or her property. Attorney General Opinion No. JC-0424(2001) also addresses a property owner's right to access of appraisal information in the office of a private appraisal firm under contract with the appraisal district.

Property Tax Code Section 23.45 provides that applications for agricultural appraisal under Article VIII, Section 1-d, Texas Constitution, are confidential. The exceptions are identical to those under Section 22.27. Penalties for illegally disclosing the information are identical to the Section 22.27 penalties.

Information in Personnel Files. Most information in personnel files is public information, but information that would cause an "unwarranted invasion" into the individual's privacy may be withheld under the Open Records Act.

The attorney general has interpreted this exception literally and narrowly. Information about personnel is open if it deals with the person's qualifications for employment, terms of employment or separation from employment.

Generally, the only personnel information that is not subject to disclosure is information protected by common law or constitutional privacy. Again, if the custodian feels personnel information is protected by privacy rights, the board should contact its attorney.

Family Members, Home Addresses, Social Security Numbers and Home Telephone Numbers of Directors or ARB Members, Employees, Former Board or ARB Members and Former Employees.

This information is confidential only if the member or employee chooses to have the information remain confidential within 14 days of beginning or ending employment.

Information Relating to Civil or Criminal Litigation and Settlement Negotiations Involving the Appraisal District or Appraisal Review Board that the Attorney General or District's Attorney Decides Should Remain Confidential.

To withhold information under this section, the board must show that litigation is actually pending or reasonably anticipated and is of a type that disclosure would injure the district's strategy or legal interest in the litigation.

Matters Protected by Attorney-Client Privilege Pursuant to the Rules and Canons of Ethics of the State Bar of

Texas and Matters Which a Court has Ordered Protected from Disclosure may not be Disclosed.

The governing body may meet with its attorney to discuss pending litigation and other matters of a nature that would normally be protected by the attorney-client privilege.

Trade Secrets and Commercial or Financial Information Obtained from a Person and Privileged or Confidential by Statute or Judicial Decision.

Whether information is a trade secret depends on a case-by-case analysis of six factors: 1) how widely the information is known outside the company's business; 2) how widely the information is known by employees or others involved in the company's business; 3) how hard the company has tried to guard the information's secrecy; 4) how valuable the information is to the company and its competitors; 5) how much effort or money the company has spent to develop the information; or 6) how easily the information could be properly acquired or duplicated. If the custodian believes information could be confidential under this exception, he or she must explain to the attorney general in an open records decision request why the information is a trade secret.

In Open Records Decision No. 426 (1985), the attorney general determined that a computer company's computer programs and formulas used by an appraisal district to determine property values were trade secrets.

Inter-agency and Intra-agency Memoranda or Letters that Would Not Be Available by Law to a Party in Litigation with the Agency.

The focus of this exception is to protect information that consists of advice, opinions or recommendations that actually play a role in the decision-making process.

Geological and Geophysical Information and Data Including Maps Concerning Wells, Except Information Filed in Connection with an Application or Proceeding Before Any Agency.

A complete listing of information excepted from public disclosure can be found in Subchapter D, Chapter 551, Government Code.

Credit card, debit card, charge card or access device number.

These numbers that may be collected, maintained or assembled by a governmental body are confidential.

Email address.

If a member of the public communicates electronically with a governmental body, the address is confidential unless the person affirmatively consents to its release.

Records Retention

The Local Government Records Act consolidates various record keeping laws under Subtitle C, Title 6, of the Local Government Code.

A 37-member Local Government Records Committee reviewed and approved a records retention schedule developed by the State Library and Archives Commission. The schedule developed by the committee included time periods the district must keep certain records and requirements for maintaining records, including microfilm and computer.

For a copy of the retention schedule, call the Comptroller's Property Tax Division at 1-800-252-9121 or the Texas State Library, State and Local Records Management Division, at 512/452-9242. View the records retention schedule at the Texas State Library's Web site at <www.tsl.state.tx.us/slr/recordspubs/tx.html>

IV. Establishing the Appraisal Office

In most instances, district directors will not have to establish an appraisal office, since prior boards had that task. However, directors need to be aware of the facilities, equipment, supplies, special services and records necessary to operate and maintain an appraisal office.

Some appraisal districts may have contracted with another appraisal office or taxing unit to perform the duties of the appraisal office for the district, as allowed by Property Tax Code Section 6.05. Should those districts end such a contract and decide to establish a separate office, a review of this section may be helpful.

Office Space

In selecting office space, the board of directors should consider several factors:

- availability of existing structures that meet office needs;
- nearness to available records, such as county deed records;
- convenience for property owners; including accessibility for disabled persons;
- sufficient parking; and
- ability to grow if additional functions are performed in-house, such as assessing/collecting or reappraisals.

The appraisal district board of directors determine if the district will receive free space, leases or buys office space, within the budgetary limits of the district. Some taxing units may offer free space or lease idle facilities that meet district needs. In other instances, directors may decide to construct office space.

The board of directors may purchase or lease real property and construct improvements to establish and operate an appraisal district or branch appraisal office. The governing bodies of three-fourths of the taxing units entitled to vote on the appointment of directors must approve the purchase or sale of real property or the construction or renovation of an improvement.

Once the board of directors proposes a property transaction by resolution, the chief appraiser notifies the presiding officer of each governing body entitled to vote on the proposal, including costs of other available alternatives. Within 30 days after receiving the proposal, the taxing unit may approve or disapprove the proposal by resolution. If the governing body fails to act within 30 days or fails to file its resolution with the chief appraiser within 40 days after

receiving the proposal, disapproval by the governing body is automatic.

The board of directors must credit proceeds of the sale of real property to each taxing unit participating in the district in proportion to the unit's allocation of the appraisal district budget in the year of the sale.

For those districts which lease office space, a periodic review of the lease agreement may require a comparative study of other available space.

Equipment and Supplies

Appraisal office operations may require the purchase or leasing of special equipment and supplies. Such items may be for appraisal operations, mapping, data processing and clerical needs.

Appraisal Services

The chief appraiser, with approval of the board of directors, may contract with a private appraisal firm to provide appraisal services to the district. Some appraisal districts, from lack of personnel or expertise, rely on private firms for a broad range of functions. Others may contract with firms to handle specialized properties, such as oil and gas or utilities. Still others may employ in-house staff to handle all property appraisals.

It is essential that the chief appraiser and board of directors take the necessary steps to ensure satisfactory performance on the part of appraisal firms. Concerns to be addressed include:

- preparing specifications of the work to be done;
- defining the scope of the work, standards of performance desired and responsibilities of both the appraisal firm and the appraisal office;
- allowing sufficient time for prospective bidders to inspect the district and present a proposal;
- providing for review of work performance throughout the contract; and
- specifying other factors affecting the district's working relationship with the private firm.

Computer Services

An appraisal district may have in-house services for data processing, or it may lease services from a private firm or another governmental agency or have no computerized system. Services offered may vary from printing the appraisal roll to computer-assisted mass appraisal programs.

Map System

In meeting the chief appraiser's principal responsibility of locating, recording and appraising all property in the appraisal district, a complete set of maps is indispensable. Maps enable appraisers to locate each real property parcel, identify its size and shape and determine its relationship with factors that affect its value. Maps also serve to display market and statistical data, appraisal comparisons and land appraisals. They are also valuable when presenting evidence in court.

Comptroller Rule 9.3002 requires that each appraisal office establish and maintain a system of tax maps. Depending on the sophistication of the map system established by the appraisal district, the types of equipment and supplies needed will vary, as will the costs. However, once developed and maintained, maps will also be useful for taxing units in the district, such as for fire protection and street identification.

Records System

Comptroller Rule 9.3003 requires the appraisal district to develop and maintain a uniform tax records system. Such a system must include:

- appraisal cards;
- maps;
- rendition forms;
- report of decreased value forms;
- appraisal records of all property;
- tax roll of any taxing unit for whom the appraisal office assesses or collects;
- delinquent tax roll of any taxing unit for whom the office collects;
- alphabetical index of property owners;
- partial exemption lists;
- absolute exemption lists; and
- lists of properties receiving appraisal as open-space land; agricultural use; timber-use; recreational park and scenic land; and public access airports.

V. Appraisal District Financial Affairs

Participating taxing units pay for all appraisal district operations. The appraisal district directors' financial responsibilities include adopting an annual operating budget, selecting a district depository, engaging in competitive bidding procedures, contracting, purchasing, setting accounting methods and auditing.

Annual Operating Budget

Before June 15 of each year, the chief appraiser submits to the board a proposed budget for the upcoming fiscal year. The district's fiscal year is the calendar year, unless changed under Property Tax Code Section 6.06(i).

The chief appraiser's proposed budget must list each proposed position in the district, the position's proposed salary and benefits. The budget must also include each proposed capital expenditure and an estimate of the amount of the budget allocated to each taxing unit participating in the district. This allocation is only an estimate, since final levy figures for the year will not be known until late fall.

Other items commonly included in the budget are:

- reimbursement for reasonable and necessary appraisal district director expenses;
- per diem or actual expense reimbursement for appraisal review board members;
- compensation for attorneys hired for the appraisal district, appraisal review board or both;
- reimbursement of appraisal office staff for reasonable and necessary expenses;
- payment of tuition and fees incurred for courses or educational programs;
- funds for appraisal review board proceedings and operations; and
- other items necessary for appraisal district operations.

During budget preparations, the chief appraiser should identify each appraisal district service or activity. The board of directors should review each identified activity to determine the current level of service provided and whether that level is adequate. Through this review process, the chief appraiser should develop a clear, logical plan for allocation of funds.

The chief appraiser should explain to the board the budget's plan of operation and outline the basis for each funding request. The chief appraiser should identify any need for major changes in appraisal district services and identify the impact of changes on the cost of operations.

Directors should remember that taxing units pay the cost of appraisal district operations. Each unit may have its own budget limited by the voters through the tax rate rollback election process.

Collection or assessment services are a separate budget from the main appraisal district budget. Only units using these services pay for them, so the chief appraiser should budget separately for these services. This separation permits allocating costs to the responsible taxing units.

Public Hearing and Publication of Budget

The board of directors must hold a public hearing to consider the budget. This hearing gives taxing units and the public an opportunity to observe and comment on how funds are being spent.

The law does not require the board to hold the hearing on a specific date, but the budget must be finally approved before September 15. The September 15 date permits taxing units participating in the district to include their share of appraisal district cost in their own budgets.

If the fiscal year has been changed, the chief appraiser must prepare a proposed budget before the 15th day of the seventh month preceding the first day of the fiscal year established by the change. The board of directors must adopt a budget for the fiscal year before the 15th day of the fourth month preceding the first day of the fiscal year established by the change.

Before the board holds the budget hearing, the board's secretary must deliver to the presiding officer of the governing body of each taxing unit in the district written notice of the date, time and place of the hearing. The secretary must deliver this notice no later than the 10th day before the date of the budget hearing.

Not later than 10 days before the public hearing date, the chief appraiser must publish a notice of the hearing in the newspaper. The one-quarter page notice must be published in a newspaper or tabloid of general circulation in the appraisal district's county. The notice may not be published in the part of the paper in which legal notices and classified advertisements appear.

Comptroller Rule 9.3048 sets out the content of the notice. The notice must state where and when the public hearing will be held, the total amount of the proposed budget, the amount the proposed budget is increased from the current year and the number of employees to be compensated from the budget. The notice must also state the name, address and telephone number of the appraisal district and, at the chief appraiser's option, a statement explaining any significant differences between the current

and the proposed budgets. The notice must also state that the appraisal district is supported solely by payments from taxing units in the appraisal district. In addition, the notice must contain the following statement:

"If approved by the appraisal district board of directors at the public hearing, this proposed budget will take effect automatically unless disapproved by the governing bodies of the county, school districts, cities and towns served by the appraisal district. A copy of the proposed budget is available for public inspection in the office of each of those governing bodies."

The rule and notice form appear in **Appendix E**.

Under the Open Meetings Act, the district also must post notice of the budget hearing 72 hours in advance.

Voting taxing units may veto the approved budget. To veto, a majority of the voting taxing units must pass resolutions disapproving the adopted budget. These units must file resolutions with the board's secretary within 30 days after the date the budget is adopted. If enough veto resolutions are filed, the budget does not take effect. The board must adopt a new budget within 30 days of disapproval. Whether a new budget publication is required before the hearing to adopt a new budget is unclear. The most conservative approach is to publish notice of the new budget and hearing.

The board of directors may amend the approved budget if the board's secretary delivers to the presiding officer of each taxing unit's governing body a written copy of the amendment proposal. The secretary must deliver this notice at least 30 days before the date the board intends to act on the amendment.

Voting taxing units may disapprove a budget amendment under the general authority given to taxing units to disapprove a board action. Voting taxing units must file disapproval resolutions with the board's secretary by majority of the voting taxing units within 15 days of the amendment's adoption.

Each taxing unit must pay its share of the budget in four equal installments, due at the end of each calendar quarter (December 31, March 31, June 30 and September 30). The first payment is due before January 1 of the year in which the budget takes effect. A taxing unit's governing body and the chief appraiser, however, may agree on a different method of payment.

If a taxing unit does not pay on time, the payment becomes delinquent and incurs a penalty of 5 percent of the payment amount. Interest accrues at an annual rate of 10 percent. The attorney general in Opinion No. JM-74 (1983) ruled that the appraisal district has no authority to waive or rescind the penalty and interest imposed on a delinquent taxing unit.

If the budget is amended, any change in the amount of a unit's cost allocation is apportioned among the payments remaining.

Allocating an Appraisal District's Costs

Each participating taxing unit pays a share of the appraisal district budget. Section 6.06(d) specifies how to determine each unit's share. The formula for calculating a taxing unit's share of the budget is:

$$\frac{\text{Unit's Tax Levy}}{\text{Total Tax Levy of All Units}} = \text{Unit's Share}$$

The chief appraiser calculates the unit's share by dividing the current taxes levied by the unit on property in the appraisal district by the current total taxes levied by all taxing units on property in the district. The resulting fraction is multiplied by the total dollar amount of the budget. Only the taxes imposed by a unit on property in an appraisal district are used to calculate the unit's allocation in that district.

Section 6.06(d) provides a limitation for a taxing unit that has very few parcels of property but has a large tax levy. If the unit has less than 5 percent of the total number of parcels in the district, but imposes more than 25 percent of the taxes in the district, the unit's allocation may not exceed three times its percentage of parcels. For example, a taxing unit has 4 percent of the parcels but imposes 30 percent of the taxes. Its normal budget share would be 30 percent, but under this rule, the share may not exceed 3 times 4 percent, or 12 percent.

One further point about budget allocation concerns a taxing unit with territory located in more than one county. If the taxing unit chooses to participate in only one appraisal district, all costs of appraisal district operations in the territory outside county boundaries are allocated to the taxing unit that chooses to add that territory to the district. Property Tax Code Section 6.02(f) provides that if two or more units add the same territory to the district, costs of operating in the added territory are allocated based on the proportion of taxes imposed by each unit to the total taxes imposed by all units in that territory.

Finally, a school district may have annexed property from another school district in another county for state funding purposes. The school district pays to each appraisal district in which it has territory, based on the amount of taxes levied on the property in that territory.

Changing the Allocation Method

Either the board or the participating units may change the Section 6.06 allocation method.

The board of directors may do so by passing a resolution making the change and delivering copies to the participating taxing units after June 15 and before August 15. The change takes effect if no taxing unit files a resolution opposing it. If any taxing unit that participates in the district adopts a resolution opposing the change and files the document with the board prior to September 1, the change is void.

Under Section 6.061 provisions, the voting taxing units may also change the method of allocating payment. To make the change, the governing bodies of three-fourths of the voting taxing units must adopt appropriate resolutions and file them with the chief appraiser after April 30 and before May 15.

A change in allocation method made by either the directors or by the voting taxing units as provided by Section 6.061 remains in effect until changed or rescinded by resolution of a majority of the governing bodies of voting taxing units.

Selecting a Depository

The board must select a depository for appraisal district funds at least once every two years. Selection is by competitive bidding. Property Tax Code Section 6.09 sets out requirements for selection of a depository. These include:

- The depository must be a Texas or United States banking corporation or a savings and loan association whose deposits are insured by the Federal Savings and Loan Insurance Corporation.
- The board must choose the financial institution(s) which offer the most favorable terms and conditions for handling the district's funds.
- The board must solicit bids at least once in each two-year period.
- To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, the depository must secure funds in the manner provided by law for the security of funds of counties.
- Soliciting bids allows the board to select the depository which will best achieve these purposes. However, the code does not require specific competitive bidding procedures for depositories.
- If the board solicits depository bids, the minimum requirements, of the competitive bidding process should be fulfilled. The board should carefully develop its method for soliciting bids, drafting bid

requirements and establishing criteria for awarding depository contracts.

- When funds in a depository exceed the limit insured by the Bank Insurance Fund or Savings Association Insurance Fund, the excess must be secured in the same manner as similar county funds. Local Government Code Section 116.051 provides for securing county funds. Section 116.051 allows a depository 15 days after selection to insure funds that are not otherwise insured. The board has the option of insuring these funds in one or more of the following ways:

Personal Bonds. The depository may execute and file with the board a bond or bonds, payable to the chair of the board and the successors in office. The board must approve the bond. At least five solvent sureties who own unencumbered real property in Texas that is not exempt from execution must sign the bond. The amount of the bond must equal the estimated highest daily balance of the district. The estimate may not be less than 75 percent of the highest daily balance the district held in the preceding year. If personal bonds are used, the board must check into the solvency of the sureties at least twice a year.

Surety Bonds. The second option is essentially the same as the first, except that the bond is to be executed by a solvent surety company authorized to do business in the state rather than by individual sureties.

Pledged Securities. The third option is the most common method used in the state. The depository may pledge to the district specified types of securities in an amount equal to the insured appraisal district funds on deposit. The types of securities that qualify are identified in Local Government Code Section 116.054 and in Art. 2529b-1, Tex. Rev. Civ. Stat. When the pledged securities exceed the district funds, the district must permit the release of such securities in an amount equal to the excess. When the funds deposited increase beyond the amount of securities pledged, the depository must immediately pledge additional securities with the board of directors.

