

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

##### SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

###### 16 TAC §25.58

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.58, relating to Contracts for Electric Energy Storage, to implement Public Utility Regulatory Act (PURA) §35.153, as enacted by Senate Bill 415 during the 87th Regular Texas Legislative Session. The proposed rule would establish an avenue for transmission and distribution utilities (TDUs) to contract with power generation companies (PGCs) for electric energy storage facility (EESF) capacity to ensure reliable service to distribution customers.

###### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

###### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

###### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

###### Fiscal Impact on State and Local Government

Zachary Dollar, Power Markets Analyst, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

###### Public Benefits

Mr. Dollar has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be providing greater reliability of electric service to the distribution customers of TDUs operating in the ERCOT region. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

###### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

###### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

###### Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 18, 2026. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

###### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be

filed by May 18, 2026. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 59523.

To further assist the commission in implementing PURA §35.153, the commission also requests comments on the following issues:

Should a transmission and distribution utility's recovery of costs under these contracts be limited to comprehensive base-rate cases or also be permitted in interim proceedings? If the latter, which interim proceedings are appropriate for recovery of these costs?

Should PURA §35.153(i) be read to require all contracts to satisfy relevant accounting standards for a capital lease or finance lease, or should those criteria only be required if a transmission and distribution utility seeks recovery plus a reasonable return on the payments under the contract?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

#### Statutory Authority

The new rule is proposed under Public Utility Regulatory Act (PURA) §§14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; 14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and 35.153, which authorizes a TDU to, with prior commission approval, contract with a PGC to provide electric energy from an electric energy storage facility to ensure reliable service to distribution customers and directs the commission to adopt rules as necessary to implement the section and establish criteria for approving these contracts.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; 14.002; and 35.153.

#### §25.58. Contracts for Electric Energy Storage.

(a) Applicability. This section applies to:

(1) a transmission and distribution utility (TDU) that operates facilities in the Electric Reliability Council of Texas (ERCOT) region to serve distribution customers; and

(2) a power generation company (PGC), as defined under §25.5 of this title (relating to Definitions).

(b) Definition. Electric energy storage facility (EESF)--A piece of equipment or a facility in the ERCOT region that is intended to:

(1) provide energy or ancillary services at wholesale, including an electric energy storage equipment or facility that is listed on a PGC's registration with the commission or, for an exempt wholesale generator, on the generator's registration with the Federal Energy Regulatory Commission; or

(2) provide reliable delivery of electric energy to distribution customers.

(c) Allocation of total EESF capacity.

(1) The total amount of EESF output capacity reserved by contracts under this section may not exceed 100 megawatts (MWs).

(2) A TDU is allocated a portion of 100 MWs according to its load ratio share on the effective date of this section, as calculated by ERCOT. A TDU may file a petition for the commission to reassess the allocation methodology or update the allocation amount not more than once each year.

(d) Authorization to contract for EESF capacity. A TDU must not enter into, renew, or extend a contract with a PGC for energy and output capacity from an EESF until receiving authorization from the commission under this subsection.

(1) Application. A TDU must file an application to obtain commission authorization.

(A) Contents. The application must include:

(i) If applicable, the TDU's history with EESF, including:

(I) Whether the TDU is currently authorized, or has previously been authorized, by the commission to contract for EESF energy and output capacity, including the details of existing and prior authorizations and each docket number in which the existing and prior authorizations were granted; and

(II) A description of all EESF energy and output capacity the TDU has under contract at the time of the application, including the total energy and output capacity the TDU has under contract, the length of the contract(s), and a description of the contract terms for discharging an EESF's energy capacity.

