SUPPLEMENTAL MATERIALS

AGENDA ITEM XI-E

Consideration of adopting the Committee's recommendation to the Board relating to amendments to Chapter 1, Agency Administration, Subchapter A, Section 1.6 Advisory Committees (S.B. 215, 83rd Texas Legislature, Regular Session)

The public comment period on the proposed rules ended on October 20. The attached revised blue pages and proposed rules include a summary of the public comments received, the staff response, and the modified proposed rules in red bold font.

AGENDA ITEM XI-E

Consideration of adopting the Committee's recommendation to the Board relating to amendments to Chapter 1, Agency Administration, Subchapter A, Section 1.6, Advisory Committees, and adding new Sections 1.61-1.691 (S.B. 215, 83rd Texas Legislature, Regular Session).

RECOMMENDATION: Adopt

Background Information:

Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session, requires the Coordinating Board to adopt rules, in compliance with Chapter 2110, Government Code, regarding advisory committees, including rules governing an advisory committee's purpose, tasks, reporting requirements, and abolishment date. The bill also prohibits Board members from serving on an advisory committee and requires each advisory committee to report its recommendations directly to the Board. The proposed rules provide general rules applicable to all advisory committees established by the Board. Specific rules governing each advisory committee are proposed under a separate agenda item.

Date approved by the Commissioner for publication in the *Texas Register*. September 6, 2013.

Date Published in the Texas Register. September 20, 2013.

The 30-day comment period with the Texas Register ends on: October 20, 2013.

Summary of comments received:

A joint letter of the following comments was received from The University of Texas System, Texas A&M University System, Texas State University System, Texas Tech University System, University of North Texas System, University of Houston System, Midwestern State University, Stephen F. Austin University and Texas Woman's University.

Comment: Include language that would ensure regional representation as specified in the statute and to the extent possible on the varying advisory committees.

Staff response: Staff concurs with this comment and has added the suggested language in the proposed final rules.

Comment: Specify the nomination process in rules and require the THECB request the president and chancellor or designee of each institution or system to nominate members for each advisory committee for the Board to consider. The rules should allow for flexibility in the types of institutions approached for nominations. The Board may establish the qualifications of members of the committees based on statute. As institutions and systems are in the best

position to determine the campus or system official with the most expertise, the Board should appoint members from the nominations.

Staff response: Staff concurs with this comment and has added the suggested language in the final proposed rules.

Comment: Committees should be able to form workgroups that would function in the same manner as subcommittees.

Staff response: Staff concurs with this comment and has added the suggested language in the final proposed rules.

Comment: Regarding Subsection 1.6(k) Manner of Reporting, the various advisory committee and councils have different work cycles but this provision would require all committees to report annually event if the committee's work is on a two year cycle. Suggest adding annual or biennial report, as appropriate.

Staff response: Staff concurs with this comment and has added the suggested language in the final proposed rules.

Comment: We believe §1.6(j) presiding officer, (k) manner of reporting, and (l) subcommittees are good universal rules that should apply to the administration of all advisory committees, and we see no need to repeat in the proposed rules regarding specific committees. We suggest the elimination of the following proposed rules:

Presiding officer	Manner of Reporting	Subcommittees
§1.123(e)	§1.127	§1.166(e)
§1.130(e)	§1.134	§1.173(e)
§1.137(b)	§1.141	
§1.144(c)	§1.148	
§1.158(f)	§1.155	
§1.166(f)	§1.163(e)	
§1.173(f)	§1.170(e)	
§1.180(e)	§1.177(e)	
§1.187(e)	§1.184	
§1.194(e)	§1.191	
§1.201(j)	§1.198	
§1.208(g)	§1.205	
	§1.212	

Staff response: Staff believes it is necessary to retain the section on *Presiding Officer* within individual committee rules because not all committees have a co-/vice-chair. This option is up to each committee and should be denoted as such in rule. Second, reporting requirements have been overlooked by advisory committees in the past. Since this reporting requirement is mandated by Texas Government Code, Chapter 2110, Section 2110.006, staff prefer to retain this section in individual committee rules to improve transparency, accountability and compliance. Finally, staff does not see any disadvantage to retaining these sections in individual committee rules.

Legal Review:		
Approved by the Office of General Counsel	Da	ate:

The amendments have been prepared in the following format:

- New language is in lowercase, underlined, and shaded.
- Deleted language is bracketed and struck through.
- When new language replaces deleted language, the new language precedes the deleted language.