An additional statute applies to the depository selection process. Article 2529c, Tex. Rev. Civ. Stat., places limitations on the selection of a depository in which a member of the board of directors has an interest. A depository is not disqualified from bidding and becoming a depository if an employee of the appraisal district is an officer, director or stockholder of the bank who is not charged with the duty of selecting the depository.

There are limitations on selection when one or more board members individually or collectively owns stock in a

bank. If any board members own 10 percent or less of the bank's outstanding stock, the bank is eligible to be selected as the district's depository, as long as no officer, director or stockholder of the bank votes or participates in the proceedings. If more than 10 percent of the bank's outstanding capital stock is owned by board members, the bank is disqualified.

The Property Tax Code imposes stricter limits where a member and spouse together own 10 percent of the bank shares. The code also bars a contract if a board member is an officer of the bank, even if the member abstains from the selection process.

Property Tax Code Section 6.036 prohibits an appraisal district from contracting with a director or with a business entity in which a member of the board has a substantial interest. "Substantial interest" exists when a director and his or her spouse have a combined ownership of at least 10 percent of the voting stock or shares of the business, or the director or his or her spouse serve as a partner, limited partner or officer in the business. A thorough discussion of conflicts of interest appears in Section III.

Investing Public Funds

Government Code Chapter 2256 addresses the authorized investments for Texas governmental entities. Each governing body of a political subdivision may purchase, sell and invest its funds as provided by this chapter. For more about investing public funds, see Appendix H for the text of Chapter 2256.

Competitive Bidding

District directors will consider a variety of contracts for supplies, equipment, services and other work. Property Tax Code Section 6.11 forbids the board from making a contract that requires an expenditure of more than \$15,000 unless the board submits the proposed contract to competitive bidding. Specifically, the board must follow the process set out for county commissioners in the Certificate of Obligation Act of 1971. This law is now codified as Subchapter C, Chapter 271, Local Government Code.

The following exceptions from competitive bidding are available only if the board of directors grants them. They are:

- expenditures of less than \$15,000;
- purchasing (not leasing) land or buildings for authorized purposes;
- purchasing any item that can be obtained from only one source, including copyrighted items, books, films, manuscripts, utility services and captive replacement or component parts;

- replacing or repairing unforeseen damages to property, machinery or equipment;
- hiring salaried employees;
- renewing an existing lease or equipment maintenance agreement if approved by the board and the lease has gone through competitive bidding within the preceding year, the renewal does not exceed one year and is the first renewal of the lease;
- work performed and paid for day by day as work progresses;
- purchasing personal property sold at an auction by a licensed auctioneer, at a legally held going-out-of-business sale or by a political subdivision of the state, Texas state agency or a federal agency; and
- contracts for personal or professional services.

While the law does not specifically define personal services, it lists professional services. The law defines "professional services" to include architects, professional engineers, certified public accountants and land surveyors.

Government Code Section 2254.002 provides that a local political subdivision may not select a provider of professional services by competitive bidding. "Professional services" are selected based on demonstrated competence and qualifications and for a fair and reasonable price.

The courts and the attorney general have generally interpreted "professional services" to imply specialized knowledge attained through advanced study and training in compliance with a widely accepted set of standards. A professional's skills and labor are primarily intellectual, rather than physical or manual.

"Personal services" is a broader category than professional services, but is not defined in the law. Presumably, personal services include all acts done for the benefit of another by a specific individual.

The attorney general has ruled that a county must seek competitive bids on a contract for microfilm services because the service was not "personal or professional." Attorney General Opinion No. JM-890 (1988) held that microfilm services were not "personal" because they were to be provided by a company's employees and not by specific individuals. The opinion noted that the Legislature has placed some "high technology services" requiring higher skills and expertise than microfilming under the competitive bidding requirements.

Legal advice may be necessary to establish appropriate bid procedures because a contract made without conforming to statutory requirements is void and may be ended by either party or enjoined by any taxpayer. Violation of the bidding law with intent to benefit personally may constitute official misconduct.

Notice. The board must publish notice of its intent to receive bids. The board must publish notice in a newspaper of general circulation in the county once a week for two weeks before letting the contract. The date of the first notice must be at least 14 days before the date set for receipt of bids. The notice must state the date, time and location at which the board will award the contract and contain reasonably detailed bid specifications. It must state the location at which all bidders may examine the bidding specifications. A bid notice may be published in any section of the newspaper.

Bid Specifications. Specifications must be carefully drawn so each bidder will be on equal terms in responding and each bid will be judged according to the same standards. When this care is not taken, the specifications may favor one particular supplier and give that firm an unfair advantage. The board should notify bidders if it changes bid specifications before accepting a bid or beginning a contract.

The contract may be let on a lump-sum or unit-price basis. If the contract is unit-priced, the board should specify the approximate quantities needed. Compensation paid to the contractor must be based on the actual quantities constructed or supplied.

Acceptance or Rejection. The board is not obligated to let a contract that has been bid. It may also reject any individual bid, but should do so on defensible criteria. It must reject a bid that is not responsive to the specifications established in the notice. A bidder cannot change the terms in a response.

The board must award the contract to the lowest responsible bidder. The board must use its honest judgment in selecting among the lowest bidders and may consider such factors as the product's quality, its adaptability to the particular use required and the ability and financial responsibility of the bidders.

Public Works. If the contract is for construction of public works and exceeds \$25,000, such as an agreement for the construction, alteration or repair of any public building, the successful bidder must provide a performance and payment bond. The bond must secure the full amount of the contract price and be executed in accordance with the provisions of Art. 5160, Tex. Rev. Civ. Stat., by a surety company authorized to do business in the state.

Other Considerations. It is a good idea for the board to establish in writing the competitive bidding procedures. Among the items directors may wish to address are:

- developing a bidder mailing list so vendors may receive specific notification;
- drafting a standard invitation-to-bid form;
- opening all bids at a meeting attended by the public;
- time-stamping bids received to avoid controversy over whether bids were timely filed; and
- developing a filing system to maintain all bids.

Change Orders. Often, it will be necessary to make changes in contract specifications before the work is completed. The board is authorized to approve change orders. The board may not increase the contract price by more than 25 percent. The original contract price may not be decreased by more than 25 percent without the contractor's consent. Increases are valid only if the board also appropriates current funds for that purpose.

Sale or Exchange of Real Property

The board must give notice of the sale or exchange of real property to the public. The board must publish notice in a newspaper of general circulation in the county in which the land is located. If there is no newspaper in that county, publication should be in an adjoining county. The notice must include a description of the land, its location and the method by which bidders may submit sealed bids. Real property may not be conveyed, sold or exchanged for less than the fair market value of the land. The sale or exchange of real property is found in Section 272.001, Local Government Code.

Contracts

The appraisal district's operating efficiency may depend on its ability to contract with vendors, consultants, employees, banks and units of local government. Directors should remember that legal advice may be necessary in specific contracting situations. Information in this pamphlet is intended only to provide general contracting information.

Contracts Beyond Current Year. The Texas Constitution prohibits political subdivisions from incurring a debt or creating an enforceable contractual obligation that extends into future revenue years. Essentially, this prohibition limits the term of all contracts to the fiscal or budgetary year in which the contract was originally made.

Where time payments create any potential for being paid from future budgets, the appraisal district must include a "funding out" clause in the contract. This clause gives the district the right to terminate the agreement if revenues do not actually become available in the future.

The funding-out clause gives the board the option of spreading out larger purchases over time without creating an enforceable debt for future fiscal years.

Contracts Beyond Directors' Terms. Some contracts may extend beyond the current fiscal year. Whether the extension is allowable depends on whether the district, in making the contract, is exercising a "governmental" or "proprietary" function.

Briefly, anything an appraisal district does that is directly related to carrying out its statutory responsibilities regarding property taxation is a governmental function. For example, employing a chief appraiser, establishing an operating budget, contracting for appraisal services and designating a depository for district funds are all governmental functions.

Non-governmental functions are proprietary functions incidental to the district's statutory duties. Examples of proprietary functions include leasing space for the district's office, providing for employees other than the chief appraiser or choosing employee compensation and other benefits. Even though these actions are necessary to conduct the business of an appraisal district, they are proprietary because they are not specifically required by statute.

The distinction between governmental and proprietary functions is important because the appraisal district may not enter into a contract which will extend beyond the term of the present board of directors when the subject matter of that contract concerns the exercise of governmental powers. Contracts involving incidental, proprietary matters are valid even if they extend beyond the directors' term.

The time limitation on contracts involving governmental functions prevents an existing board of directors from binding the hands of future boards, denying future boards the flexibility to make policy and management changes. A contract involving a governmental function may extend beyond the term of the present board if it includes a ratification clause conditioning the contract upon acceptance by a later board. In addition, contracts involving governmental functions must have a funding-out clause.

The Public Property Finance Act, Local Government Code, Section 271.001, Subchapter A, allows an appraisal district to enter into contracts for the use or purchase of any personal property. Contracts providing for payment of \$100,000 or more may be submitted to the attorney general for examination as to the validity of the contract. If approved, the contract is registered with the Comptroller of Public Accounts. The contract may last up to 25 years, subject only to constitutional restrictions.

Contracts For Legal Counsel

Hiring an attorney is a governmental function. So, it is subject to the term of the existing board and the budgetary limitation already discussed. Hiring an attorney is a contract for professional services -- competitive bidding requirements need not be followed.

If an appraisal district has made an interlocal agreement with a taxing unit to collect its taxes, directors must be sure that the contract specifies which governing body - the district or the collecting unit -- has the responsibility for hiring an attorney to collect delinquent taxes. Unless a contract says differently, a taxing unit may retain its own collection attorney if it chooses, even if its other collection functions are carried out by the appraisal district.

When the board selects a private attorney to collect delinquent taxes, additional considerations exist. The Property Tax Code sets the maximum compensation for collection attorneys at 20 percent of the tax, penalty and interest collected. This compensation must be clearly stated in the contract.

Assessment and Collection

An appraisal district may perform assessment and collection duties for any taxing unit, but this agreement between two units of local government is also subject to the Interlocal Cooperation Act. Compensation under such a contract may not exceed the actual costs incurred.

The attorney general in Opinion No. JM-996 (1988) ruled that "actual costs" are the costs that the collecting unit incurs over and above those it would incur if it were not collecting for another unit.

If the appraisal district contracts with the county for assessment and collection, then it must perform those duties for all taxing units for which the county is responsible. Section VIII addresses assessment and collection functions. A sample contract for assessment and collection functions appears in Appendix F.

Mapping Services

Mapping is considered a professional service by statute, so a contract with a private firm is not subject to competitive bidding. However, competitive bids may be desirable. The district should consider the special problems of copyrights and of map and data ownership when negotiating a mapping contract.

Specific Contracts

The following examples of specific types of contracts may help clarify the application of legal principles:

- **Personnel Contracts.** The hiring of a chief appraiser is a governmental function and is subject to limitations of both the term of the board and the budget. Because a contract with a chief appraiser is for personal services, it does not require competitive bidding. The hiring of any other employee by the chief appraiser is subject to the term of the budgetary year and personnel policies adopted by the board.
- **Appraisal Services.** Appraisal services are not subject to competitive bidding. The amount of compensation paid to a private firm cannot be contingent on the amount of increase in value of the property being appraised. The contract must clearly state that copies of the appraisal must be made available to the appraisal district and that the appraisals and supporting data are public records.
- **Office Space.** The lease of office space generally is subject to competitive bidding, but the purchase of a building or land need not be. Both types of contracts are proprietary in nature and may extend beyond the term of an existing board. A lease or financed purchase, however, must include a funding out clause to be consistent with the budgetary limitation.
- **Contracts For Equipment.** Purchasing or leasing equipment is clearly proprietary and is subject only to the limitation that the contract cannot extend beyond the district's budgetary year without a funding out clause. Where the contract involves more than \$15,000, the board must submit it for competitive bidding.
- **Computer Services.** Purchase or lease of computer hardware is treated like any other acquisition of equipment. Software services are a bit more complicated. The most prudent course would be to allow competitive bidding and to limit the duration of the software contract to the term of the existing board or include a ratification clause.

Bonds

Neither state law nor Comptroller rules require bonding of the chief appraiser for performing appraisal services. However, a taxing unit may require a bond when the appraisal district collects for the unit.

If the chief appraiser acts as the collector for any unit other than the county under an intergovernmental contract, the unit may require a bond conditioned on the faithful performance of the duties as collector. The taxing unit

must pay the premium for the bond.

Within the appraisal district, the board may require some employees to post bonds. Bonds should be required only for those officers or employees who are authorized to handle money. According to Property Tax Code Section 6.06(f), only the district chair and secretary may disperse the district's funds by written check, draft or order. If authorized by the directors, the chief appraiser may write checks. Only those employees authorized by the chief appraiser to handle funds need to be covered by a fidelity bond. However, more employees should be covered if the appraisal office handles the collection of taxes.

Accounting Procedures

Accounting is evidence to the public and taxing units that an appraisal district has managed public money in a responsible manner. Accounting procedures should provide for a continual process of review and documentation, usually in monthly or quarterly reports. The law requires an annual financial audit. This provides the board of directors with information to determine the financial status of the district at any time.

In addition, sound accounting procedures are a necessity to ensure timely deposits and proper records if the appraisal district collects taxes for a unit or units. As with legal matters, the board and the chief appraiser should have competent professional advice in handling the district's financial records.

Accounting procedures should include:

- budget summaries and status reports;
- cost/benefit analyses;
- collection and delinquency reports;
- information concerning leasing/purchasing decisions;
- physical property controls; and
- other items to assist in financial decision-making process.

Financial Audit

Property Tax Code Section 6.063 requires an annual financial audit of the county appraisal district. An independent certified public accountant must prepare the audit. The board must deliver a copy of the report to the presiding officer of the governing body of each taxing unit eligible to vote on director appointments. Copies of the report should be made available at the appraisal office for public inspection.

An independent audit assists the board in the overall

review of appraisal district operations. It tests the established systems of the district. It determines whether necessary controls are available and used and whether transactions have been conducted within legal limits. If the appraisal office collects taxes, the taxing units may require an audit in the intergovernmental contract.

Performance Audit

Property Tax Code Section 5.10(a) requires the Comptroller to conduct an annual study of appraisal uniformity in each county appraisal district (CAD). The Comptroller determines the median level of appraisal within each major category of property. The annual study provides information that helps chief appraisers determine whether appraisals within their district follow legal requirements.

Section 5.12 requires performance audits of appraisal districts that fail to meet specified standards for two consecutive studies. Existence of any one of the following conditions for two years in a row triggers the audit:

1. The overall median level of appraisal for properties in the Comptroller study is less than .75;
2. The coefficient of dispersion around the median of the overall property sample is greater than .30; or
3. The difference between median levels of appraisal for any two property classes is greater than .45.

An appraisal district does not have to miss the same standard for each year. For example, having an overall median less than .75 in year one and a coefficient of dispersion greater than .30 in the second year would trigger a performance audit even if the CAD had an overall median greater than .75 in year two.

Section 5.12(b) specifies that a majority of the taxing units or voting taxing units served by an appraisal district may request a performance audit. Section 5.12(c) allows the owners of at least 10 percent of the property in a single class to petition for a performance audit (but only if the class makes up at least 5 percent of the total property value in the district). Section 5.12(d) prohibits property owners from requesting an audit if:

1. The overall median for all property in the Comptroller study is more than .90 and less than 1.10;
2. The coefficient of dispersion for the overall property sample in the study is less than .15; and
3. The difference between the highest and lowest median appraisal levels for the various property classes is less than .20.

A CAD must meet all three standards before the code will prohibit taxing units or taxpayers from requesting a

performance audit. Districts subject to an automatic audit must bear the cost of the audit. Districts subject to an audit by the governing body's request must also pay for the audit.

The cost of a taxpayer-requested audit is borne by the requesting taxpayers. However, the district must pay for a taxpayer-requested audit if the audit's results show that the median level of appraisal for a class of property exceeds 1.10 or the median level of appraisal for one class of property varies by at least 10 percent from the level of property in the district. The law provides the procedure the district must follow to reimburse taxpayers in this case.

MSP Reviews

The Comptroller also conducts a review of appraisal district's methods, standards and procedures (MSP), as required by Property Tax Code Section 5.102.

The on-site reviews include a look at specific, practices policies, records and interviews with managers and supervisors. The Comptroller's report to the CAD board will point out any "non-compliance with generally accepted standards and procedures." Section 5.16 requires CADs to produce materials necessary for conducting studies and audits in the form and manner prescribed by the Comptroller.

Other Administrative Details

The appraisal district directors and chief appraiser handle other financial details that affect appraisal district operations, such as reporting to the Internal Revenue Service, purchase of insurance, retirement program participation, etc. Some of these aspects are briefly discussed below.

Internal Revenue Service (IRS)

The appraisal district must apply for an account with the IRS to obtain an IRS Employer Identification Number and be placed on the IRS mailing list. Funds withheld from employees' pay are calculated, deposited and reported using the proper forms required by IRS.

Sales Tax

Appraisal districts, as political subdivisions of the state, are exempt from paying any sales tax except on lodging secured by officials traveling on official business.

The appraisal district should not charge sales tax when furnishing multiple copies of public records if the governmental body is required to furnish them under the Open Records Act. Sales tax is due on the sale of regular publications records or general information. For example, a set of tax maps for a county available for sale to the public at a set price is taxable. The district must remit collected sales tax

to the Comptroller. Further information on charging sales tax may be obtained by contacting the Comptroller's Office, Tax Assistance at 1-800-252-5555, ext. 3-4600.

Workers' Compensation

An appraisal district may provide workers' compensation coverage for its employees through the purchase of a workers' compensation insurance policy, becoming self-insured or participating in a joint self-insurance fund with other districts or governmental units.

Liability Insurance

The Texas Tort Claims Act provides that governmental units are liable for property damage, personal injury and death caused by employees or officers operating automobiles or motor-driven equipment while working in their employment. A district could be liable for death or personal injury caused by the condition of or use of tangible personal or real property. Liability is limited to \$100,000 per person, \$300,000 per occurrence and \$100,000 property damage. Governmental immunity does not apply to a claim in connection with the assessment or collection of taxes by an appraisal district. Many appraisal districts carry policies of liability insurance to protect against this risk.