(ii) The total EESF energy and output capacity the TDU is requesting authorization to contract for and the length of time for which the TDU is requesting authorization. In support of its request, the TDU must include, with any necessary supporting documentation:

(I) Whether the amount of requested EESF energy and output capacity and requested authorization length will ensure reliable service to the TDU's distribution customers;

(II) The location(s) where a need for EESF energy and output capacity exists;

(III) The number of distribution customers, by customer class, that the TDU expects to benefit from a contract for EESF energy and output capacity;

(IV) The conditions in which the TDU would direct a PGC to discharge contracted EESF energy capacity;

(V) A cost-benefit analysis that demonstrates the expected cost savings associated with entering into a contract for EESF energy and output capacity over constructing or modifying a traditional distribution facility; and

(VI) A description of any additional measures being implemented, or scheduled for implementation, that may mitigate the TDU's need for EESF energy and output capacity.

(B) The TDU may provide in its application additional information that it believes will be necessary for the commission's consideration of the TDU's request. Any additional information that the TDU provides must be clearly labeled as supplemental and separate from the information that the TDU is required to provide under subparagraph (A) of this paragraph.

(C) The commission may request additional information from the TDU that it believes is necessary to evaluate the TDU's request.

(D) As appropriate, data provided under this section must be filed in a format native to Microsoft Excel and must permit basic data manipulation functions, such as copying and pasting data.

(2) Notice and intervention. Within one working day after the TDU files its application, the TDU must provide notice of its filed application, including the docket number assigned to the application and the deadline for intervention in accordance with this paragraph. The intervention deadline is 45 days from the date the application is filed with the commission. The notice must be provided using a reasonable method of notice to:

(A) all municipalities in the TDU's service area that have retained original jurisdiction;

(B) all parties in the TDU's last base-rate proceeding;

(C) each retail electric provider that provides service in the TDU's service area; and

(D) the Office of Public Utility Counsel

(3) Commission evaluation and decision.

(A) In reviewing a TDU's application, the commission may consider whether:

(i) the requested amount of EESF energy and output capacity will ensure reliable service to the TDU's distribution customers;

(ii) the requested amount of EESF energy and output capacity exceeds, either by itself or together with existing authorized amounts, the amount allocated to the TDU under subsection (c) of this section; and

(iii) the estimated cost of entering into a contract for the requested amount of EESF energy and output capacity is less than the estimated cost of constructing or modifying a traditional distribution facility.

(B) The commission's final order may:

(i) include the total amount of EESF energy and output capacity the TDU is authorized to contract for;

(ii) include the date the authorization expires; and

(iii) require a contract under this section to comply with Public Utility Regulatory Act (PURA) §35.153.

(C) The commission's final order may include additional requirements related to an EESF's characteristics.

(e) Contract for EESF capacity. A TDU that has obtained authorization under subsection (d) of this section may enter into one or more contracts with a PGC for EESF energy and output capacity, provided that all contracts comply with the commission's authorization under subsection (d) of this section.

(1) Competitive bidding process.

(A) Prior to entering into a contract under this section, the TDU must conduct a competitive bidding process.

(B) In any proceeding in which the commission is reviewing the reasonableness, necessity, or prudence of the costs associated with a contract, the commission may also consider whether the contract the TDU entered into was reasonable relative to other bids that were available to the TDU, if any.

(2) If requested by a commissioner or commission staff, the TDU must allow for the inspection of any contract entered into under this section. If a commissioner or commission staff retains a copy of the contract, the contract will be treated as a confidential document if so requested by the TDU.

(f) PGC responsibilities. A PGC that owns or operates an EESF subject to a contract under this section:

(1) may offer electric energy or ancillary services from an EESF into the ERCOT wholesale markets, only to the extent that the PGC reserves capacity as required by the contract;

(2) may not discharge energy from an EESF to satisfy the contract's requirements unless directed by the TDU; and

(3) must reimburse the TDU for the cost of an administrative penalty assessed against the TDU for a violation caused by the EESF's failure to meet the contract requirements.

(g) Eligible costs and deferred recovery.

(1) Eligible costs.

(A) Contract costs. Reasonable and necessary costs associated with a contract for EESF capacity, including the present value of future payments required under the contract, are eligible for recovery under this section. A contract for EESF capacity must be treated as a capital lease or finance lease for ratemaking purposes, regardless of its classification under generally accepted accounting principles or other accounting frameworks.