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 1.1. Dates for Regular Quarterly Meetings of the Board
- 1.2. Authority of the Commissioner to Interpret Rules
- 1.3. Educational Data
- 1.4. Rules of Order
- 1.5. Coordinating Board Committees
- 1.6. Advisory Committees
- 1.7. Petition for the Adoption of Rules
- 1.8. Historically Underutilized Businesses (HUBs) Program
- 1.9. Training for Members of Governing Board and Board Trustees
- 1.10. Administration of the Open Records Act
- 1.11. Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues
- 1.12. Foreign Travel
- 1.13. Internal Auditor
- 1.14. Negotiated Rulemaking
- 1.15. Authority of the Commissioner to Propose Board Rules
- 1.16. Contracts for Materials and Services
- 1.17. Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers
- 1.18. Operation of Education Research Centers
- 1.19. Education and Training of Board Administrators and Employees
- 1.1.-1.5. (No change.)
- 1.6. Advisory Committees.
- (a) The Board may appoint advisory committees from outside the Board's membership to advise the Board as it may deem necessary [, and the Commissioner may appoint advisory committees from outside the Board staff to advise the staff as the Commissioner may deem necessary].
- (b) The use of advisory committees by the Board [or by the Commissioner] shall be in compliance with the provisions of Texas Government Code, Chapter 2110 regarding the composition and duration of committees, the reimbursement of committee member's expenses, the evaluation of committees, and the reporting to the Legislative Budget Board.
- (c) An advisory committee is automatically abolished on the fourth anniversary of the date of its creation unless it has a specific duration prescribed by statute or the Board reestablishes the committee. A written statement shall be prepared by the Commissioner or his or her designee for each advisory committee setting forth the purpose of the committee, the task of the committee, the manner in which the committee will report to the Board [or the Commissioner], the date on which the committee is created, and the date on which the committee will automatically be abolished. The written statements shall be maintained on file in the Board offices. [At each quarterly Board meeting the Commissioner shall report to the Board any

advisory committees created or abolished by effect of this rule since the previous quarterly meeting.]

(d) Purpose and Duties of Advisory Committees.

The purpose of an advisory committee shall be to give the Board the benefit of the members' collective technical expertise and experience with respect to matters within the Board's jurisdiction. An advisory committee's sole duty is to advise the Board. An advisory committee has no executive or administrative powers or duties with respect to the operation of the Board, and all such powers and duties rest solely with the Board. The specific purposes and tasks of an advisory committee subject to this subchapter shall be identified in Board rules.

(e) Composition of Advisory Committees.

- (1) The composition of advisory committees created by the Board including subcommittees or workgroups with non-advisory committee members, shall contain no more than 24 members in compliance with the requirements of Texas Government Code, Chapter 2110.
- (2) The Board shall make reasonable attempts to provide balanced, **geographic** representation, consonant with Texas Government Code, Chapter 2110, on all advisory committees. A rule or other action may not be challenged because of the composition of an advisory committee.
- (3) This section does not apply to an advisory committee to the extent that:
- (A) another state law specifically states that Texas Government Code, Chapter 2110 does not apply; or

(B) a federal law or regulation:

(i) imposes an unconditional requirement that irreconcilably conflicts with the requirements of Texas Government Code, Chapter 2110; or

(ii) imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with Texas Government Code, Chapter 2110.

(f) Membership Terms.

Except as otherwise provided by law, advisory committee members shall serve terms as determined by the Board.

(q) Membership.

The Board shall solicit nominations and make appointments from such nominations for membership on advisory committees from presidents and chancellors or the respective designee. Except as otherwise provided by law, all members of advisory committees are appointed by and serve at the pleasure of the Board. Board members may not serve on advisory committees. If an advisory committee member resigns, dies, becomes

incapacitated, is removed by the Board, otherwise vacates his or her position, or becomes ineligible prior to the end of his or her term, the Board may appoint a replacement who shall serve the remainder of the unexpired term.

(h) Attendance.

A record of attendance at each meeting of advisory committees shall be made. Except as otherwise provided by law, if a member of an advisory committee misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period, without approval by a majority vote of the Board, that member automatically vacates his or her position on the advisory committee and the Board may make an appointment to fill the remainder of the unexpired term of the vacancy.

(i) Reimbursement.

Members of advisory committees shall not be reimbursed for expenses unless the Board expressly authorizes reimbursement. The Board may also, in its discretion, reimburse the expenses of members of any duly authorized subcommittee of an advisory committee.

(i) Presiding Officer.

Except as otherwise provided by law, each advisory committee shall select from its members a presiding officer, who shall report the committee's recommendations to the Board. The Board may, at its discretion, appoint other officers of advisory committees or allow committee members to elect other officers at their pleasure.

(k) Manner of Reporting.

Advisory committees shall report any recommendations directly to the Board at a Board meeting determined in consultation with agency staff, including the Commissioner of Higher Education.

Advisory committees shall also provide an annual report to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(I) Subcommittees or Workgroups.

Advisory committees may organize themselves into subcommittees or workgroups. One member of each subcommittee or workgroup shall serve as the chairperson [of that subcommittee]. Subcommittee or workgroup chairs shall make written reports regarding their [subcommittee's] work to the presiding officer of the advisory committee. A subcommittee or workgroup of an advisory committee may include members who are not members of the advisory committee, but must include at least one member of the advisory committee.

(m) Meetings.

Advisory committees shall meet at the call of the presiding officer or the Board. All advisory committee and subcommittee meetings shall be open to the public and broadcasted via the web, unless prevented by technical difficulties.

- (n) Monitoring of Advisory Committees and Records.
 - (1) The Board shall monitor the activities of advisory committees.
 - (2) Agency staff shall record and maintain the minutes of each advisory committee and subcommittee meeting. The staff shall maintain a record of actions taken and shall distribute copies of approved minutes and other committee documents to the Board and to advisory committee members on a timely basis.
 - (3) Minutes kept for advisory committee meetings and reports required under §1.68 of this title (relating to Manner of Reporting) shall be maintained in a form and location that is easily accessible to the public, including making the information available on the Board's website.
- 1.7.-1.19. No change.