Property Insurance

The appraisal district may wish to consider insurance for burglary, robbery of money and securities, forgery and other crimes.

Insurance covering office equipment, supplies, furniture and fixtures may also be desired. Valuable papers coverage for maps, cards and records can be provided, as well as all-risk coverage for computers, software, tapes and other items.

Group Hospitalization and Life Insurance

Most appraisal districts will provide hospitalization, life, accident and/or other health benefits for their employees. Before selecting any type of plan, the district should complete a comparative study of available policies.

Retirement Plans

Most appraisal districts have a retirement system adopted by an earlier board of directors.

Chapter 810, Government Code, allows appraisal districts to establish public retirement systems. Public retirement system means a continuing, organized program or plan (including a plan qualified under Section 401(a) of the Internal Revenue Code of 1986) of service retirement, disability retirement or death benefits for officers or employ-

ees of a political entity.

Chapter 810 lists certain programs that do not qualify as public retirement systems. These include programs providing only workers' compensation benefits; programs administered by the federal government, individual retirement accounts or annuities within Section 408 or retirement bonds within Section 409, Internal Revenue Code of 1986; annuity contracts within Section 403(b); or eligible state deferred compensation plan by Section 457(b) of the Internal Revenue Code.

Appraisal district directors should consult with the district's attorney to determine whether the district's retirement plan complies with state statutes.

The appraisal district shall file all reports with the State Pension Review Board as required by Government Code Chapter 802.

Attorney Fees

In Attorney General Opinion No. DM-488 (1998), the Texas Attorney General found a CAD board may reimburse legal fees if it is authorized to do so by statute or under common law.

A CAD board of directors may reimburse attorney fees for a chief appraiser who was a defendant in a criminal action. The opinion addressed the case where the chief appraiser had failed to notify a taxpayer of a determination of a change in use for land that no longer qualified for open-space land appraisal.

The Attorney General found no statute expressly authorizing an appraisal district to reimburse its chief appraiser's legal fees if the chief appraiser is indicted for official misconduct for an alleged failure to carry out a duty of his or her office. However, the opinion also said that no statute expressly prohibited the reimbursement of the legal fees in a case where the chief appraiser failed to notify the taxpayer of the determination of a change in use for agricultural land.

According to the Attorney General, under common law, an appraisal district may reimburse the legal expenses if (1) the board determines that paying for the legal representation serves a public interest, not just the interest of the employee or officer, and (2) the board determines that the employee or officer committed the alleged act or omission that was the basis of the suit in good faith and within the scope of his or her official duties.

The Attorney General noted that the ultimate successful defense of the lawsuit by the employee or officer is not relevant in determining the decision to pay the legal fees. Furthermore, there may be statutes that regulate the appraisal district's payment of attorney fees in certain civil actions. (See, for example, the Civil Practices and Remedies

Code Chapters 101 and 102.) Finally, the fact that an employee or officer is no longer serving the appraisal district was irrelevant to the decision to pay the legal fees.

The opinion also held that a CAD board of directors need not adopt a policy on paying officers' and employees' legal expenses before it may agree to pay accrued expenses.

VI. Appraisal Office Staff

Recruiting, training and retaining competent, qualified personnel is crucial to effective appraisal district operations.

The chief appraiser is responsible for hiring, firing and training personnel. The board should not become involved in day-to-day personnel decisions, but may establish broad personnel policies to be implemented by the chief appraiser.

The board will establish an outline for appraisal office staff through the budget. Through the budget, the board may control the size and qualifications of staff and set the goals and objectives of appraisal office personnel.

This section addresses general personnel issues. A district should consult its legal counsel for any specific situation or policy.

Personnel Policy

The chief appraiser, working with the board of directors, should develop a written personnel policy manual. A manual serves to inform employees about the district's goals and objectives, policies, procedures and guidelines to follow in the course of their duties.

Each employee should have a copy of the manual. The chief appraiser should review and update the manual annually. The personnel policy manual should state the district's general goals and objectives and contain the following items:

- Applications for employment;
- Promotion, demotion, transfer and termination policies;
- Compensation plan;
- Leave plans, such as vacations and sick leave;
- Conditions of employment ("at will" or "property right");
- Work hours and overtime;
- Employee benefit program;
- Conduct and discipline;
- Prohibitions against discrimination (sex, race, age, national origin, religion, disability) and clear guidelines for resolving complaints;
- EEO guidelines;
- Prohibition against sexual harassment and methods to report improper conduct; and
- Other policies directly affecting employees, such as court appearances on property tax matters.

Selecting Personnel

The size of the appraisal office staff is influenced by several factors -- size of the appraisal district, number of taxing units, number and types of properties in the district, reappraisal plans, rate of growth in the appraisal district area and additional functions assumed by the appraisal district (e.g., as assessing-collecting taxes). The use and availability of outside resources such as private appraisal firms, computer companies, mapping companies and others will also affect staffing requirements.

Necessary personnel qualifications vary, depending on the functions performed in-house and those contracted to outside firms or governmental units. Typical staff will include personnel for administration, legal, appraisal, mapping, data processing, clerical, collections and other specialized services.

Civil Rights and the Appraisal District

Appraisal district employees have civil rights related to employment. Some of these rights come directly from the United States Constitution, others from federal and state law. These laws will directly affect appraisal district personnel policies.

One constitutional right that some — but not all — employees have is the right to due process. In employment situations, due process rights mean the employee has a right to notice of the charges against him or her, explanation of the charges and a chance to reply to the charges before termination. The employee must be given a full hearing on the issue — which may occur after the termination — to determine whether sufficient cause existed to support the action.

An employee who wins such a hearing after being fired may be reinstated to his or her old job and may also be entitled to receive any lost pay.

Not every employee has this right — only employees who have property interests in their jobs are entitled to due process. In Texas, most employees are "at will" employees. These employees do not have due process rights in their employment. Stated simply, employment "at will" allows either the employer or employee to end employment for a good reason, a bad reason or no reason at all, so long as the employment was not intended to last for a specific time and the termination does not violate any federal or state law.

Employees with a property interest in the job are those employed by an employment contract with express terms and those whose rights are guaranteed by a statute,

appraisal district policies, a "mutually explicit understanding" or well-known, long-standing policies of giving notice and a hearing.

Although Texas is largely an "at will" state, courts have recognized that employees have certain rights in certain situations. Courts have implied the existence of a property right in some situations that in earlier times were non-contract employments at will.

Courts have interpreted personnel handbooks as creating contractual protections for employees. If a handbook states that no employee will be terminated except for good cause, the employer has voluntarily given up the ability to terminate for no reason at all. A court reviewing a wrongful termination case will imply the contractual protection as defined in the handbook.

Similarly, oral or written statements made to an employee may limit the employer's right to terminate at will. Some courts have viewed hiring a person for a definite period — by the week or by the month — as establishing a definite term of employment. Depending on the wording, a termination might not be effective until the end of the next pay period.

Appraisal district directors should carefully review personnel policies to determine whether the policy is employment "at will," or whether the policy grants property rights in the job.

Often, the employer's procedures unwittingly grant a property interest by promising grievance procedures. A handbook provision or other policy statement by the board of directors may require the chief appraiser to follow a special discharge procedure before firing an employee. For example, it may be an office policy to allow an employee grievance committee to rule on a proposed employee firing. A termination has not been done correctly if it takes place without giving the employee access to this committee.

Creation of a grievance policy is a self-imposed limit on "at will" employment. If the district chooses to grant grievance procedures, the district's procedures should be clear, understandable and strictly followed at all times. Otherwise, the employee may file a lawsuit to be reinstated and the court may require the employer to follow its procedure before terminating the employee. The court may also order back pay.

A number of Texas laws also alter the "at will" doctrine. An employer may not:

- base employment decisions on whether an applicant or employee belongs to a labor union;
- fire an employee for serving as a juror (the law does, however, provide a defense for the employer who can prove that re-employment is unreasonable or impossible);

- fire an employee who is ordered to active duty as a member of the state military forces during an emergency (again, the employer has a defense by proving that re-employment is unreasonable or impossible);
- discriminate against an employee for filing a claim, hiring an attorney, testifying or pursuing rights under the Texas Workers' Compensation Act; and
- discriminate against an employee for reporting violations of the law by employees or employer to an appropriate law enforcement agency in good faith – that is, whistle blowing.

Equal Employment Opportunity

As employers, appraisal districts must comply with state and federal laws that regulate employment practices. These laws protect government employees and persons applying for government jobs from a variety of discriminatory actions. Employers who comply with the law and use sound personnel policies can minimize the risk of complaints and lawsuits under these laws.

In employment, "discriminate" means to make a choice that affects a person on the basis of a trait or characteristic that the law says may not be a basis of a choice. Equal employment opportunity laws demand that employers disregard differences in sex, race, nationality, age, religion and disability in making employment decisions.

The law recognizes four types of discrimination. One type occurs when an employer deliberately takes action against an employee or job applicant because of an illegal factor. This type of discrimination is purposeful or unequal treatment. Each of the following examples is purposeful discrimination: an applicant is rejected because he or she is black; an employer permits male employees to marry but will not permit female employees to marry; an employer fires a 55 year old employee so he or she can hire a younger person.

A second type of discrimination is called disproportionate or adverse impact. This type of discrimination occurs when the employer adopts employment practices or policies which affect some protected group more than they affect the population as a whole. For example, an employer requires all employees to be at least six feet tall. Few women are six feet tall, so the policy necessarily discriminates against women as a class or group. It is the effect on the group that creates the disparate impact.

A third type of discrimination occurs when the employer retaliates against an employee for invoking the protection of civil rights laws.

The fourth type of discrimination occurs when the employer refuses reasonably to accommodate disabilities or religious preferences.

The costs of discrimination to an appraisal district can be very high. Direct monetary costs can include back pay, damages, attorney's fees and court costs. Less obvious costs may include court or agency interference in the district's policies, the time spent responding to discrimination charges, low employee morale and damage to the district's public image.

Appraisal district employees can invoke their civil rights in a variety of ways. Agencies at both state and federal levels administer civil rights laws. Some cities have local civil rights offices. And finally, state and federal courts may become involved.

The law requires an aggrieved employee to start a complaint at the lowest level available. Persons cannot go directly to court unless the Texas Human Rights Commission or federal Equal Employment Opportunity Commission (EEOC) has investigated and issued a "right to sue" letter. Also, if a local human rights commission has jurisdiction over a discrimination complaint, the Texas Commission on Human Rights and the federal EEOC will postpone action on the complaint until the local agency has an opportunity to act on it.

The Texas Commission on Human Rights administers the Texas Commission on Human Rights Act, which applies to private employers of 15 or more person. The act also applies to all counties, municipalities and state agencies, including institutions of higher education, regardless of the number of employees.

The act permits anyone who feels aggrieved or discriminated against by an illegal employment practice to file a complaint with the commission within 180 days of the date the illegal practice occurred. If the commission has jurisdiction, it investigates the complaint and attempts to resolve any illegal practices by agreement.

The commission has the power to file a civil lawsuit if the problem cannot be resolved voluntarily. The commission can also seek an immediate court order if the complainant would be irreparably harmed if the problem were allowed to continue during the course of an investigation.

Federal and state remedies overlap in the civil rights area. At the federal level, the EEOC performs many of the functions performed at the state level by the Texas Commission on Human Rights. Congress designed the federal laws to encourage states to take on the burden of enforcing civil rights laws. Congress also created the EEOC to enforce those laws when state enforcement machinery does not fill the need.

Federal law requires the EEOC to investigate complaints of employment discrimination. However, it must

defer any action if, as in Texas, state law forbids the discriminatory practice and a state agency can grant relief from the practice.

On the other hand, if the state agency does not follow procedures to enforce the complainant's rights, or does not do so in a timely manner, then the EEOC can step in to investigate. Like the Human Rights Commission, the EEOC attempts to resolve employment problems first through agreement. Also like the Human Rights Commission, the EEOC may go to court when negotiation fails and/or if there is immediate danger of irreparable harm to the complainant.

Finally, if neither the EEOC or Human Rights Commission effects a satisfactory remedy, the complainant may file a civil suit. Lawsuits under the Texas Commission on Human Rights Act are filed in state district courts; suits under federal law may be filed in federal district courts if the plaintiff has exhausted state remedies.

In both cases, courts have the power to order hiring, reinstatement or promotion, payment of back pay (for up to two years under Texas law), reports on compliance and payment of court costs and attorneys' fees. A court can also order other actions to prevent repetition of illegal practices.

Age Discrimination

The Commission on Human Rights Act and the federal Age Discrimination in Employment Act (ADEA) both bar discrimination against persons because of age. The federal law protects persons at least 40 years old — the state law protects persons at least 40 years old and under 70 years old.

Both laws prohibit the compulsory retirement of persons under 65. The ADEA permits compulsory retirement of persons aged 65 and who, for the two-year period immediately before retirement, are employed in a bona fide executive or high-policy making position. The person must, however, be entitled to an annual retirement benefit of at least \$44,000. Texas law permits compulsory retirement under the same conditions, but the individual's retirement benefits must be at least \$27,000.

The federal law entitles employees and their spouses age 65 or over to coverage under the same group health plan offered to younger employees.

Discrimination Because of Disability

The Commission on Human Rights Act and the Rehabilitation Act of 1973 both provide disabled persons with some degree of protection from discrimination. The protection applies only where the disability would not prevent the person from performing job duties in question.

Under Texas law, persons addicted to drugs or alcohol are not considered disabled or handicapped. Persons with

communicable diseases, such as Acquired Immune Deficiency Syndrome or infection with the human immunodeficiency virus, that constitute a "direct threat to the health or safety of the public" or that makes the affected person unable to perform his job, are not disabled.

See **Appendix G** for more about the Americans with Disabilities Act.

Sexual, Racial and Religious Harassment

The Commission on Human Rights Act and Title VII of the Civil Rights Act both guarantee freedom from employment discrimination on the basis of race, color, nationality, religion and sex. Protections against discrimination based on sex include protection from sexual harassment and from discrimination on the basis of pregnancy or childbirth.

However, not all actions or policies that adversely impact people in these categories are illegal. First, where race, color, nationality, religion or sex is a genuine occupational qualification reasonably necessary to performance of the job duties, the employer may discriminate on that basis.

All seniority, merit or incentive systems for determining pay and benefits do not necessarily create illegal discrimination. The federal act requires special record keeping and reports and directs the employer to post information on legal rights in conspicuous places.

Each district should have a policy strictly prohibiting any type of sexual, racial or religious harassment. The district, the board and the chief appraiser may be held liable for back pay and other damages for incidents of harassment or for allowing an atmosphere of harassment to exist in district offices.

The law on sexual harassment mirrors the law on racial and religious harassment. The following discussion will focus on sexual harassment. Generally, the same rules will apply to racial and religious harassment. Both men and women are protected from sexual harassment, but the large majority of victims of sexual harassment are women. For that reason, the following discussion will assume the victim of sexual harassment is a woman.

Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin." 42 U.S.C. Section 2000e-2(a)(1).

Following EEOC guidelines on sexual harassment, most courts recognize two categories of Title VII sexual harassment claims: "quid pro quo" claims and "hostile environment" claims. Quid pro quo sexual harassment is harassment that forces an employee to choose between

consenting to sexual demands and losing a job, a promotion or other employment-related benefits. Hostile environment sexual harassment involves forcing an employee to choose between tolerating an atmosphere of sexual hostility, intimidation or abuse and keeping the job.

Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment is the most commonly recognized form of sexual harassment. Typically in these cases, a supervisor makes a sexual advance toward an employee. The employee rejects the advance and consequently is either fired, demoted, blocked from promotions or denied other job-related benefits.

To prove a case of quid pro quo harassment, the complainant must prove by a preponderance of evidence that she was denied an employment benefit because she refused to accede to sexual demands. Once the plaintiff presents a prima facie case, the courts assume illegal sexual discrimination did take place.

The employer may then rebut the presumption by offering a legitimate explanation for denying the particular benefit to the complainant. If the employer has a legitimate explanation, the plaintiff must then prove that the explanation offered is simply a smoke screen intended to hide the true motive — unlawful sexual discrimination.

The viewpoint for determining the wrongfulness of the defendant's behavior is that of the reasonable defendant. The question is whether in view of all the facts, a reasonable defendant could have fired or failed to promote the plaintiff-employee for a legitimate reason.

Hostile Environment Sexual Harassment

Hostile environment sexual harassment occurs when "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. . . has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." EEOC "Guidelines on Sexual Harassment."

In effect, the victim claims that she should not have to "run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living." *Henson v. Dundee*, 682 F.2d 897 (11th Cir., 1982).

The sexually hostile environment case has two major elements. First, the work environment must in fact be sexually hostile. Second, the sexual behavior must be unwelcome to the victim.

An environment is sexually hostile or abusive when it is so severe or pervasive that it creates an abusive work environment and alters the conditions of employment. In looking at the issue, courts use the viewpoint of the rea-

sonable victim. The question is: "Would the reasonable victim have felt she was being harassed?"

Courts have singled out four major factors to weigh in deciding whether a sexually hostile environment existed.

1. Nature of the unwelcome sexual conduct. For instance, touching may be considered more offensive than words alone.
2. Frequency of the offensive incidents. A hostile environment more likely exists if the behavior occurs every day than if it occurs once a year.
3. Total number of days over which the conduct occurred, weighed against the period of time the plaintiff and defendant worked together. For example, if the incidents occurred every day for one month, the conduct would be more offensive than if the incidents occurred over five days during a one-year period.
4. Context, or totality of circumstances, in which the behavior occurred.

Unlike the quid pro quo sexual harassment type, where a supervisor must be the aggressor, supervisors, co-workers or even non-employees can create sexually hostile environment harassment. The chief appraiser should work to ensure the office environment is free of any sexual harassment.

Avoiding Liability

The EEOC "Guidelines", 29 CFR 1604.11(f), suggest prevention is the best way to avoid liability for sexual harassment. Steps suggested in the "Guidelines" are: affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII and developing methods to sensitize all concerned.