(B) Return. Reasonable and necessary costs under this section include a return on investment, including the present value of future payments required under the contract, using the rate of return on investment established in the commission's final order in a TDU's most recent comprehensive base-rate proceeding.

(2) Deferred recovery. A TDU may create a regulatory asset to defer for recovery in a future ratemaking proceeding the return, not otherwise included in any of the TDU's rates.

(h) Cost recovery. Eligible costs under this section may be recovered as follows.

(1) Ratemaking proceedings. A TDU may request recovery of eligible costs, including any deferred expenses, in a proceeding under §25.243 of this title (relating to Distribution Cost Recovery Factor (DCRF)) or in another ratemaking proceeding where it is appropriate to recover distribution invested capital and associated costs. A river authority may request recovery of eligible costs, including any deferred expenses, through a ratemaking proceeding where it is appropriate to recover distribution invested capital.

(A) A TDU must provide notice to REPs of the approved rates not later than the 45th day prior to the effective date of the approved rates.

(B) Eligible costs must not be allocated to, or collected from, retail transmission service customers or wholesale transmission service at transmission voltage customers.

(C) Notwithstanding the provisions of §25.243 of this title, an allocation of eligible costs among distribution-level rate classes, based on substation-level class non-coincident peak demand, regardless of the time at which the class demand occurs, from the TDU's current or most recent base-rate proceeding, is presumed to be reasonable.

(D) EESF rates may not be established on a per-kilowatt-hour basis for any customer class that includes demand charges.

(E) Upon any amendment to a contract under this section that would reduce the rate of necessary cost recovery, a TDU must submit an application to reflect the reduced rate of necessary cost recovery, by the earlier of three months from the contract amendment or the TDU's next DCRF proceeding.

(F) Eligible costs will not be reviewed for reasonableness, necessity, or prudence in a proceeding other than a base-rate proceeding, unless the presiding officer finds good cause to review them in another proceeding.

(G) In any proceeding in which eligible costs are reviewed for reasonableness, necessity, or prudence, the TDU's application must also include the contracts associated with the eligible costs being reviewed. The commission will review the contracts to ensure compliance with the final order under subsection (d) of this section, the requirements under subsection (e) of this section, and PURA §35.153.

(2) Notice. The notice for any ratemaking proceeding in which eligible costs are sought must specifically identify those eligible costs.

(3) Affiliate contracts. For any contract between a TDU and an affiliate, the TDU bears the burden of proof to show that the terms to the TDU were reasonable and necessary and did not exceed the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons within the same market area or having the same market conditions. In addition, all affiliate payments must comply with the requirements of PURA §36.058.

(4) Reconciliation. If EESF rates include any eligible costs that have not been reviewed for reasonableness, necessity, and prudence, any rates to recover any portion of those costs are temporary rates that must be reconciled in the TDU's next base-rate proceeding, including to determine whether the costs are reasonable, necessary, and prudent.

(A) In reconciling eligible costs, all revenues received associated with EESF programs, including actual rate revenues, must be applied to offset reasonable, necessary, and prudent EESF costs as these costs and revenues were incurred and received.

(B) A TDU must provide comprehensive testimony and workpapers supporting the reconciliation of all eligible costs and associated rate revenues as part of any base rate proceeding application. Any amounts recovered through rates approved under this subsection that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return, taxes, and carrying costs, must either be refunded or applied as an offset to any outstanding regulatory asset associated with eligible costs. In any proceeding in which the commission determines that a TDU has included in rates any amounts deemed unreasonable, unnecessary, or imprudent, or that the TDU has otherwise over-recovered costs, the commission may order a compliance proceeding to determine the amounts and manner of any necessary refunds to ratepayers or the proper accounting of over-recovered amounts as an offset to any outstanding regulatory assets associated with eligible costs. Carrying costs will be determined as follows:

(i) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the TDU's base rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the TDU's rate base included in base rates in effect when the over-recovery began.

(ii) For the time period beginning with the effective date of the TDU's rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be

calculated using an effective monthly interest rate based on the TDU's rate of return authorized in that base-rate proceeding.

(C) As part of the reconciliation of EESF costs, the commission may consider whether the contracted EESF complied with the characteristics required under subsection (d) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601459

Katelyn Lewis

Projects Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 936-7044



## SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

### 16 TAC §25.101

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.101 relating to Certification Criteria. This amendment will implement Public Utility Regulatory Act (PURA) §37.052(c) as revised by House Bill (HB) 3092 during the Texas 89th Regular Legislative Session. The proposed rule will increase the minimum transmission line length that may be constructed without requiring an electric utility to amend its certificate of convenience and necessity, from three miles to five miles when the line connects an existing transmission facility to a load-serving substation or metering point. Additionally, non-substantive clarifying and consistency edits were made to the rule language.

#### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

## Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

## Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

## Fiscal Impact on State and Local Government

Seaver Myers, Project Manager, Rules and Projects, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

## Public Benefits

Mr. Myers has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be streamlining transmission line construction approval process for certain transmission line construction projects. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

## Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

## Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

## Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 8, 2026. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

## Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be filed by May 8, 2026. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 59528.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary

must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

## Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §37.052, which governs exceptions to certificate requirements for service extension.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; 14.002; and 37.052.

### §25.101. Certification Criteria.

(a) - (b) (No change.)

(c) Projects or activities not requiring a certificate. A certificate, or certificate amendment, is not required for the following:

(1) An extension of facilities as described in PURA §37.052(a) and (b);

(2) A new electric high voltage switching station, or substation;

(3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies should proceed without delay or prior approval of the commission and must be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports);

(4) The construction or upgrading of distribution facilities within the electric utility's service area;

(5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs must be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports). The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required. Routine activities are defined as follows:

(A) The modification, construction, or extension of a transmission line that connects existing transmission facilities to a substation or metering point provided that:

(i) the transmission line modification, construction, or extension does not exceed:

(I) five [~~three~~] miles if the line connects to a load-serving substation or metering point; or

(II) two miles if the line connects to a generation substation or metering point; and

(ii) all rights-of-way necessary for the modification, construction, or extension have been acquired, and

(iii) all landowners whose property is directly affected by the transmission line, as defined in §22.52(a)(3) of this title (relating to Notice in Licensing Proceedings), have given written

consent for the modification, construction, or extension. If the transmission line modification, construction, or extension does not exceed one mile to provide service to a substation or metering point, written consent is only required by landowners whose property is crossed by the transmission line.

(B) The rebuilding, replacement, or respacing of structures along an existing route of the transmission line; upgrading to a higher voltage not greater than 230 kV; bundling of conductors or re-conductoring of an existing transmission facility, provided that:

(i) no additional right-of-way is required; or

(ii) if additional right-of-way is required, all landowners of property crossed by the electric facilities have given prior written consent.

(C) The installation, on an existing transmission line, of an additional circuit not previously certificated, provided that:

(i) the additional circuit is not greater than 230 kV; and

(ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

(D) The relocation of all or part of an existing transmission facility due to a request for relocation, provided that:

(i) the relocation is to be done at the expense of the requesting party; and

(ii) the relocation is solely on a right-of-way provided by the requesting party.

(E) The relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing or impending encroachments, provided that all landowners of property crossed by the electric facilities have given prior written consent.

(F) The relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air and water quality, provided that:

(i) all landowners of property crossed by the electric facilities have given prior written consent; and

(ii) the relocation, alteration, or reconstruction is responsive to the governmental request.

(6) Upgrades to an existing transmission line by an MPE that do not require any additional land, right-of-way, easement, or other property not owned by the MOU;

(7) The construction, installation, or extension of a transmission facility by an MPE that is entirely located not more than 10 miles outside of an MOU's certificated service area that occurs before September 1, 2021; or

(8) A transmission facility by an MOU placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, an MOU was contractually obligated to purchase at least 190 megawatts of capacity.