Training should remind supervisors of their responsibility to actively guard against sexual harassment as well of the forms harassment can take. One of the best prevention tools is for supervisors to be aware of what goes on in their division or unit and then take steps to stop harassment before it becomes a problem.

Raising the subject with employees, in either a memo or a meeting, shows that the district is encouraging reporting of harassment and is taking steps to prevent its occurrence. New employees should all receive a copy of the district's policy to show the district is making an on-going effort. Merely addressing the issue is not enough, though, if the response to direct complaints is inadequate.

The courts place great importance on the existence of a grievance procedure. Grievance procedures should

encourage victims of harassment to come forward. One of the most important parts of a grievance procedure is the person to whom victims can report problems. The best policy is for victims to report harassment to any supervisor in the organization.

Another component of the procedure is an assurance of absolute confidentiality within the limits of the law. This policy should be clear to employees; supervisors should be sensitive to the need for confidentiality. All persons interviewed in connection with harassment claims should be cautioned as well. A policy of reprimanding those found to have violated the confidentiality policy will show courts, the EEOC and the Human Rights Commission that the district is sincere in its efforts to encourage reporting of harassment.

A third component of a grievance procedure is a quick response to the complaint. Supervisors should give a short deadline in which to start investigating the complaint. Immediate investigation includes discussing the situation with the harassed employee and identifying other people to interview. Documentation of every complaint made and all actions taken to follow-up is necessary in case the matter does end up in litigation.

Investigations into complaints should be completed quickly and actions taken to remedy the situation. Care should be taken to document the claims and later investigation, but this information should not be placed in personnel files until some resolution is made. Accused employees could be awarded damages if unfounded complaints remain in their file.

Supervisors should be cautious not to dismiss any complaint without a thorough investigation. Some supervisors may be uncomfortable dealing with the issue, but they should never handle their discomfort by joking about it or ignoring it. Another possible reaction of supervisors is to think they know what's going on and deciding the employee "deserves it." These attitudes can easily lead to lawsuits. One way to deal with this discomfort is to appoint one person to take over after the initial investigation has started.

Remedies, ranging from reprimands to demotion or termination, should be rationally related to the severity of the harassment. Sometimes, separating the two employees is enough. If separation is the solution, the solution should not penalize the harassed employee with a less desirable position. Also, if the harassment cannot be proven, separation is still a solution. Again, neither employee should have downgraded positions. When the solution is to demote or file, be aware that the penalized employee could file a lawsuit against the district if the severity of the penalty is greater than the actual offense.

Part of the remedy is aid to the harassed employee. These actions will show the district has taken full corrective

action. Often, the harassed employee suffers psychological or physical problems that result in time away from work and poor work performance. Penalizing the employee in any way for problems directly related to the harassment may result in a lawsuit.

Extra help or training may be necessary if the victim's work performance suffers. Also, the district may compensate sick leave or leave without pay with back pay if the link between the leave and the harassment is clear. The district should show tolerance for continuing problems clearly related to the harassment.

Personnel files should show harassment as the reason for the leave. One court penalized an employer who granted administrative leave to a harassed employee, but recorded it in the employee's file as sick leave. The court felt the failure to admit the true reason was an attempt to protect the manager responsible for the harassment and to hurt the employee for complaining.

Sexual harassment is a difficult problem and the government's solution leaves districts and other employers vulnerable to liability. Sincere efforts to prevent and resolve sexual harassment are the key to avoiding liability.

Job Descriptions, Evaluations and Salary

A written job description should define each position in the appraisal office. Job descriptions are useful in three ways. The chief appraiser can be assured that a specific position is handling each function of the appraisal office. The employee can be certain of the duties and responsibilities that the position carries. Interviewing new employees can be informative and complete.

The chief appraiser and/or supervisors should review job descriptions periodically and updated as necessary.

The district should have a formalized system of evaluation included in the written personnel policy manual. The board should evaluate the chief appraiser's performance at least annually. Likewise, the chief appraiser should evaluate employees on an annual basis, if not more often.

The district should develop a salary classification system based on the duties, qualifications and level of performance necessary for each position. The salary schedule should be realistically based on the appraisal district budget.

Professional Development

Article 8885, Tex. Rev. Civ. Stat., requires that certain employees of the appraisal district register with and attain certification with the Board of Tax Professional Examiners (BTPE). The functions and certification standards of BTPE are discussed in Section IX.

Section 5.04, Property Tax Code, requires an appraisal district to reimburse an employee for all actual and necessary expenses, tuition, fees and costs of materials incurred in attending a course or training program conducted, sponsored or approved by the BTPE. The chief appraiser must approve the course or seminar before the employee is entitled to reimbursement.

The appraisal district should budget funds to cover necessary training and education expenses, based on a careful evaluation by the chief appraiser of employee training and certification needs. For information, contact BTPE by e-mail at <btpe@mail.capnet.state.tx.us.> or call 512/305-7300.

Authority Over Personnel

The Property Tax Code gives the chief appraiser the authority to employ and compensate personnel as provided by the appraisal district budget. The board of directors adopts the budget. So, the directors and chief appraiser must establish a close working relationship on personnel matters.

The chief appraiser should recommend personnel policies and procedures to the board of directors for adoption, then administer the district staff in a manner consistent with board policy and the approved budget.

VII. Appointing the Appraisal Review Board

One of the most important phases of the property tax system is the review of appraisal records by an impartial citizen board. The board hears protests from taxpayers and challenges from taxing units on the proposed appraisal records submitted by the chief appraiser.

The Tax Code assigns this function to the appraisal review board (ARB) whom the appraisal district board of directors appoint. District directors should be aware of the need to select citizens with high competence and with an excellent reputation for fairness and good judgment. Experience in one of the following fields may be helpful: appraisal, real estate, accounting, business, agribusiness, engineering or construction.

Membership Requirements

The statutory requirements to serve as an ARB member are minimal. To be eligible, an individual must be a resident of the appraisal district and must have resided in the district for at least two years.

The Tax Code provides that, in all appraisal districts, a person is ineligible to serve on the ARB if the person is a county appraisal district (CAD) director, a CAD officer or employee, a Comptroller employee or a member of the governing body, office or employee of a taxing unit.

In counties having a population of more than 100,000, a person is ineligible to serve on the ARB if the person has served for all or part of three previous terms or is a former director, officer or employee of the CAD. A person also is ineligible to serve on the ARB in counties having a population of more than 100,000 until the fourth anniversary of the date the person ceased to serve as a member or officer of a taxing unit for which the appraisal district appraises property. In these 100,000 population counties, a person may not serve as an ARB member if the person has ever appeared before the ARB for compensation.

In counties having a population of 100,000 or less, a person is ineligible to be appointed to the ARB for a fourth term if the person has served for all or part of three consecutive terms. The person, however, may serve in some future year.

Barred from Membership

Tax Code Section 6.412 bars an ARB member from serving if the member is related to a person who operates for compensation as a tax agent or a property tax appraiser in the appraisal district. Relatives barred are those within the second degree by consanguinity (blood) or affinity (marriage). Knowing violation of this section is a Class B misdemeanor.

Section 6.413 bars a person who contracts with the appraisal district or a taxing unit served that the appraisal district for any purpose from serving on the ARB. A person who has a substantial interest in a business that has either type of contract is also barred. "Substantial interest" is defined as either: (1) combined ownership of the person and his spouse of at least 10 percent of the voting stock or shares of the business, or (2) service by the individual or a spouse as a partner, limited partner or officer in the business entity.

This section also bars an appraisal district from entering into a contract with a current ARB member or with a business entity in which the member has a substantial interest. This section also bars a taxing unit from making a contract with a member of the ARB or a business entity in which the member has a substantial interest.

Other conflict of interest statutes that apply to ARB members are discussed in Section III of this manual. They are the same statutes that apply to appraisal district directors. Additional information regarding conflicts of interest for ARB members, including Section 41.69, Property Tax Code, may be found in the Appraisal Review Board Manual published by the Comptroller. Appendix B shows the family relationships that may bar an ARB member from serving or contracting with the district or taxing unit.

In Opinion No. JC-0192 (2000), the Texas Attorney General ruled that an individual who serves as legal counsel to an appraisal district was not eligible to be appointed to the ARB. The opinion held that ineligibility of an ARB member does not affect actions by the board during the member's tenure.

The opinion held that a paid legal advisor was ineligible for appointment to the ARB because of Tax Code Section 6.413(a). It provides that a person may not serve if the person or a business entity in which the person has a substantial interest is a party to a contract with the appraisal district or a taxing unit in the district. In the capacity as attorney to the appraisal district, the legal advisor is a party to "some kind of contract" with the appraisal district.

Current on Taxes

The Tax Code disqualifies a person from serving on an ARB if the person owns property on which delinquent property taxes have been owed for more than 60 days, after the date the person knew or should have known of the delinquency.

This restriction does not apply if the person is paying the delinquent taxes under an installment payment agree-

ment or has deferred or abated a suit to collect delinquent taxes.

Number and Term of Office

The board of directors must appoint at least three members to the ARB. However, the directors may, by resolution of a majority, increase the size from three to not more than nine members in appraisal districts with less than 250,000 inhabitants. In an appraisal district with a county population of at least 250,000, the number may be increased to 15 members.

Beginning in 2002, in counties with a population of at least 250,000, the number of ARB members may not be more than 40 members and in counties with a population of at least 500,000 to not have more than 75 members.

Directors appoint ARB members by resolution passed by a majority of the appraisal district board. A vacancy on the ARB is filled in the same manner for the unexpired portion of the term.

ARB members serve two-year terms beginning January 1. However, terms must be staggered, so that the terms of approximately half the members expire each year. In making the initial appointments, the board of directors must designate those members who serve terms of one year.

ARB members must sign the required statement and take the prescribed oath of office before acting in an official capacity. The statement and oath are the same as those taken by district directors, with "Appraisal Review Board of _____ County" indicated as the office held.

An appointment to the ARB by the board of directors may be vetoed by a majority of the voting taxing units. A majority of the voting units must file veto resolutions with the board secretary of the appraisal district within 15 days after the action is taken.

Auxiliary ARB Members

Effective January 1, 2002, the Texas Legislature repealed Tax Code Section 6.411 concerning the appointment and duties of auxiliary ARB members. With the increased number of regular ARB members available for appointment, the Legislature discontinued auxiliary ARB members.

Temporary ARB Members

Appraisal district directors may appoint temporary ARB members. Property Tax Code Section 41.66(g) provides for temporary ARB members to replace regular ARB members who may not participate in a hearing because the ARB members have communicated with another per-

son(s) about a hearing outside that scheduled hearing.

Temporary ARB members must meet all the eligibility requirements for appointment that are required for regular ARB members. These temporary ARB members must take the oath of office and sign the required statement before serving on the ARB. The appraisal district directors appoint these ARB members for a term of the same length as regular ARB members.

The appraisal district directors must adopt and implement a plan for the temporary replacement of an ARB member. Again, temporary ARB members may be necessary when a ARB member may not participate in a hearing where the ARB member has communicated with another person about the hearing outside the scheduled hearing.

ARB Training

Property Tax Code Section 5.041 requires the State Comptroller to approve curricula, provide materials and supervise the training of ARB members. All ARB members must complete the Comptroller course or may not participate in ARB hearings. However, an ARB member appointed after a course offering may continue to serve until the completion of a subsequent course offering.

The Comptroller may assess a fee, not to exceed \$50 per ARB member, to recover a portion of the costs incurred for the training course. The appraisal district board should provide for budgeting ARB training as part of the district's annual budget. Currently, the Comptroller charges a \$10 fee per person for the seminar.

ARB Member Removal

Property Tax Code Section 6.41 requires the appraisal district board of directors to adopt a specific procedure for the removal of ARB members by a majority vote. The grounds for removing an ARB member are for:

- violating Section 6.412 (restrictions on eligibility to serve as an ARB member),
- violating Section 6.413 (interest in certain contracts),
- violating Section 41.66 (communication outside a hearing),
- participating in a hearing with a conflict of interest or related to a party of the hearing and
- failure to attend ARB meetings and hearings.

The directors should include in their written policies the number of meetings/hearings that an ARB member must attend for a year. If the ARB member does not meet the attendance policy, the directors have grounds for removing the ARB member.

The appraisal district directors must adopt and implement a plan for the temporary replacement of an ARB member. Section 41.66(g) provides that an ARB member must not participate in a hearing where the ARB member has communicated with another person about the hearing outside the scheduled hearing.

ARB Meetings

Once the board of directors has appointed the ARB members and the members are sworn into office, their authority is independent of the control of the board of directors. The ARB selects their own chair and secretary. The ARB meets at any time at the call of the chair or as provided by ARB rule. The ARB must meet to examine the appraisal records within 10 days after the date the chief appraiser submits the records to them.

ARB meetings, like appraisal district board meetings, are open to the public and must meet the requirements of the Open Meetings Act discussed earlier in this handbook. In addition, ARB records are open under the Open Records Act, except those deemed confidential in the Property Tax Code.

The ARB will work closely with the appraisal office in receiving information, handling requests, sending notices and handling daily administration of ARB duties. The chief appraiser may assign staff to assist the ARB.

The review board adopts its own rules of order and procedure. The board of directors does not have the authority to establish rules for the ARB.

Compensation of ARB Members

Members of the review board are entitled to payment of a per diem for each day the board meets as provided in the appraisal district budget. The budget may allow also for reimbursing ARB members for actual and necessary expenses incurred in the performance of their duties.

ARB Personnel

The ARB may employ legal counsel as provided by the district budget or use the services of the county attorney. As previously noted, the ARB may use the staff of the appraisal office for clerical assistance.

The board of directors should budget additional funds to provide such personnel or make policy guidelines for legal and clerical assistance to the ARB. Legal and clerical assistance must be independent of work done for the appraisal district or its office.

The chief appraiser, with guidance from the board of directors, may wish to establish policy on personnel assignments to the ARB, overtime issues, the allocation of regular job duties during periods when employees work with the ARB and other administrative details.

VIII. Assessment and Collection Functions

A taxing unit may contract the assessment and collection functions to the appraisal district, the county or to another taxing unit. The Property Tax Code provides procedures for taxing units to follow to consolidate either or both of the assessment and collection functions with the appraisal district. The district may be responsible for these functions for one or more of the district's taxing units.

For convenience, when referring to consolidation contracts and elections, this manual refers to the contract or election for the appraisal district to assume the function. A taxing unit may assume these functions instead of the appraisal district. When referring to consolidation, this manual includes transferring both the assessment and collection functions, although taxing units and voters have the choice of transferring only one of these functions.

Assessment functions are set forth in Chapter 26, Property Tax Code. These functions include calculating a taxing unit's effective and rollback tax rates, publishing the unit's effective and rollback tax rates and publishing required notices of hearings held by the taxing unit to discuss and adopt a tax rate. The final assessment function is applying the adopted tax rate to the values on the appraisal roll certified by the appraisal district. The result of the assessment process is to fix a tax rate and determine each property owner's tax liability.

Collection functions are covered in Chapters 31, 32, 33 and 34, Property Tax Code. These duties include preparing and mailing tax statements, collecting current and delinquent taxes and pursuing delinquent taxpayers.

By Contract

Intergovernmental contracts may bind the appraisal district to collect and assess for a taxing unit. A consolidation contract may provide as well for the appraisal district to contract with an attorney to collect delinquent taxes.

Property Tax Code Section 6.24 and the Intergovernmental Cooperation Act, Art. 4413 (32b), Tex. Rev. Civ. Stat., provide the authority for consolidation contracts. These contracts must meet the following requirements of the Intergovernmental Cooperation Act:

- Be approved by the appraisal district board and the taxing unit's governing body; and
- State the purpose, terms, rights, objectives, duties and responsibilities of the appraisal district and the taxing unit.

There are two different procedures for getting the necessary approval for the appraisal district to assess or collect

taxes under a consolidation contract: one procedure for counties and one procedure for other taxing units.

Counties

The commissioners court must approve the contract and have the county TAC's approval to contract with the appraisal district for tax assessment and collection.

The attorney general has held that the county may not contract to transfer all the county TAC's functions from that office. However, the county may contract for the county TAC to receive assessment-collection assistance from the appraisal district (or another taxing unit). See Texas Attorney General Opinion No. JM-833 (1987).

When the county makes a consolidation contract, the contract must provide for the appraisal district to assist in assessing and collecting all taxes the county is required to assess and collect, except the county may retain the collection of the special inventory taxes outlined in Tax Code Chapter 23.

Other Taxing Units

The governing body of any other taxing unit may approve a contract with either another taxing unit or the appraisal district to assess and collect taxes.

A sample contract for consolidating assessing and collecting appears as Appendix F. The district's attorney must modify the sample contract to fit the specifics of the agreement.

By Consolidation Elections

Tax Code Section 6.26 provides for voters to vote to consolidate collections. Voters may require either the appraisal district or an individual taxing unit to handle consolidated tax assessment and collection functions.

Texas Attorney General Opinion JM-833 (1987) held that elections to consolidate the county TAC's functions to the appraisal district or another taxing unit are unconstitutional.

The code permits two types of elections:

- All voters in the appraisal district may vote to consolidate assessment and collection for all taxing units in the appraisal district in either the appraisal district office, the county or one taxing unit; or
- The voters in a taxing unit that assesses and collects taxes may vote to consolidate that function in the appraisal district, the county or another taxing unit.

An appraisal district may not be required to provide assessing and collecting services for taxing units outside its boundaries. Similarly, a taxing unit may not be required to assess and collect taxes for a unit outside the appraisal district that appraises property for the taxing unit.

Although the board does not determine the validity of a consolidation petition or call an election, members should be aware of the law on consolidation elections and petitions. In a district-wide consolidation drive, the voters must submit the petition to the county clerk of the county where the appraisal district is principally located. The commissioners court determines the validity of the consolidation petition and calls an election.

In a drive to consolidate the assessment and collection functions of an individual taxing unit, the voters submit the petition to the taxing unit's governing body. The governing body determines the validity of the consolidation petition and calls an election.

A petition is valid if it:

- Specifies the taxing unit or appraisal district for which the assessment and collection functions are to be consolidated;
- Specifies the taxing unit, county or appraisal district that will perform the assessment and collection function;
- States the functions to be consolidated—assessment, collections or both;
- States that the petition intends to require an election on the question of consolidation of assessment, collection or both; and
- Is signed by the lessor of 10,000 qualified voters or at least 10 percent of the number of qualified voters residing in the taxing unit or the appraisal district (if the election is to consolidate the assessment and collections of all taxing units), according to the most recent official voter registration list.

Petition signatures do not count if:

- The person did not write the date signed on the petition beside the name, or
- The person signed the petition more than 30 days before the date the petition is submitted to the county clerk or governing body.

If the petition is valid, the commissioners court or governing body must order an election. The election is set for the next uniform election date in the Texas Election Code that is more than 60 days from the last day the petition could have been approved or disapproved.

The ballot must permit a "yes" or "no" vote and read as follows:

Requiring the (name of entity or office) to (assess, collect, or assess and collect as applicable) property taxes for (all taxing units in the appraisal district for _____ County or name of taxing unit or units as applicable).

If a majority votes in favor of the proposition, then assessment and collection functions will be consolidated as stated in the petition.

Consolidation begins the next time taxes are assessed and/or collected that is more than 90 days after the election date, although all entities may agree to begin consolidation in less than 90 days. In a county-wide consolidation election, a majority must vote for consolidation, but a majority of total votes does not necessarily bind all taxing units. Where the total majority votes for consolidation but less than a majority of any one taxing unit votes for consolidation, that one taxing unit is not bound by the consolidation vote.

The consolidation may not be terminated within a two-year period following the date of the election.

Annual Collection Budget

When assessment and collections are consolidated, the taxing unit that consolidated its functions must pay the actual cost of performing the functions. If the appraisal district is assessing and collecting, the district should outline the costs in a separate budget.

The attorney general in Opinion No. JM-996 (1988) has defined "actual costs" as those costs that the collecting unit incurs over and above those it would incur if it were not collecting for another unit.

If the appraisal district performs assessment and collection functions under contract, the budget should be based on the contract. If the district collects under an election, the budget should be based on actual costs among the taxing units served. Of course, the district must allocate costs only to those taxing units for which it performs assessment and collection functions.

Special items in the annual collection budget include bonds required, services of a delinquent tax attorney and court fees (if the appraisal district is handling delinquent collections).

IX. Certification by Board of Tax Professional Examiners

State law requires that individuals in the property tax field be competent and accountable through a program of registration and certification.

The Board of Tax Professional Examiners (BTPE), established September 1, 1983, is governed by Article 8885, Tex. Rev. Civ. Stat. The BTPE is responsible to see that property taxation is practiced as a learned profession and that practitioners are accountable to the public.

The BTPE provides information on registration, fees, applications, certification requirements and other data to individuals engaged in appraisal, assessment/collection and collection only. The agency can be reached by e-mail at <btpe@mail.capnet.state.tx.us.> or by calling 512/305-7300. BTPE's Web site is <www.txbtpe.state.tx.us.>

Appraisal district directors need to be aware of certification requirements. Chief appraisers and certain appraisal office staff must register and fulfill certification standards within a required time period to lawfully perform their duties. The district must budget funds to cover registration fees, tuition for courses and other special programs associated with this area.

The following is a brief review of the provisions of Article 8885 and BTPE rules governing registration and certification standards.

Who Must Register

The law requires that the following persons must register:

- all chief appraisers, appraisal supervisors and assistants, property tax appraisers, appraisal engineers and other persons with authority to render judgment on, recommend or certify appraised values to the appraisal review board of an appraisal district;
- the tax assessor-collector, tax collector or other person designated by the governing body of a taxing unit as the chief administrator of the unit's assessment functions, collections functions or both; other persons who perform assessment or collection functions for a taxing unit whom the chief administrator of the unit's tax office requires to register*;
- and
- all persons engaged in appraisals of real or personal property for ad valorem tax purposes for an appraisal district or a taxing unit.

* Note: A county tax assessor-collector of a county with a population of one million or more is not required to be registered with BTPE.

*A tax assessor-collector for a county with a population of 1 million or more is exempt from registration.

So, directors need assurance that those staff members who handle appraisal of property, assessment and/or collection functions are registered with BTPE. This requirement includes consultants and representatives of private firms which provide appraisal services to the appraisal district under contract.

Registrants are divided into three fields, based on current duties and responsibilities: appraisal, assessment/collections and collections only.

Requirements

A new registrant has a set number of years in which to reach certification. An individual in appraising has five years in which to complete requirements for the Registered Professional Appraiser (RPA) designation. An individual in assessing/collecting has five years to complete requirements for Registered Texas Assessor-Collector (RTA). An individual who collects only has three years to become a Registered Texas Collector (RTC).

The first year of registration has identical requirements for all three fields; thereafter, the requirements differ. Additional information is available from BTPE.

Re-certification

Individuals must re-certify five years from the date of first certification and every five years while registered.

Re-certification requires the individual: (1) to gain five years additional experience in the field and (2) to obtain 60 to 75 continuing education units (CEUs), depending on deadline for re-certification. RTCs must obtain 25 CEUs prior to their re-certification date.

CEUs are awarded for examined education courses, workshops, seminars, conferences, institutes and professional service. CEUs are not awarded for social, political or purely organizational activities. A person who is required to register and fails to do so commits a Class C misdemeanor.

Enforcement

Registration is not voluntary; it is a mandatory requirement for persons engaged in appraisal, assessing or collecting for property tax purposes. The BTPE may enforce the law and its rules regarding registration and certification as follows:

- refusal to register a person who does not meet the requirements for registration;
- cancellation of registration if a person fails to advance in classification in the specified time period;
- suspension of registration after an investigation and hearing based on a citizen's complaint or on board initiative; and
- revocation of registration after an investigation and hearing based on a citizen's complaints or on board initiative.

Suspension and revocation of registration could occur for violation of the standards of professional practice, violation of the code of ethics, misrepresentation of fact which directly results in harm or injury to a taxpayer or governmental unit or other violation as determined by BTPE.

Individuals desiring to register must meet specific requirements such as being actively engaged in appraising for property tax purposes, in assessing or in collecting property taxes. A person that does not perform these functions cannot register.

Fees

The annual application fee for registration is set by the BTPE board, to be not less than \$45 and not more than \$75. Additional cost for the appraisal district will be for tuition, fees, materials and other items associated with courses and programs taken by appraisal office personnel.

As previously noted, Tax Code Section 5.04 provides that an appraisal district shall reimburse an employee of the appraisal office for all actual and necessary expenses, tuition and other fees and costs of materials incurred in attending, with the chief appraiser's approval, a course or training program conducted, sponsored or approved by the BTPE. Appraisal office staff may seek BTPE determination on whether certain courses will be acceptable in meeting certification standards for a special field.

Appendix A. Selection of Directors

The quality of the property tax system depends on the appraisal district board of directors. Individuals serving on the board of directors bring to the board knowledge, judgment and expertise in establishing policies and procedures for the district's organization and operation.

Directors are nominated and selected by the governing bodies of voting taxing units in the appraisal district. Voting taxing units for all appraisal districts are the county, cities and towns and school districts participating in the district. Conservation and reclamation districts as a group may be voting taxing units under certain circumstances. Other special districts, such as hospital districts, rural fire prevention districts and junior college districts do not vote to select directors.

The Tax Code provides that the county tax assessor-collector (TAC) will serve on the appraisal district board of directors. The county TAC automatically will serve as a nonvoting district director, if the county TAC is not appointed to the board of directors under the regular process. If a taxing unit, such as the county commissioner's court, appoints the county TAC to the appraisal district board, then the county TAC serves as a voting member. The county TAC does not have to meet the residency requirements for serving as a nonvoting director.

The county TAC is ineligible to serve as a nonvoting or voting director if the county TAC also serves as the CAD's chief appraiser. The county TAC is ineligible to serve as a nonvoting director if the county has contracted for county tax assessment and collection with another taxing unit or with the CAD.

Appraisal district boards may vary in size from five to thirteen members. Most appraisal district boards have five members. Enlarging the board beyond five members requires action by the previous board of directors or three-fourths of the voting units. Tax Code Section 6.031 provides the method for increasing the board's size.

Taxing units select directors in the fall of each odd-numbered year. The chief appraiser announces the new directors before December 1. The selection method may be changed in the same manner as changes in the number of directors.

Tax Code Section 6.03 establishes the selection process for appraisal district directors. This process is not an "election" governed by the Texas Election Code, but an independent procedure unique to the property tax system. This section describes the following features of the selection process:

- qualifications for serving as an appraisal district

director;

- voting process;
- sample calculation of the number of votes a taxing unit may cast in selecting directors;
- sample worksheet for calculating the votes;
- list of each voting taxing unit's responsibilities; and
- selection of a candidate of conservation and reclamation districts.

The Selection Process Step-by-Step

A board of five directors governs each county appraisal district, plus the county TAC as a nonvoting director (if not regularly appointed). The county, cities and towns and school districts participating in the district nominate and select directors. Incorporated villages are considered part of "cities and towns" and also vote. Conservation and reclamation districts (municipal utility districts, water districts, etc.) are entitled to vote under certain circumstances.

Other taxing units—junior colleges, hospital districts and other special districts participating in the appraisal district—may not vote for directors.

The Property Tax Code permits appraisal districts to change the procedure for appointing directors. This part of the pamphlet discusses the normal process described in the code. A later section discusses how to change the appointment process.

Chief Appraiser's Duties

The chief appraiser calculates the number of votes for each taxing unit, receives nominations for directors, prepares the ballot, counts the votes and announces the winners.

Throughout the selection process, the Property Tax Code specifies dates for action by the chief appraiser and the voting units. These dates are directory and not mandatory — that is, minor delays in the nominations or voting process may be ignored. A nomination made a day or two after the statutory deadline is still a valid nomination unless the chief appraiser has already prepared and distributed the ballot. Similarly, a taxing unit delivering a vote to the chief appraiser after the deadline for submission is not void unless the chief appraiser has announced the winners. Under the law, officials must be in substantial compliance with the process, according to Texas Attorney General Opinion No. JM-166 (1984).

The following steps outline the chief appraiser's duties.

Step 1 - Obtain prior year tax levies.

The number of votes allocated to a voting unit is based on the ratio of its tax levy in the preceding year to the total tax levy of all voting units. The chief appraiser uses the most recent official tabulation of each voting unit's prior year levy. This is the amount levied, not the amount collected, by the voting unit.

If a multi-county unit has chosen only one appraisal district, that appraisal district uses all of the tax levy in calculating the unit's votes. If a taxing unit participates in several appraisal districts, the chief appraiser uses only the tax levied in that appraisal district.

The chief appraiser also should find out if any voting unit plans to change appraisal districts.

The county tax levy includes taxes for the general fund, farm-to-market roads or flood control and special road and bridge funds.

Further, the chief appraiser does not include payments received in lieu of taxes in the tax levy of a voting unit, since by definition such payments do not constitute tax levies.

Step 2 - Calculate votes for each voting unit.

Before October 1, the chief appraiser must calculate the number of votes for each voting unit. To determine the votes, the chief appraiser must:

1. Divide the amount of the preceding year's property taxes imposed by each unit by the total amount of preceding year's property taxes imposed by all voting units.
2. Multiply the quotient in No. 1 by 1,000 and round to the nearest whole number.
3. Multiply the whole number in No. 2 by the number of seats on the appraisal district board that will be filled.

The formula looks like this:

$$\frac{U}{V} = T \times 1,000 \times D$$

$$V = T \times 1,000 \times D$$

V = the number of votes for a given voting unit.

U = the amount of preceding year's property taxes imposed by the given voting unit.

T = the total amount of preceding year's property taxes imposed by all voting units within the appraisal district.

D = the number of directors that will be selected this year (ordinarily five, unless the number of directors has increased).

See the sample calculation.

Step 3 - Notify each voting unit.

Before October 1, the chief appraiser must notify each voting taxing unit of the number of votes it may cast. The chief appraiser will send a notice of the votes to the following individuals:

- for the county, to the county judge and each county commissioner;
- for a city or town, to the mayor and to the city manager, city secretary or city clerk (as applicable); and
- for a school district, to the school board president.

Step 4 - Receive director nominations.

Each voting unit may nominate one candidate for each position to be filled. Thus, the unit may nominate from one to five candidates, provided the board of directors consists of five members. The unit may nominate more candidates if the size of the board has been increased.

The presiding officer of the unit submits the names of the nominees by written resolution to the chief appraiser before October 15. The presiding officer should include the addresses of the nominees so that the chief appraiser can notify the winners.

The chief appraiser has neither the authority nor the duty of investigating or judging the qualifications of the nominees.

Step 5 - Prepare the ballot.

Before October 30, the chief appraiser must prepare a ballot listing the nominees alphabetically by each candidate's last name. The chief appraiser must deliver a copy of

Unit	Tax Levy	Percentage	Votes
County A	\$1,500,000	20.0	1,000
City B	500,000	6.7	335
Town C	200,000	2.7	135
ISD AA	4,000,000	53.3	2,665
ISD BB	1,000,000	13.3	665
ISD CC	300,000	4.0	200

this ballot to the presiding officer of the governing body of each voting unit.

Step 6 - Cast the votes.

Each voting unit must cast its vote by written resolution and submit it to the chief appraiser before November 15. The unit may cast all its votes for one candidate or may distribute the votes among any number of candidates.

Some voting units may have enough votes to select several directors to the board. To share representation on the board, several units may wish to vote for the same candidate.

A voting unit must cast its votes for a person nominated and named on the ballot. There is no provision for write-in candidates. The chief appraiser may not count votes cast for someone not listed on the official ballot.

Step 7 - Announce the winners.

The chief appraiser must count the votes and declare the candidates who received the largest vote totals before December 1. The chief appraiser notifies all taxing units (voting and non-voting) and all the candidates (winners and losers) of the outcome.

If a tie occurs, the chief appraiser must resolve it through any method of chance. Methods of chance include such actions as flipping a coin, drawing straws, drawing a black bean, drawing names from a hat and so forth.

Changing the Selection Process

Section 6.031, Property Tax Code, allows appraisal districts to change the number of directors or the method of selection, or both, subject to veto by any voting unit.

A second option is called the "three-quarters rule" because at least three-quarters of the voting units must decide to change the process.

First Option - Unanimous Consent

The appraisal district board may increase its number of directors to a maximum of 13, change the selection procedure or both. To do so, the directors must pass a resolution stating the change and send it to all taxing units in the appraisal district before August 15 of a year in which directors are selected.

Any voting unit—county, school district, city or town—may veto the change by adopting a resolution of opposition and filing it with the board of directors before September 1.

Upon receipt of a veto resolution, the board of directors must notify all taxing units in writing before September 15. This deadline allows sufficient time for taxing units

to invoke the second option—the three-quarters rule.

Second Option - Three-quarters Rule

A voting unit that holds a majority of the votes in the normal selection process may not have its voting strength reduced to less than a majority unless it adopts a resolution supporting the change.

For example, a school district with 85 percent of all calculated votes must agree to any proposed change that decreases its voting percentage to less than 50 percent of all votes. If the school does not agree, the new method is void, even if approved by three-quarters of the remaining units.

No unit's voting strength may be reduced to less than one half of the number of votes it holds in the normal selection process without its consent, unless the unit's appraisal district budget allocation is reduced in the same proportion as its voting strength.

For example, a city has 40 percent of all calculated votes and does not support the resolution to change the selection process. The new method can reduce that city's voting strength to 20 percent without any budget adjustment. However, if the new method reduces the strength to less than 20 percent, then the appraisal district reduces the city's budget allocation by the same proportion.

The procedure may not be used to expand the types of units that vote.

Steps for Changing the Selection Process

Before October 1 in a year of selecting directors, at least three-quarters of the voting units must adopt and file their resolutions with the chief appraiser for changing the selection process.

Before October 5, the chief appraiser determines whether a sufficient number of voting units have adopted the resolution to change the selection process. If this is the case, the chief appraiser must notify taxing units of the change before October 10. Once adopted, any replacement procedure remains in effect for subsequent elections until:

1. the resolution changes in accordance with the requirements and provisions of Section 6.031 (the statute for changing the process); or
2. a majority of the voting units rescind the resolution that approved the change.

SUMMARY - Tasks for Voting Units in the Selection Process

The governing bodies of the voting units have certain responsibilities in selecting directors. The governing body of each voting unit must do the following:

1. File a resolution with the chief appraiser before October 1 if the unit wishes to change the selection process.
2. File a resolution of opposition with the board of directors before September 1 if the unit objects to a change in the selection process that the board has made.
3. Nominate one candidate for each position on the board of directors. Submit the names and addresses of the nominees to the chief appraiser before October 15.
4. Cast votes for any of the candidates on the ballot. Send the resolution to the chief appraiser before November 15.
5. Nominate a person to fill a vacancy on the board of directors within 10 days after notice of the vacancy. Send the name of the nominee to the chief appraiser.

Participation by Conservation and Reclamation Districts

Conservation and reclamation districts may participate in this process if a proper request for participating in the director's selection process has been filed for the current year. These districts may also participate if they were entitled to vote in the last director selection that took place in the appraisal district.

Selection of Conservation and Reclamation District Nominee

Conservation and reclamation districts may become voting taxing units. The Property Tax Code defines a conservation and reclamation district as a district created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or under a statute enacted one of these provisions. The most common of these districts are water districts, municipal utility districts and road districts.

Conservation and reclamation districts are not automatically entitled to vote for appraisal district directors. To become voting taxing units, at least one conservation and reclamation district in the appraisal district must make a

request to nominate and vote on the board of directors. The request must be in writing and delivered to the chief appraiser on or before June 1 of each odd-numbered year. If the chief appraiser receives a request from a conservation and reclamation district, he or she will begin the process of selecting a nominee from these districts. This process is different from the process of selecting nominees of other voting taxing units.

Step 1 - Certify a list of eligible districts.

After receiving a request, the chief appraiser must certify a list of all eligible conservation and reclamation districts that are imposing taxes and that participate in the appraisal district. The chief appraiser must certify the list by June 15 of the year the request is made. To determine whether a district is authorized under the code's definition, chief appraisers should ask each district involved for a citation to the statute or constitutional provision authorizing the district. If not convinced of the district's right to participate in the process, the chief appraiser should consult the appraisal district's attorney.