(d) - (h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601460

Katelyn Lewis

Projects Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 936-7044



### 16 TAC §25.107

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.107 relating to Certification and Obligations of Retail Electric Providers (REPs). The commission also proposed amendments to three commission-prescribed forms: (1) the REP Letter of Credit template; (2) the REP Application and Amendment Form; and (3) the REP Reporting Instructions Form.

The amended rule will implement the new electronic filing requirements applicable to REP letters of credit (LoCs) adopted in 2025 under Project 52059 which revised §22.71, relating to Commission Filing Requirements and Procedures, and §22.72, relating to Form Standards for Documents Filed with the Commission in Chapter 22 of the commission's procedural rules. Specifically, §22.71(d)(1)(A) requires a REP with a physical letter of credit on file with the commission as of the effective date of the section to file an original letter of credit electronically on or before March 5, 2027. The amended rule will accordingly detail the specific procedures and requirements for filing REP LoCs electronically with the commission. The amended rule will also revise the definition of "affiliate" to more appropriately conform with the disclosure and financial requirements of §25.107. The amended rule also makes minor clarifying changes to requirements applicable to Option 2 REPs and to the financial documentation requirements of segregated cash accounts and escrow accounts. Amendments to the REP Letter of Credit template include conforming revisions to reflect electronic filing, including the prohibition on amending a LoC without commission approval and the authorization for the commission to present or terminate a LoC by electronic transmission. Amendments to the REP Application and Amendment Form and REP Reporting Instructions Form are conforming changes to reflect the amended rule and LoC requirements, as well as the revised definition of "affiliate."

### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

#### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

#### Fiscal Impact on State and Local Government

Lucy Considine, Power Markets Analyst, Market Analysis, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

#### Public Benefits

Ms. Considine has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient processing and handling of REP LoCs and greater clarification on certain REP certification obligations. There will be probable economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

#### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

#### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

#### Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 21, 2026. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

#### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 21, 2026. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the effects of the proposed rule, including the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission also requests any data, research, or analysis

from any person required to comply with the proposed rule or any other interested person. The commission will consider the information submitted by commenters and the costs and benefits of implementation in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 59288.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

In addition to comments on the proposed rule text, the commission requests comments on the following questions concerning the proposed rule and forms. Questions for comment should be interpreted broadly and understood to potentially entail future revision to any underlying rule language. Any provision or concept explored in a question for comment indicates that provision or concept is specifically noticed for consideration and review in the rulemaking. Responses to questions for comment, including draft language provided by commenters, are within the scope of such consideration and review. The inclusion of additional analysis, research, or other relevant information is encouraged when responding to questions for comment.

Should additional means or methods of financial assurance be added and made available to REPs to meet the access to capital requirements under §25.107(f)(1) or customer deposit and prepayment requirements under §25.107(f)(2)? (e.g., surety bonds, insurance, etc.)

Should the financial documentation or verification requirements for segregated cash accounts or escrow accounts under §25.107(f)(4)(D) be modified (i.e., expanded, reduced, clarified, etc.)?

The proposed REP Letter of Credit Template incorporates language from the LoC template used for the Texas Energy Fund (TEF) (See Project 56896, Item #79) and the ERCOT LoC template (See <https://www.ercot.com/services/rq/credit>).

Should additional language from the TEF or ERCOT LoC templates be added to the REP Letter of Credit Template?

Should any other revisions be made to the REP Letter of Credit Template?

#### Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.352, which stipulates the requirements to certify a REP.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, and §39.052.

§25.107. *Certification and Obligations of Retail Electric Providers (REPs).*

(a) (No change.)

(b) Definitions. The following words and terms when used in this section have the following meanings unless the context indicates otherwise.