Step 2 - Calculate the votes and notify the districts.

If the proper request has been made, the chief appraiser must calculate the number of votes to which each eligible conservation and reclamation district is entitled and deliver written notice of each district's voting entitlement and right to nominate a director to the presiding officer of each district.

The chief appraiser must deliver this notice on or before June 30 of each odd-numbered year. The number of votes to which each eligible conservation and reclamation district is entitled is calculated in the same manner as other voting taxing units. This process is discussed above.

Step 3 - Receive candidate nominations.

The governing body of each conservation and reclamation district entitled to vote may nominate by resolution a candidate for the board of directors. The district's presiding officer must submit the district's nominee's name to the chief appraiser on or before July 14 of each odd-numbered year.

Step 4 - Prepare a ballot.

On or before July 31, the chief appraiser prepares a nominating ballot. The ballot must list all the nominees of each conservation and reclamation district alphabetically by surname. The chief appraiser must prepare and deliver a copy of the nominating ballot to the presiding officer of each district.

Step 5 - Cast the votes.

On or before August 14, each district's board of directors must choose its nominee by resolution and submit the resolution to the chief appraiser.

Step 6 - Count the votes.

The chief appraiser must count the votes and determine the conservation and reclamation district's nominee. The person with the most votes wins the nomination, but only if he or she receives at least 10 percent of the votes that could have been cast by the districts. Tie votes are resolved by any method of chance.

An alternate procedure is followed if no person receives at least 10 percent of the conservation and reclamation district's votes. In this case, the chief appraiser must notify the presiding officer of the board of each district of the failure to select a nominee on or before August 31. Each district may then submit a nominee following the original procedure discussed above. Each district must submit a nominee to the chief appraiser on or before September 15. The chief appraiser submits a second nominating ballot to the districts on or before October 1. Districts must vote as discussed above on or before October 14. This time around, the nominee with the most votes wins a place on the board of director's ballot. There is no requirement that one person achieve at least 10 percent of the votes. Again, tie votes are resolved by any method of chance.

Step 7 - Place the conservation and reclamation district's nominee on the ballot.

The chief appraiser must place the conservation and reclamation district's nominee on the appraisal district's board of directors ballot along with the candidates from the other voting taxing units.

Step 8 - Count the conservation and reclamation district's votes.

When the selection of the appraisal district's board takes place, the candidate receiving the most votes of the conservation and reclamation district is considered to have received all of the conservation and reclamation's district's votes. The votes of those districts that did not vote with the majority are considered to have been cast for the majority. So, for practical purposes, the conservation and reclamation districts vote as a group.

If the group of districts does not have enough votes to elect a director, then the districts will not be represented on the board. In some appraisal districts, conservation and reclamation districts may wish to cast votes with another voting taxing unit to have a representative on the board.

SUMMARY - Tasks for Conservation and Reclamation Districts in the Selection Process

The governing bodies of conservation and reclamation districts have certain responsibilities in the selection process. To participate, these districts must take the following actions:

1. File a written request to nominate and vote on the board of directors on or before June 1 of each odd-numbered year. At least one eligible conservation and reclamation district in the appraisal district must make this request.
2. Nominate a candidate for the board of director's selection ballot. Each district's governing body makes a nomination by resolution of and submits to the chief appraiser on or before July 14.
3. Choose a nominee from the nominating ballot on or before August 14. A conservation and reclamation district's nominee must be chosen from the nominating ballot submitted by the chief appraiser. The nomination must be by resolution of the district's board of directors.
4. Engage in the alternate nominating process, if necessary. Conservation and reclamation districts must participate in an alternate nomination process if no candidate on the nominating ballot receives at least 10 percent of the district's votes.
5. Participate in the appraisal district's board of directors selection process. Conservation and reclamation districts must vote for appraisal district directors in the same manner as other voting taxing units. The candidate who receives the votes of most of the conservation and reclamation districts is considered to have received all of the district's votes.

Conservation and Reclamation District Participation in Other Appraisal District Matters

Conservation and reclamation districts have a vote in appraisal district matters, even though the districts may not have requested to vote in the selection of appraisal district directors. Any provision of the code that permits a tax-

ing unit to vote also applies to conservation and reclamation districts. This permission to vote explicitly includes the right to disapprove the appraisal district's budget or veto an appraisal board action.

In exercising this right to vote in appraisal district matters, the conservation and reclamation districts vote as a block. The districts are considered to have exercised their vote only if the majority of the districts take the same action to exercise that vote. Otherwise, they are considered not to have voted.

Appendix B. Chart of Kinship for Appraisal Personnel

A Revision of the Degrees of Consanguinity and Affinity Prohibitions

1st DEGREE	2nd DEGREE	3rd DEGREE
<p>By Consanguinity</p> <ul style="list-style-type: none"> • Parents • Children <p>By Affinity</p> <ul style="list-style-type: none"> • Spouses of relatives listed under consanguinity • Spouse • Spouse's parents • Spouse's children • Stepparents • Stepchildren 	<p>By Consanguinity</p> <ul style="list-style-type: none"> • Grandparents • Grandchildren • Brothers & sisters <p>By Affinity</p> <ul style="list-style-type: none"> • Spouse's of relatives listed by consanguinity • Spouse's grandparents • Spouse's grandchildren • Spouse's brothers & sisters 	<p>By Consanguinity</p> <ul style="list-style-type: none"> • Great grandparents • Great grandchildren • Nieces & nephews • Aunts & uncles <p>By Affinity</p> <p>NO PROHIBITIONS</p>
<p>1st Degree Prohibitions for:</p>	<p>2nd Degree Prohibitions for:</p>	<p>3rd Degree Prohibitions for:</p>
<p>Chief Appraiser</p> <ul style="list-style-type: none"> • May not work for the appraisal district. On September 1, 1989, either relative or the chief appraiser must resign immediately. • The appraisal district may not contract with the relative. • If one of the relatives does business in the appraisal district as a paid property tax agent or as a fee appraiser whose work involves property taxes, the chief appraiser must resign. 	<p>Chief Appraiser</p> <ul style="list-style-type: none"> • May not be hired by the appraisal district. If a relative began working for the appraisal district more than 30 days before the chief appraiser's appointment, the relative may keep the job but the chief appraiser may not promote, demote, change the salary, or take any other action which affects the relative individually. If the relative was hired less than 30 days before the chief appraiser's appointment, either the relative or the chief appraiser must resign immediately. • If one of the relatives does business in the appraisal district as a paid property tax agent or as a fee appraiser whose work involves property taxes, the chief appraiser must resign. 	<p>Chief Appraiser</p> <ul style="list-style-type: none"> • May not be hired by the appraisal district. If the relative begins working for the appraisal district more than 30 days before the chief appraiser's appointment, the relative may keep the job but the chief appraiser may not promote, demote, change the salary, or take any other action which affects the relative individually. If the relative was hired less than 30 days before the chief appraiser's appointment, either the relative or the chief appraiser must resign immediately. <p>Appraisal District Director</p> <ul style="list-style-type: none"> • May not work for the appraisal district, either the relative or the director must resign. <p>Appraisal Review Board Member</p> <ul style="list-style-type: none"> • May not participate in the determination of a taxpayer protest in which the ARB member is related to a party to the protest.

1st and 2nd Degree Prohibitions for:

<p>Appraisal District Director</p> <ul style="list-style-type: none"> • May not work for the appraisal district. Either the relative or the director must resign immediately. • If one of the relatives does business in the appraisal district as a paid property tax agent or as a fee appraiser whose work involves property taxes, the director is ineligible to serve. However, current directors may complete their terms. <p>Appraisal Review Board Member</p> <ul style="list-style-type: none"> • If a person with substantial interest in matter before the ARB is a 1st degree relative, the ARB member must file an affidavit and abstain. • If any of the listed relatives does business in the appraisal district as a paid property tax agent or as a fee appraiser whose work involves property taxes, the ARB member is ineligible to serve. However, current members may complete their terms. • May not participate in the determination of a taxpayer protest in which the ARB member is related to a party to the protest.
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Appendix C. Policy Manual Outline

1. Organizing an appraisal district office *Chapter 6, Property Tax Code (PTC)*
 - A. Board of directors
 1. Qualifications *Section 6.03 (a), PTC*
 2. Method of selection *Section 6.03 (c), (d), (e), (f) (g), (j) and (k), PTC*
 3. Filling vacancies *Section 6.03 (h), PTC*
 4. Creating new board positions *Section 6.031, PTC*
 5. Removal from office *Section 6.033, PTC*
 6. Election of officers *Section 6.04, PTC*
 7. Conducting a board meeting *Section 6.04, PTC*
 - a. Meeting to be open to public *Chapter 551, Government Code*
 - b. Notice and posting requirements *Subchapter C, Chapter 551, Government Code*
 - c. Existence of a quorum *Section 6.04, PTC*
 - d. Rules of order
 - e. Holding executive session *Subchapter D, Chapter 551, Government Code*
 - B. Powers and duties of the board
 1. Statement of statutory purpose *Section 6.01, PTC*
 2. Establishing an appraisal office *Section 6.05 (a) and (b), PTC*
 3. Designating a chief appraiser *Section 6.05 (c), (d) and (e), PTC*
 - a. Duration of appointment *Section 6.05 (c), PTC*
 - b. Summary of statutory duties *Property Tax Code*
 - c. Delegation of authority *Section 6.05 (c), PTC*
 4. Preparing an annual budget *Section 6.06, PTC*
 - a. Budget officer designated
 - b. Deadlines for budget preparation *Section 6.06 (a), PTC*
 - c. Notice and public hearing on budget adoption *Section 6.06 (b), PTC and Comptroller Rule 9.3048.*
 - d. Method of approving the budget *Section 6.06 (b), PTC*
 - e. Disclaimer that all funds be spent in manner provided for in budget *Section 6.06 (f), PTC*
 - f. Method of amending budget *Section 6.06 (c), PTC*
 - g. Accounting method *Section 6.06 (f), PTC*
 - h. Annual report and annual financial statement *Section 6.063, PTC*
 - i. Inventories of fixed assets
 - j. Audit procedures *Section 6.063, PTC*
 5. Allocating the costs of operating the district *Section 6.06 (d) and (e), Section 6.061, PTC*
 6. Designating a district depository *Section 6.09, PTC*
 - a. Bid procedures
 - b. Insurance or security required on deposits
 - c. Renewal of depository contracts - bidding
 - d. Depository bid form
 7. Competitive bidding procedures *Section 6.11, PTC*
 - a. Scope of contracts covered
 - b. Publication of bid specification
 - c. Content of offers
 - d. Selection and award of contracts
 - e. Sample bid form
- C. Business functions and services
 1. Revenues
 - a. Investment of budget allocations
 - b. Use of fund balances at end of fiscal year *Section 6.06 (j), PTC*
 2. Payroll
 - a. Establishing payroll accounts
 - b. Participation in Social Security or other retirement program
 - c. Medical insurance benefits
 - d. Public employee pension system
 - e. Deferred compensation
 3. Insurance
 - a. Employee liability insurance
 - b. Tort Claims Act liability
 - c. Workers compensation
 - d. Unemployment insurance
 4. Personnel *Section 6.05 (d), PTC*
 - a. Nondiscrimination policies *Art. 6252-14 and 6252-16, VTCS*
 - b. Hiring practices

- c. Term of employment contract
 - d. Probationary period
 - e. Dual employment
 - f. Nepotism
 - g. Job description/employee evaluations
 - h. Conflict of interest disclosure
 - i. Employee records - employee access public access
 - j. Personnel as court witnesses
- D. Matters required by statute, Comptroller rule or both
1. Adoption of definitions *Section 1.04, PTC*
 2. Methods of delivering notices *Sections 1.07 and 1.08, PTC*
 3. Description of district boundaries *Section 6.02, PTC*
 4. Compilation of policies enacted by component taxing units
 - a. Residence homestead exemptions *Sections 11.13 and 6.08, PTC*
 - b. Exemption of historic sites *Sections 11.24 and 6.08, PTC*
 - c. "Freeport" exemption *Section 11.251, PTC*
 5. Compilation of partial exemptions *Section 11.46, PTC*
 6. Policy on December mail survey of residence homesteads *Section 11.47, PTC*
 7. Compilation of absolute exemptions *Comptroller Rule 9.3011*
 8. Compilation of special valuations *Comptroller Rule 9.3012*
 9. Promise of confidentiality of rendition statements, property reports and applications for agricultural designation under 1-d *Sections 22.27 and 23.45, PTC*
 10. Development and maintenance of uniform record system *Comptroller Rule 9.3003*
 11. Alphabetical index system *Comptroller Rule 9.3009*
 12. Property identification system *Comptroller Rule 9.3014*
 13. Appraisal card system *Comptroller Rule 9.3001*
 14. System of tax maps *Comptroller Rule 9.3002*
 15. Procedures for equitable and uniform appraisal of business inventories *Section 23.12, PTC*
 16. Interstate allocation of personal property procedures *Section 21.03, PTC and Comptroller Rule 9.4024*
 17. Explanation of agricultural land appraisal *Sections 23.43 and 23.54, PTC*
 18. Explanation of timber land appraisal *Section 23.75, PTC*
 19. Form and content of appraisal records *Section 25.02, PTC and Comptroller Rule 9.3004*
 20. Plan for periodic reappraisals *Section 25.18, PTC*
 21. Affidavit of chief appraiser on submission of appraisal records *Section 25.22, PTC*
 22. Certification of appraisal roll summary for county *Section 26.01, PTC and Comptroller Rule 9.3059*
 23. Tangible personal property transported outside the state *Section 11.251, PTC and Comptroller Rule 9.404*
 24. Public notice of protest and appeal procedures *Section 41.70, PTC and Comptroller Rule 9.3055*
 25. Representation of property owner *Section 1.111, PTC and Comptroller Rule 9.3044*
- E. Forms adopted for use in the appraisal district
1. Applications for exemptions *Comptroller Rule 9.415*
 2. Applications for special valuation (open-space land, agricultural land, timber land, ecological laboratory land, public access airport property and recreational, park and scenic land) *Comptroller Rule 9.402*
 3. Notice of exemption application requirements *Comptroller Rule 9.3034*
 4. Rendition forms or property report forms *Comptroller Rules 9.3015 and 9.3031*
 5. Notice of appraised value form *Sections 25.19 and 25.195, PTC*
 6. Separate or joint taxation forms *Comptroller Rule 9.3042*
 7. Notice of property in overlapping CADs *Section 6.025, PTC*
- The appraisal review board (ARB) for an appraisal district must also establish policies and procedures to operate smoothly and effectively. Some policies regarding the ARB are established by the appraisal district board of directors and others by the ARB members.

II. Appraisal Review Board

- A. Appraisal district board of directors *Section 6.41, PTC*
1. Qualifications for ARB members *Section 6.41 (c), PTC*
 2. Method of selection *Section 6.41 (d), PTC*
 3. Number of ARB members *Section 6.41 (b), PTC*
 4. Filling vacancies *Section 6.41 (d), PTC*

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5. Terms of office *Section 6.41 (e), PTC*
 6. Reimbursement for expenses *Section 6.42 (c), PTC*
 7. Temporary ARB members *Section 41.66(g), PTC*
 8. Removal of ARB member *Section 6.41, PTC*
- B. Appraisal review board members *Sections 6.42 and 6.43 and Chapter 41, PTC*
1. Election of officers *Section 6.42 (a), PTC*
 2. Conducting an ARB meeting *Section 6.42 (b), PTC*
 - a. Notice and posting requirements *Chapter 551, Government Code*
 - b. Existence of quorum *Section 6.42 (a), PTC*
 - c. Rules of order *Section 6.42 (b), PTC*
 3. Clerical personnel *Section 6.43, PTC*
- C. Powers and duties of appraisal review board
1. Employment of legal counsel *Section 6.43, PTC*
 2. Statement of statutory purpose *Section 41.01, PTC*
 3. Rules and procedures for conducting hearings
4. Form of records for hearings and proceedings *Section 41.68, PTC and Comptroller Rule 9.5141*
 5. Compensating witnesses subpoenaed for hearings *Section 41.63, PTC*
 6. Delivering notices of determination *Sections 41.01 and 41.47, PTC*
 7. Delivering orders to correct appraisal records *Section 41.08, PTC*
 8. Appraisal Review Board requirements *Comptroller Rule 9.5141*
 9. Notice of protest *Section 41.44, PTC and Comptroller Rule 9.801*
 10. Affidavit for protest hearing *Section 41.66, PTC and Comptroller Rule 9.802*
 11. Correction of inaccuracy by chief appraiser *Section 25.25 (b), PTC*

Appendix D. Appraisal District Work Program

Task or Function*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Appraisal District Operation												
Prepare annual budget				X	X	X			X			
Review employee benefits			X	X								
Review district policies	X	X	X									
Obtain needed personnel	X	X	X	X	X	X	X	X	X	X	X	X
Schedule appraiser training									X	X	X	
Schedule clerical training											X	X
Obtain furniture/equipment	X	X										
Appraisal District Records												
Evaluate existing records	X										X	X
Update records as needed	X	X	X	X	X	X	X	X	X	X	X	X
Process building permits	X	X	X	X	X	X	X	X	X	X	X	X
Develop parcel identification	X	X	X									
Update tax maps	X	X	X	X	X	X	X	X	X	X	X	X
Review forms									X	X	X	
Review computer programs	X									X	X	X
Develop computer programs	X	X	X	X	X	X	X	X	X	X	X	X
Appraisal Programs												
Gather market data	X	X									X	X
Develop schedules	X	X	X									X
Verify existing data	X	X	X									
Discover new improvements	X	X									X	X
Provide clerical assistance to appraisers	X	X	X	X								
Conduct in-house data entry	X	X	X	X	X	X	X	X	X	X	X	X
Apply real property price guides		X	X	X	X							
Conduct comparative analysis of real property				X	X							
Develop personal property guides	X	X	X									
Appraise personal property	X	X	X	X	X							
Mail exemption and rendition forms	X											
Mail productivity appraisal forms	X											
Process renditions, exemptions	X	X	X	X	X							
Appraise mobile homes			X	X								
Appraise real property	X	X	X	X								X
Appraise specialized property	X	X	X	X								X
Develop appraised values and notices	X	X	X	X								
Mail appraisal notices					X	X						
Mail omitted property notices	X	X	X	X	X	X	X	X	X	X	X	X
Mail overlapping property notice	X	X	X	X	X							
Appraisal Review Board Programs												
Attend required state training course			X	X								
Hold prehearings with taxpayers					X	X	X					
Schedule taxing unit challenges					X	X						
Schedule protests with ARB					X	X	X					
Conduct reappraisals/inspections					X	X	X					

*This is a general list of tasks; not all tasks done have been included.

Appraisal District Work Program (Continued)

Task or Function*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Appraisal District Operation												
Participate at ARB hearings					X	X	X					
Bring supplemental records to ARB						X	X	X	X			
Send notices required by ARB					X	X	X	X	X			
Make changes ordered by ARB					X	X	X	X	X			
Certify approved appraisal roll							X					
Other Functions												
Perform assessing functions (if any)								X	X			
Prepare tax roll and statements (if any)									X	X		
Process collections (if any)	X									X	X	X
Review ARB decisions for possible appeal								X				
Handle tax information requests	X	X	X	X	X	X	X	X	X	X	X	X
Present late Sec. 25.25 protest to ARB	X	X	X	X	X	X	X	X	X	X	X	X
Present late homestead exemptions to ARB	X	X	X	X	X	X	X	X	X	X	X	X
Handle delinquent tax collections (if any)	X	X	X	X	X	X	X	X	X	X	X	X
Address any tax suits by taxpayers/units	X	X	X	X	X	X	X	X	X	X	X	X

*This is a general list of tasks; not all tasks done have been included.

 50-196
Appraiser
of Public
Accounts
FORM
(8-00/2)

Notice of Public Hearing on _____ Budget

(insert name of appraisal district)

The _____ will hold a public hearing on a proposed budget for the _____ fiscal year.

The public hearing will be held on _____ at _____.

A summary of the appraisal district budget follows:

The total amount of the proposed budget. \$ _____

The total amount of increase over the current year's budget. \$ _____

The number of employees compensated under the proposed budget. _____
(full-time equivalent)

The number of employees compensated under the current budget. _____
(full-time equivalent)

(Insert explanation of differences in current and proposed budgets if applicable.)

The appraisal district is supported solely by payments from the local taxing units served by the appraisal district.

If approved by the appraisal district board of directors at the public hearing, this proposed budget will take effect automatically unless disapproved by the governing bodies of the county, school districts, cities and towns served by the appraisal district.

A copy of the proposed budget is available for public inspection in the office of each of those governing bodies. A copy is also available for public inspection at the appraisal district office.

(Insert appraisal district name, address and telephone number.)

Comptroller Rule

Section 9.3048. Publication of Budget.

- (a) In publishing the notice summarizing the appraisal district budget under the Tax Code, Section 6.062, the chief appraiser shall include the following:
- (1) the time, date and place of the public hearing on the proposed budget;
 - (2) the total amount of the proposed budget;
 - (3) the amount of increase proposed from the budget adopted for the current year;
 - (4) the number of employees compensated under the current budget and the number of employees to be compensated under the proposed budget, provided that the number of employees shall be expressed as the number of full-time equivalent employees;
 - (5) the name, address and telephone number of the appraisal district; and
 - (6) at the chief appraiser's option, a statement explaining any significant differences between the current and the proposed appraisal district budget.
- (b) The chief appraiser may duplicate Model Form 6.062 [50-196] or use a different form that sets out the information listed in subsection (a) of this section in the same language and sequence as the model form.
- (c) In special circumstances the chief appraiser may use a form that provides additional information, deletes information required by this section, or sets out the required information in different language or sequence than that required by this section if the form has been previously approved by the [Comptroller of Public Accounts].
- (d) The [Comptroller of Public Accounts] adopts by reference Model Form 6.062 [50-196]. Copies may be obtained from the [Comptroller's Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528].

Appendix F. Sample Contract for Assessing/Collecting

State of Texas

County of _____

CONTRACT FOR ASSESSMENT AND COLLECTION SERVICES

On this the ____ day of _____, 19____, the _____ County Appraisal District (hereinafter called "District") and _____, (hereinafter called "taxing units"), enter into the following agreement:

Purpose

The parties to this agreement wish to consolidate the assessment and collection of property taxes in one agency, the _____ County Appraisal District. The county enters this agreement to eliminate the duplication of the existing system and to promote governmental efficiency.

The parties enter this contract pursuant to the authority granted by Section 6.24, Property Tax Code, and TEX. REV. CIV. STAT. ANN. Art. 4413(32c) (Vernon 1979).

Term

This contract shall be effective from _____, 19____, to December 31, 19____, provided, however, that the district shall complete performance of services to be performed for the 19____ tax year after December 31, 19____, if the district finds extension to be necessary. (Note: If the term is longer than one year, the contract must contain a ratification clause. The following is an example of such a clause: "To remain effective, this contract must be approved by any subsequent governing bodies of the parties to this contract.")

Service to be Performed

- (1) The district shall collect the ad valorem property taxes owing to the (List as appropriate: the county, the taxing units for which the county is otherwise required to assess and collect taxes, and all other taxing units participating in this agreement). The district further agrees to perform for the (county, and said taxing units) all the duties provided by the laws of the State of Texas for the collection of said taxes.
- (2) The district shall perform all the functions set out in the definitions section of the contract. Specifically, the district agrees to prepare consolidated tax statements for each taxpayer. The tax statement shall include taxes owed to all taxing units to which the taxpayer owes taxes. The district shall mail said tax statement to each taxpayer within the district.
- (3) Each taxing unit hereby designates the chief appraiser as its tax assessor for purposes of compliance with Chapter 26 of the Texas Property Tax Code, as amended. In addition, the parties agree that the chief appraiser of the district shall perform all the duties required by law of the tax assessor-collector of each taxing unit in regard to assessing and collecting ad valorem taxes.

Payment

Option 1, Amount of Payment

- (1) The taxing units agree to pay the district the cost of performing the services specified above. These costs shall be allocated among the taxing units contracting for assessment and collection services in the following manner: each taxing unit shall pay the portion of the cost of assessing and collecting equal to the proportion of district cost to be paid by that taxing unit under Section 6.06(d) of the Property Tax Code. The

Sample Contract for Assessing/Collecting (Continued)

portion of the costs for assessment and collection services to be paid by the county shall include the proportion of district costs to be paid under Section 6.06(d) by any taxing units for which the county is otherwise obligated to assess and collect taxes.

Option 2, Amount of Payment

- (1) The taxing units agree to pay the district the cost of performing the services specified above. These costs shall be allocated among the taxing units contracting for assessment and collection services in the following manner: each taxing unit shall pay the portion of the cost of assessing and collecting that is equal to the proportion that the total number of collection accounts for that taxing unit bears to the sum of the total number of collection accounts of all taxing units for which the district assesses and collects taxes. The total number of collection accounts for the county shall include the number of collection accounts of any taxing units for which the county is otherwise obligated to assess and collect taxes.

Option 3, Amount of Payment

- (1) The county shall pay to the district _____ percent of the total taxes collected by the district on behalf of the county.
- * (2) The appraisal district shall estimate its cost of assessing and collecting taxes for all participating taxing units each year during the normal budgeting process for the appraisal district. The estimate of the cost of assessing and collecting shall be approved in the same manner as the rest of the appraisal district's budget. However, the cost of assessment and collection shall be separately stated from the remainder of the appraisal district budget. Should the amount estimated for assessment and collection prove insufficient, the appraisal district may amend the budget at that time by utilizing the same procedures normally used to amend the appraisal district's budget.
- ** (3) In the event payment received in any one year exceeds the actual cost of assessing and collecting, the district shall reimburse the taxing units the excess funds.

Option 1, Method of Payment

- (4) The cost of assessing and collecting taxes for each taxing unit shall be paid to the appraisal district in four quarterly installments. The chief appraiser and the governing body of the taxing unit may agree to delay a payment from a taxing unit or to arrange a different method of payment.

Option 2, Method of Payment

- (4) The district shall withhold from the remittances to each taxing unit the amount of money necessary to pay for the cost of assessing and collecting for that taxing unit. The amount withheld from each remittance shall be the percentage found by dividing the taxing unit's estimated total payments to the district by the estimated total collections for the taxing unit. The chief appraiser for the district shall estimate both total payments and total collections to calculate the percentage to be withheld.

Remittance of Collection

The taxes collected for each taxing unit shall be remitted to the unit _____ (daily, weekly, monthly).

*To be used only with options 1 and 2

**To be used with all options

Sample Contract for Assessing/Collecting (Continued)

Taxes collected shall be remitted on the _____ day of the _____ (week, month) next following the _____ (week, month) in which such sums are collected.

Administrative Provisions

- (1) All expenses incurred by the district for the assessment and collection of taxes shall be clearly kept on the books and records of the district. The taxing units of their designated representatives are authorized to examine the records to be kept by the district at such reasonable times and intervals as the taxing units deem fit. Such books and records will be kept in the offices of the district.
- (2) The district agrees to obtain a surety bond for the chief appraiser acting in the capacity as assessor-collector for each of the taxing units. Such bond (shall, will) be payable to each taxing unit, or for counties to be payable to the county tax assessor-collector, in the following amounts.

<u>Amount</u>	<u>Taxing Unit</u>
_____	_____
_____	_____
_____	_____
_____	_____

Miscellaneous Provisions

- (1) The taxing units agree to transfer to the possession and control of the district, without charge, copies of all records necessary for the performance of the duties and responsibilities of the district pursuant to this contract. These records shall include all tax records, including delinquent tax rolls, or records available to the taxing units.
- (2) The district shall not be liable to the taxing units on account of any failure to collect taxes nor shall the chief appraiser be liable unless the failure to collect taxes results from some failure on the chief appraiser's part to perform the duties imposed by law and by this agreement.
- (3) Payments by the taxing units for the service under this contract shall be made from current revenues available to the taxing units.

Delinquent Tax Suits

Option 1

The taxing units authorize the district to institute such suits for the collection of delinquent taxes as the district deems necessary and to contract with an attorney, as provided by Section 6.30 of the Property Tax Code, for the collection of delinquent taxes.

Option 2

The taxing units reserve the right to institute such suits for the collection of delinquent taxes as the units deem necessary and to contract with an attorney for the collection of delinquent taxes.

Sample Contract for Assessing/Collecting (Continued)

Definitions

For purposes of this agreement, the terms "assessment" and "collection" shall include the following: calculation of current liabilities, collection of delinquent taxes, issuance of refunds, calculation of effective and rollback tax rates required by Section 26.04 of the Property Tax Code. The term "assessment" shall not include those functions defined as "appraisal" by the Property Tax Code.

Executed at _____, Texas, on the date and year first written above.

<u>Name</u>	<u>Jurisdiction</u>
_____	_____
<i>Chair, Board of Directors</i>	County Appraisal District
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Appendix G. Americans with Disabilities Act: What CADs Should Know

The Americans with Disabilities Act (ADA) prohibits employment discrimination against qualified individuals with a disability and requires public agencies to make all services accessible to individuals with disabilities.

State agencies have appointed ADA coordinators and adopted grievance procedures to handle ADA-related complaints. To increase awareness at the local level, a summary highlighting the law's major points follows.

Employment provisions

Who is protected by the ADA's employment provisions? Disabled individuals who are qualified are protected. Two criteria are established to help employers decide who are qualified. The first is that individuals must meet the job's prerequisites such as education, work experience, training, skills, licenses or other job-related requirements. Employers are not required to lower existing quality or production standards for a specific job when considering the qualifications of disabled persons.

The second criteria is that disabled job applicants must be able to perform the essential functions of a job with or without the provision of a reasonable accommodation. For example, a person who applies for a proofreader position must be able to read.

Under the law, a person with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities. A "major life activity" includes activities that an average person can perform with little or no difficulty, such as walking, speaking, breathing, seeing, hearing, learning or working. The law is

designed also to protect those who have a history of a disability whether or not their current activities are limited. For example, the law protects people with a history of cancer or heart disease whose illnesses are either cured, controlled, or in remission.

The ADA also protects people who are treated by an employer as though they have an impairment. For instance, an employer cannot penalize an employee with a slight blood pressure problem by assigning light duty because the employer fears the employee will have a heart attack.

Employers also must reasonably accommodate the disabilities of qualified applicants or employees, including modifying work stations and equipment, restructuring a job or modifying work schedules, unless undue hardship would result. If a necessary modification is unduly burdensome because of either the difficulty or expense involved, the employer may not be required to make the accommodation. However, the burden is on the employer to show that an accommodation would impose an undue hardship.

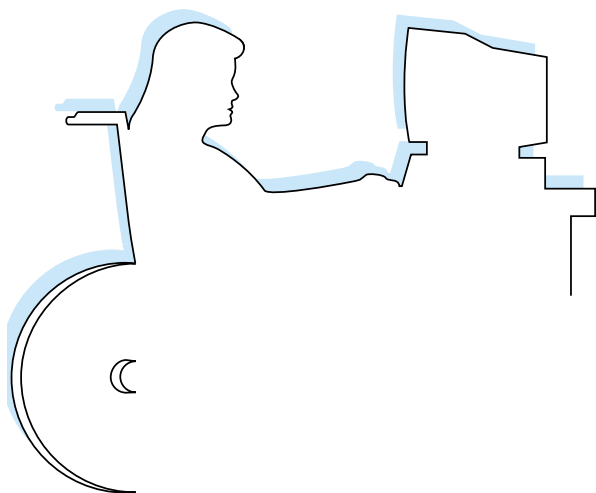
Accessible services

Title II of the ADA requires that all government (including taxing units and appraisal districts) facilities, services and communications must be accessible.

A governmental entity is not required to make each of its existing facilities accessible to the disabled. However, the agency is required to make all programs it offers accessible. This may require redesign of equipment or reassigning services to an accessible building. However, structural modifications are only necessary if there is no other way to offer the services in an alternative format. Entities must have completed any necessary structural modifications by January 1995.

A common sense approach is best when considering accessibility. For example, appraisal districts and taxing units should consider making at least one section of their counters 36 inches wide and 36 inches high to accommodate wheel-chairs. Alternatives are to provide a desk or table adjacent to a counter area which is accessible or provide a clipboard to a person which can be handed over the counter.

Local government entities are not required to take any action that would fundamentally alter the nature of their service, program or activity or result in a financial and administrative burden. However, public entities must take any other action, if available, that would not result in a fun-



damental alteration or undue burden but would ensure that individuals with disabilities receive the benefits or services.

For example, when necessary to ensure that communications with individuals with hearing, vision or speech impairments are as effective as communications with others, public entities must provide appropriate auxiliary aids. Such aids include qualified interpreters, assistive listening headsets, television captioning and decoders, devices for deaf persons (TDDs), videotext displays, readers, large print materials or brailled materials. For example, the Comptroller prepares a large print tape version of *Texas Property Taxes: Taxpayers' Rights, Remedies and Responsibilities*.

The ADA does not require automatic retrofitting of existing buildings to eliminate barriers, but it does establish a high standard of accessibility for new buildings. Local

governments must make sure that any newly constructed building and facilities are free of architectural and communications barriers. And when alterations are made to an existing building, the altered portions must also be accessible. The changes should not be limited to adding ramps and automatic opening doors, but also should include braille signs (with a braille directory) and large print signs.

For additional information or explanation of the ADA law's detailed provisions, contact the agencies listed below.



ADA INFORMATION

Local government services

Department of Justice
Office on the Americans with Disabilities Act
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035-6118
Telephone: 1-800-514-0301; 800-514-0383 (TDD)

Texas Governor's Committee on People with Disabilities
1100 San Jacinto, Austin, Texas 78711
512-463-5739 (Voice) 1-800-relay - vv (voice)
512-463-5746 (TDD) 1-800-relay - tx (TDD)
512-463-5745 (Fax)
<http://www.governor.state.tx.us/disabilities>

Employment

Employment Equal Employment Opportunity
Commission 1801 L Street NW
Washington, D.C. 20507
Telephone: 1-800-669-3362
1-800-669-6820 (TDD)

Telecommunications

Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554
Telephone: 202/418-0190
202/418-2555 (TDD)

Accessible design in new construction and alterations

Architectural and Transportation Barriers Compliance Board
1111 18th Street, NW, Suite 501
Washington, D.C. 20036
Telephone: 1-800-USA-ABLES

In addition to the ADA, local government entities must comply with existing state law — The Architectural Barriers Act — governing the accessibility of government agencies to the disabled (Article 9102, Texas Civil Statutes).

This state law is not retroactive, but it does affect all construction, substantial renovation, modification and alteration of publicly financed buildings.

Texas Architectural Barriers Act

Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711-2157
Telephone: 512/463-3211
1-800-803-9202
<http://www.license.state.tx.us/ab/ab.htm>

Appendix H. Chapter 2256, Public Funds Investment Act, Government Code

Chapter 2256, Public Funds Investment Act, Government Code, addresses how appraisal districts may invest their funds. This act applies to appraisal districts because Property Tax Code Section 6.01 states that an appraisal district is a political subdivisions of the state.

Chapter 2256 is available at the Texas Legislature's Web site at:

www.capitol.state.tx.us/statutes/go/go225600toc.html

Selected sections of interest to appraisal districts follow.