(1) Affiliate--means any company that is related by common control with another company. Any company in the immediate corporate family or a company in the direct or indirect chain of corporate ownership up to the ultimate parent company is an affiliate unless the context indicates otherwise. [As defined in §25.5 of this title (relating to Definitions).]

(2) - (16) (No change.)

(c) Application processing.

(1) - (6) (No change.)

(7) Filing requirements for irrevocable stand-by letters of credit.

(A) To meet the financial requirements under subsection (f) of this section, an irrevocable stand-by letter of credit must be filed electronically with the commission in accordance with §22.71 of this title (relating to Commission Filing Requirements and Procedures).

(B) An irrevocable stand-by letter of credit that does not comply with the filing requirements of §22.71 of this title for REP letters of credit will be rejected and securely and confidentially disposed of in accordance with §22.71 of this title.

(d) Basic requirements.

(1) (No change.)

(2) An applicant must provide the following information to the commission to certify as a REP under this section.

(A) - (H) (No change.)

(I) An applicant for an Option 2 REP certificate must include a signed, notarized affidavit stating that it will only contract with customers to provide one megawatt or more of capacity [energy]. Within 30 days of conditional commission approval of the application and before an Option 2 REP begins serving a customer, the Option 2 REP must file with the commission a signed, notarized affidavit from each customer with which it has contracted to provide one megawatt or more of capacity [energy]. The affidavit may be submitted by the applicant while the application for an Option 2 REP certificate is pending. Each customer affidavit must state that the customer understands and accepts the REP's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

(J) (No change.)

(e) (No change.)

(f) Financial requirements. An Option 1 REP must, on an ongoing basis, maintain compliance with paragraph (1) of this subsection and, as applicable, paragraph (2) and (3) of this subsection. This subsection does not apply to an Option 2 or Option 3 REP.

(1) - (3) (No change.)

(4) Financial documentation requirements. The following must be provided by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection, as applicable. Additionally, the applicant must provide the month and last day of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year. The applicant must also provide a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.

(A) Investment-grade credit ratings must be documented by reports from a credit reporting agency. The report the

applicant provides must be the most recently released report by the credit reporting agency.

(B) Tangible net worth, current ratio, and debt to capitalization ratio calculations must be supported by a signed, notarized affidavit from an executive officer of the guarantor that attests to the accuracy of the calculations and be documented by audited or unaudited financial statements of the guarantor for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the guarantor's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(C) Shareholders' equity must be documented by the audited or unaudited financial statements of the applicant for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the REP's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(D) Segregated cash accounts must be documented by a current account statement and the executed agreement with an unaffiliated person that controls the segregated cash account.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account;

(II) the account number; and

(III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) ~~If applicable, a [A] REP must provide the [an] executed agreement it has with the [a] provider of credit that governs the control and management of the account. The provider of credit must not be affiliated with the applicant or the applicant's corporate parent. [If the segregated cash account contains customer deposits, the agreement must specify that the customer deposits are not the property of the REP or in the REP's control; unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.]~~

(E) Escrow accounts must be documented by a current account statement and the executed escrow account agreement.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account;

(II) the account number; and

(III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) The escrow account agreement must provide that the account holds only customer deposits, prepayments, or both, and that the customer deposits will be held in trust by the escrow agent ~~[and will not be the property of the REP or in the REP's control; unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts].~~

(F) ~~Except as otherwise provided for amendments or cancellations under clause (v) or (vi) of this subparagraph, respectively, irrevocable [irrevocable] stand-by letters of credit provided under paragraphs (1) and (2) of this subsection must use the standard form irrevocable stand-by letter of credit template approved by the commission. The original [document of the] irrevocable stand-by letter of credit must be filed electronically in accordance with §22.71 of this title [provided in a manner established by the commission].~~

(i) The irrevocable stand-by letter of credit must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(ii) The irrevocable stand-by letter of credit must:

(I) be an original document;

(II) [(H)] be irrevocable for a period not less than twelve months;

(III) [(H)] automatically renew, and only expire if prior notice is provided to the commission at least 90 days before the expiration and commission staff signs the notice of non-renewal to acknowledge that the notice was received 90 days before the expiration;

(IV) [(H)] be payable to the commission;

(V) [(H)] permit a draw to be made in part or in full;

(VI) [(V)] permit a draw to be made with the return of the original document or a photocopy;

(VII) [(V)] permit a draw to be made by first class certified and registered mail, overnight mail and electronic mail ~~[among other ways, through over-night mail];~~

(VIII) permit notification and approval of the termination or amendment of the irrevocable stand-by letter of credit to be performed through electronic mail.

(IX) [(V)] permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit and terminate the irrevocable stand-by letter of credit; ~~[and]~~

(X) [(V)] comply with clause (v) of this subparagraph for amendments to an irrevocable, stand-by letter of credit; ~~and [require commission staff approve all amendment requests to decrease the value of the irrevocable stand-by letter of credit prior the value of the irrevocable stand-by letter of credit decreasing. Amendments to decrease the value of the irrevocable stand-by letter of credit must be accompanied by a notarized affidavit signed by an executive officer of the REP and include, as applicable, the current number of ESI IDs the REP serves, the value of customer deposits and prepayments the REP is liable for.]~~

(XI) contain a verifiable electronic signature or other means of authentication acceptable to the commission in accordance with clauses (iii) and (iv) of this subparagraph.

(iii) For purposes of an irrevocable stand-by letter of credit, a verifiable electronic signature must include:

(I) a signature from an executive officer of the issuing bank with a digital identifier (e.g. a public-key certificate or self-signed certificate); and

(II) the date the irrevocable stand-by letter of credit was signed.

(iv) An irrevocable stand-by letter of credit without a verifiable electronic signature must include other means of authentication. Other means of authentication must consist of, at a minimum, an affidavit attesting to the authenticity of the irrevocable stand-by letter of credit. If a REP utilizes multiple letters of credit, a single affidavit may be used. The affidavit must:

(I) use the form-prescribed by the commission;

(II) be sworn;

(III) be signed by an executive officer of the REP;

(IV) include the date the affidavit was signed.

(v) An amendment to an irrevocable stand-by letter of credit must comply with this clause.

(I) An amendment to an irrevocable stand-by letter of credit involving an increase to the stated amount or a non-material change to the irrevocable stand-by letter of credit (e.g., address, contact information, etc.) is only effective upon the filing of written confirmation of the change by the issuing financial institution. The written confirmation must be filed in Project 37919 or by any other means prescribed by the commission.

(II) An amendment to an irrevocable stand-by letter of credit involving a request to decrease the value of the irrevocable stand-by letter of credit is only effective upon the execution of a written agreement by the executive director or his or her designee approving the change. Additionally, an amendment to decrease the value of the irrevocable stand-by letter of credit must be accompanied by an affidavit that:

- (-a-) is sworn;
- (-b-) is signed by an executive officer of the

REP;

- (-c-) includes the date the affidavit was

signed; and

- (-d-) includes a written statement indicating, as applicable, either the current number of ESI IDs the REP serves or the value of customer deposits and prepayments the REP is liable for.

(III) In addition to the applicable requirements of subclause (I) or (II) of this clause, as applicable, an amendment to an irrevocable stand-by letter of credit must substantially comply with and conform to the commission-prescribed form for such amendments and must, at a minimum, include:

(-a-) the number or identifier applicable to the irrevocable stand-by letter of credit being amended;

(-b-) the previous effective date of the irrevocable stand-by letter of credit being amended;

(-c-) the name and contact information of the issuing financial institution;

(-d-) the stated amount of the previously effective irrevocable stand-by letter of credit immediately followed by the new amount of the irrevocable stand-by letter of credit;

(-e-) the effective date of the amendment, as applicable under subclause (I) or (II) of this clause;

(-f-) the following language: "All other terms and conditions of the Irrevocable Stand-By Letter of Credit remain unchanged; and

(-g-) the signature of a representative of the issuing financial institution and their corresponding contact information.