Section 2256.002. Definitions

In this chapter:

- (1) "Bond proceeds" means the proceeds from the sale of bonds, notes, and other obligations issued by an entity, and reserves and funds maintained by an entity for debt service purposes.
- (2) "Book value" means the original acquisition cost of an investment plus or minus the accrued amortization or accretion.
- (3) "Funds" means public funds in the custody of a state agency or local government that:
 - (A) are not required by law to be deposited in the state treasury; and
 - (B) the investing entity has authority to invest.
- (4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.
- (5) "Investing entity" and "entity" mean an entity subject to this chapter and described by Section 2256.003.
- (6) "Investment pool" means an entity created under this code to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are:
 - (A) preservation and safety of principal;
 - (B) liquidity; and
 - (C) yield.
- (7) "Local government" means a municipality, a county, a school district, a district or authority created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, a fresh water supply district, a hospital district, and any political subdivision, authority, public corporation, body politic, or instrumentality of the State of Texas, and any nonprofit corporation acting on behalf of any of those entities.
- (8) "Market value" means the current face or par value of an investment multiplied by the net selling price of the security as quoted by a recognized market pricing source quoted on the valuation date.
- (9) "Pooled fund group" means an internally created fund of an investing entity in which one or more institutional accounts of the investing entity are invested.
- (10) "Qualified representative" means a person who holds a position with a business organization, who is authorized to act on behalf of the business organization, and who is one of the following:
 - (A) for a business organization doing business that is regulated by or registered with a securities commission, a person who is registered under the rules of the National Association of Securities Dealers;
 - (B) for a state or federal bank, a savings bank, or a state or federal credit union, a member of the loan committee for the bank or branch of the bank or a person authorized by corporate resolution to act on behalf of and bind the banking institution;
 - (C) for an investment pool, the person authorized by the elected official or board with authority to administer the activities of the investment pool to sign the written instrument on behalf of the investment pool; or
 - (D) for an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or, if not subject to registration under that Act, registered with the State Securities Board, a person who is an officer or principal of the investment management firm.
- (11) "School district" means a public school district.
- (12) "Separately invested asset" means an account or fund of a state agency or local government that is not invested in a pooled fund group.
- (13) "State agency" means an office, department,

commission, board, or other agency that is part of any branch of state government, an institution of higher education, and any non-profit corporation acting on behalf of any of those entities.

Section 2256.003. Authority to Invest Funds; Entities Subject to This Chapter

(a) Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006:

- (1) a local government;
- (2) a state agency;
- (3) a nonprofit corporation acting on behalf of a local government or a state agency; or
- (4) an investment pool acting on behalf of two or more local governments, state agencies, or a combination of those entities.

(b) In the exercise of its powers under Subsection (a), the governing body of an investing entity may contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control. A contract made under authority of this subsection may not be for a term longer than two years. A renewal or extension of the contract must be made by the governing body of the investing entity by order, ordinance, or resolution.

(c) This chapter does not prohibit an investing entity or investment officer from using the entity's employees or the services of a contractor of the entity to aid the investment officer in the execution of the officer's duties under this chapter.

Section 2256.004. Applicability

(a) This subchapter does not apply to:

- (1) a public retirement system as defined by Section 802.001;
- (2) state funds invested as authorized by Section 404.024;
- (3) an institution of higher education having total endowments of at least \$95 million in book value on May 1, 1995;
- (4) funds invested by the Veterans' Land Board as authorized by Chapter 161, 162, or 164, Natural Resources Code;
- (5) registry funds deposited with the county or district clerk under Chapter 117, Local

Government Code; or

- (6) a deferred compensation plan that qualifies under either Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 1 et seq.), as amended.

(b) This subchapter does not apply to an investment donated to an investing entity for a particular purpose or under terms of use specified by the donor.

Section 2256.005. Investment Policies; Investment Strategies; Investment Officer

(a) The governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control.

(b) The investment policies must:

- (1) be written;
- (2) primarily emphasize safety of principal and liquidity;
- (3) address investment diversification, yield, and maturity and the quality and capability of investment management; and
- (4) include:
 - (A) a list of the types of authorized investments in which the investing entity's funds may be invested;
 - (B) the maximum allowable stated maturity of any individual investment owned by the entity;
 - (C) for pooled fund groups, the maximum dollar-weighted average maturity allowed based on the stated maturity date for the portfolio;
 - (D) methods to monitor the market price of investments acquired with public funds; and
 - (E) a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis.

(c) The investment policies may provide that bids for certificates of deposit be solicited:

- (1) orally;
- (2) in writing;
- (3) electronically; or
- (4) in any combination of those methods.

(d) As an integral part of an investment policy, the governing body shall adopt a separate written investment strategy for each of the funds or group of funds under its control. Each investment strategy must describe the investment objectives for the particular fund using the following priorities in order of importance:

- (1) understanding of the suitability of the investment to the financial requirements of the entity;
- (2) preservation and safety of principal;
- (3) liquidity;
- (4) marketability of the investment if the need arises to liquidate the investment before maturity;
- (5) diversification of the investment portfolio; and
- (6) yield.

(e) The governing body of an investing entity shall review its investment policy and investment strategies not less than annually. The governing body shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies.

(f) Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the state agency, local government, or investment pool as investment officer to be responsible for the investment of its funds consistent with the investment policy adopted by the entity. If the governing body of an investing entity has contracted with another investing entity to invest its funds, the investment officer of the other investing entity is considered to be the investment officer of the first investing entity for purposes of this chapter. Authority granted to a person to invest an entity's funds is effective until rescinded by the investing entity, until the expiration of the officer's term or the termination of the person's employment by the investing entity, or if an investment management firm, until the expiration of the contract with the investing entity. In the administration of the duties of an investment officer, the person designated as investment officer shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs, but the governing body of the investing entity retains ultimate responsibility as fiduciaries of the assets of the entity. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

(g) Subsection (f) does not apply to a state agency, local government, or investment pool for which an officer of the entity is assigned by law the function of investing its funds.

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be an investment officer for the commission under Subsection (f) if the officer or employee is an investment

officer designated under Subsection (f) for another local government.

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (f) for any investing entity other than for that commission.

(i) An investment officer of an entity who has a personal business relationship with a business organization offering to engage in an investment transaction with the entity shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined under Chapter 573, to an individual seeking to sell an investment to the investment officer's entity shall file a statement disclosing that relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and the governing body of the entity. For purposes of this subsection, an investment officer has a personal business relationship with a business organization if:

- (1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
- (2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or
- (3) the investment officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the investment officer.

(j) The governing body of an investing entity may specify in its investment policy that any investment authorized by this chapter is not suitable.

(k) A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction with an investing entity or to an investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio. For purposes of this subsection, a business organization includes investment pools and an investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio. Nothing in this subsection relieves the investing entity of the responsibility for monitoring the investments made by the investing entity to determine that they are in compliance with the investment policy. The qualified representative of the business organization offering to engage in an investment transaction with an investing entity shall execute a written

instrument in a form acceptable to the investing entity and the business organization substantially to the effect that the business organization has:

- (1) received and reviewed the investment policy of the entity; and
- (2) acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the entity and the organization that are not authorized by the entity's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the entity's entire portfolio or requires an interpretation of subjective investment standards.

(l) The investment officer of an entity may not acquire or otherwise obtain any authorized investment described in the investment policy of the investing entity from a person who has not delivered to the entity the instrument required by Subsection (k).

(m) An investing entity other than a state agency, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and adherence to the entity's established investment policies.

(n) Except as provided by Subsection (o), at least once every two years a state agency shall arrange for a compliance audit of management controls on investments and adherence to the agency's established investment policies. The compliance audit shall be performed by the agency's internal auditor or by a private auditor employed in the manner provided by Section 321.020. Not later than January 1 of each even-numbered year, a state agency shall report the results of the most recent audit performed under this subsection to the state auditor. A state agency also shall report to the state auditor other information the state auditor determines necessary to assess compliance with laws and policies applicable to state agency investments. A report under this subsection shall be prepared in a manner the state auditor prescribes.

(o) The audit requirements of Subsection (n) do not apply to assets of a state agency that are invested by the comptroller under Section 404.024.

Section 2256.006. Standard of Care

(a) Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following investment

objectives, in order of priority:

- (1) preservation and safety of principal;
- (2) liquidity; and
- (3) yield.

(b) In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

- (1) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
- (2) whether the investment decision was consistent with the written investment policy of the entity.

Section 2256.007. Investment Training; State Agency Board Members and Officers

(a) 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 under this chapter within six months after taking office or assuming duties.

(b) The Texas Higher Education Coordinating Board shall provide the training under this section.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) An investment officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the governing body of the state agency. The investment officer shall prepare a report on this subchapter and deliver the report to the governing body of the state agency not later than the 180th day after the last day of each regular session of the legislature.

Section 2256.008. Investment Training; Local Governments

(a) Except as provided by Subsection (b), the treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a local government shall:

- (1) attend at least one training session from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government and containing at least 10 hours of instruction relating to the treasurer's or officer's

responsibilities under this subchapter within 12 months after taking office or assuming duties; and

- (2) except as provided by Subsection (b), attend an investment training session not less than once in a two-year period and receive not less than 10 hours of instruction relating to investment responsibilities under this subchapter from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government.

(b) An investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, that has contracted with an investment management firm under Section 2256.003(b) and has fewer than five full-time employees or an investing entity that has contracted with another investing entity to invest the entity's funds may satisfy the training requirement provided by Subsection (a)(2) by having an officer of the governing body attend four hours of appropriate instruction in a two-year period. The treasurer or chief financial officer of an investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, and that has fewer than five full-time employees is not required to attend training required by this section unless the person is also the investment officer of the entity.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) Not later than December 31 each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the governmental entities for which the person provided required training under this section during that calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

Section 2256.009. Authorized Investments: Obligations of, or Guaranteed by Governmental Entities

(a) Except as provided by Subsection (b), the following are authorized investments under this subchapter:

- (1) obligations of the United States or its agencies and instrumentalities;
- (2) direct obligations of this state or its agencies

and instrumentalities;

- (3) collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
- (4) other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities;
- (5) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent; and
- (6) bonds issued, assumed, or guaranteed by the State of Israel.

(b) The following are not authorized investments under this section:

- (1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- (2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- (3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- (4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Section 2256.010. Authorized Investments: Certificates of Deposit and Share Certificates

A certificate of deposit is an authorized investment under this subchapter if the certificate is issued by a state or national bank domiciled in this state, a savings bank domiciled in this state, or a state or federal credit union domiciled in this state and is:

- (1) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor;
- (2) secured by obligations that are described by Section 2256.009(a), including mortgage backed securities directly issued by a federal

- agency or instrumentality that have a market value of not less than the principal amount of the certificates, but excluding those mortgage backed securities of the nature described by Section 2256.009(b); or
- (3) secured in any other manner and amount provided by law for deposits of the investing entity.

Section 2256.011. Authorized Investments: Repurchase Agreements

(a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:

- (1) has a defined termination date;
- (2) is secured by obligations described by Section 2256.009(a)(1); and
- (3) requires the securities being purchased by the entity to be pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and
- (4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state.

(b) In this section, "repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.009(a)(1), at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement.

(c) Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered.

(d) Money received by an entity under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

Section 2256.012. Authorized Investments: Banker's Acceptances

A bankers' acceptance is an authorized investment under this subchapter if the bankers' acceptance:

- (1) has a stated maturity of 270 days or fewer from the date of its issuance;

- (2) will be, in accordance with its terms, liquidated in full at maturity;
- (3) is eligible for collateral for borrowing from a Federal Reserve Bank; and
- (4) is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

Section 2256.013. Authorized Investments: Commercial Paper

Commercial paper is an authorized investment under this subchapter if the commercial paper:

- (1) has a stated maturity of 270 days or fewer from the date of its issuance; and
- (2) is rated not less than A-1 or P-1 or an equivalent rating by at least:
 - (A) two nationally recognized credit rating agencies; or
 - (B) one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

Section 2256.014. Authorized Investments: Mutual Funds

(a) A no-load money market mutual fund is an authorized investment under this subchapter if the mutual fund:

- (1) is registered with and regulated by the Securities and Exchange Commission;
- (2) provides the investing entity with a prospectus and other information required by the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) or the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);
- (3) has a dollar-weighted average stated maturity of 90 days or fewer; and
- (4) includes in its investment objectives the maintenance of a stable net asset value of \$1 for each share.

(b) In addition to a no-load money market mutual fund permitted as an authorized investment in Subsection (a), a no-load mutual fund is an authorized investment under this subchapter if the mutual fund:

- (1) is registered with the Securities and

- Exchange Commission;
- (2) has an average weighted maturity of less than two years;
 - (3) is invested exclusively in obligations approved by this subchapter;
 - (4) is continuously rated as to investment quality by at least one nationally recognized investment rating firm of not less than AAA or its equivalent; and
 - (5) conforms to the requirements set forth in Sections 2256.016(b) and (c) relating to the eligibility of investment pools to receive and invest funds of investing entities.
- (c) An entity is not authorized by this section to:
- (1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described in Subsection (b);
 - (2) invest any portion of bond proceeds, reserves and funds held for debt service, in mutual funds described in Subsection (b); or
 - (3) invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described in Subsection (a) or (b) in an amount that exceeds 10 percent of the total assets of the mutual fund.

Section 2256.015. Authorized Investments: Guaranteed Investment Contracts

(a) A guaranteed investment contract is an authorized investment for bond proceeds under this subchapter if the guaranteed investment contract:

- (1) has a defined termination date;
- (2) is secured by obligations described by Section 2256.009(a)(1), excluding those obligations described by Section 2256.009(b), in an amount at least equal to the amount of bond proceeds invested under the contract; and
- (3) is pledged to the entity and deposited with the entity or with a third party selected and approved by the entity.

(b) Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested under this subchapter in a guaranteed investment contract with a term of longer than five years from the date of issuance of the bonds.

- (c) To be eligible as an authorized investment:
- (1) the governing body of the entity must specifically authorize guaranteed investment con-

tracts as an eligible investment in the order, ordinance, or resolution authorizing the issuance of bonds;

- (2) the entity must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;
- (3) the entity must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;
- (4) the price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and
- (5) the provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

Section 2256.016. Authorized Investments: Investment Pools

(a) An entity may invest its funds and funds under its control through an eligible investment pool if the governing body of the entity by rule, order, ordinance, or resolution, as appropriate, authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by this subchapter.

(b) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:

- (1) the types of investments in which money is allowed to be invested;
- (2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;
- (3) the maximum stated maturity date any investment security within the portfolio has;
- (4) the objectives of the pool;
- (5) the size of the pool;
- (6) the names of the members of the advisory board of the pool and the dates their terms expire;
- (7) the custodian bank that will safekeep the pool's assets;
- (8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;
- (9) whether the only source of payment is the

assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;

- (10) the name and address of the independent auditor of the pool;
- (11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and
- (12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.

(c) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity:

- (1) investment transaction confirmations; and
- (2) a monthly report that contains, at a minimum, the following information:
 - (A) the types and percentage breakdown of securities in which the pool is invested;
 - (B) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;
 - (C) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;
 - (D) the book value versus the market value of the pool's portfolio, using amortized cost valuation;
 - (E) the size of the pool;
 - (F) the number of participants in the pool;
 - (G) the custodian bank that is safekeeping the assets of the pool;
 - (H) a listing of daily transaction activity of the entity participating in the pool;
 - (I) the yield and expense ratio of the pool;
 - (J) the portfolio managers of the pool; and
 - (K) any changes or addenda to the offering circular.

(d) An entity by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

(e) In this section, "yield" shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the federal Securities and Exchange

Commission.

(f) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool created to function as a money market mutual fund must mark its portfolio to market daily, and, to the extent reasonably possible, stabilize at a \$1 net asset value. If the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, portfolio holdings shall be sold as necessary to maintain the ratio between 0.995 and 1.005.

(g) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool must have an advisory board composed:

- (1) equally of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for a public funds investment pool created under Chapter 791 and managed by a state agency; or
 - (2) of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for other investment pools.
- (h) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

Section 2256.017. Existing Investments

An entity is not required to liquidate investments that were authorized investments at the time of purchase.

Section 2256.019. Rating of Certain Investment Pools

A public funds investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service or no lower than investment grade by at least one nationally recognized rating service with a weighted average maturity no greater than 90 days.

Section 2256.021. Effect of Loss of Required Rating

An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not have the minimum rating. An entity shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating.

Section 2256.023. Internal Management Reports

(a) Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by this chapter for the preceding reporting period.

(b) The report must:

- (1) describe in detail the investment position of the entity on the date of the report;
- (2) be prepared jointly by all investment officers of the entity;
- (3) be signed by each investment officer of the entity;
- (4) contain a summary statement, prepared in compliance with generally accepted accounting principles, of each pooled fund group that states the:
 - (A) beginning market value for the reporting period;
 - (B) additions and changes to the market value during the period;
 - (C) ending market value for the period; and
 - (D) fully accrued interest for the reporting period;
- (5) state the book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset and fund type invested;
- (6) state the maturity date of each separately invested asset that has a maturity date;
- (7) state the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired; and
- (8) state the compliance of the investment portfolio of the state agency or local government as it relates to:
 - (A) the investment strategy expressed in the agency's or local government's investment policy; and
 - (B) relevant provisions of this chapter.

(c) The report shall be presented not less than quarterly to the governing body and the chief executive officer of the entity within a reasonable time after the end of the period.

(d) If an entity invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers under this section

shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.

Section 2256.024. Subchapter Cumulative

(a) The authority granted by this subchapter is in addition to that granted by other law. Except as provided by Subsection (b), this subchapter does not:

- (1) prohibit an investment specifically authorized by other law; or
- (2) authorize an investment specifically prohibited by other law.

(b) Except with respect to those investing entities described in Subsection (c), a security described in Section 2256.009(b) is not an authorized investment for a state agency, a local government, or another investing entity, notwithstanding any other provision of this chapter or other law to the contrary.

(c) Mortgage pass-through certificates and individual mortgage loans that may constitute an investment described in Section 2256.009(b) are authorized investments with respect to the housing bond programs operated by:

- (1) the Texas Department of Housing and Community Affairs or a nonprofit corporation created to act on its behalf;
- (2) an entity created under Chapter 392, Local Government Code; or
- (3) an entity created under Chapter 394, Local Government Code.

Section 2256.025. Selection of Authorized Brokers

The governing body of an entity subject to this subchapter or the designated investment committee of the entity shall, at least annually, review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the entity.

Section 2256.026. Statutory Compliance

All investments made by entities must comply with this subchapter and all federal, state, and local statutes, rules, or regulations.

Section 2256.051. Electronic Funds Transfer

Any local government may use electronic means to transfer or invest all funds collected or controlled by the local government.