(vi) Termination of an irrevocable stand-by letter of credit may be effectuated through one of the following methods under subclause (I) or (II) of this clause.

(I) Cancellation. The cancellation of an irrevocable stand-by letter of credit is effective only upon:

(-a-) the filing of a written statement with the commission that substantially adheres to the commission-prescribed form for cancellations and complies with the requirements of subclause (III) of this clause; and

(-b-) the signature or written approval of the executive director or his or her designee.

(II) Non-renewal. The non-renewal of an irrevocable stand-by letter of credit is effective only upon:

(-a-) the filing of a written statement with the commission, provided at least 90 days prior to the expiry date of the irrevocable stand-by letter of credit that substantially adheres to the commission-prescribed form for non-renewals and complies with the requirements of subclause (III) of this clause; and

(-b-) the signature of the executive director or his or her designee acknowledging the statement of non-renewal.

(III) A statement terminating an irrevocable stand-by letter of credit must, at a minimum, include:

(-a-) the number or identifier of the irrevocable stand-by letter of credit used by the financial institution;

(-b-) the date the irrevocable stand-by letter of credit was effective and the date the written statement was filed;

(-c-) the face value of the irrevocable stand-by letter of credit;

(-d-) the name of the applicant associated with the irrevocable stand-by letter of credit; and

(-e-) as applicable, the expiry date of the irrevocable stand-by letter of credit.

(G) Irrevocable guaranty agreements must be executed on the commission approved standard form irrevocable guaranty agreement and must obligate the guarantor to meet commission's demands on behalf of the applicant. A copy of the executed irrevocable guaranty agreement must be provided in the manner established by the commission.

(i) The guarantor's obligation to satisfy a commission demand for payment must be in an amount not less than \$1,500,000 and must be absolute, and the guarantor may not avoid its obligation for any reason.

(ii) The irrevocable guaranty agreement must automatically renew and only expire if prior notice is provided to the commission at least 90 days before expiration. Commission staff must sign a notice of non-renewal to acknowledge that the notice was received at least 90 days prior to the date of expiration. Any notices or amendments must be provided to the commission in a commission approved method. Until the 90 days' [days] advance notice has elapsed or until an amendment to the REP's financial qualifications is approved, whichever occurs first, the guarantor must remain completely and absolutely liable to the extent provided by the terms of the agreement.

(H) A power purchase agreement must be documented by providing a copy of the executed agreement between the applicant and the guarantor.

(5) - (6) (No change.)

(g) - (l) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601458

Katelyn Lewis

Projects Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 936-7044

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 103. HEALTH AND SAFETY**

**SUBCHAPTER CC. COMMISSIONERS RULES CONCERNING SAFE SCHOOLS**

**19 TAC §103.1217**

The Texas Education Agency (TEA) proposes new §103.1217, concerning safety during extracurricular activities. The proposed new section would establish safety protocols for extracur-

ricular activities to implement Texas Education Code (TEC), §37.108(f)(8), as amended by House Bill (HB) 121, 89th Texas Legislature, Regular Session, 2025.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Proposed new §103.1217 would detail provisions to ensure the safety of students, staff, and spectators during extracurricular activities, in accordance with TEC, §37.108(f)(8), as amended by HB 121, 89th Texas Legislature, Regular Session, 2025.

Proposed new §103.1217(a) would outline definitions and terminology applicable to this section.

Proposed new §103.1217(b) would explain that school systems must adopt and implement multihazard emergency operations plans and must certify that written plans are reviewed, amended, and retained that ensure the safety of students, staff, and spectators during extracurricular activities occurring on property owned, leased, or otherwise under the control of a school system. The subsection would also require that written plans be submitted by a school system to TEA upon request.

Proposed new §103.1217(c) would outline what must be included in a school system's written plan for extracurricular activities.

Proposed new §103.1217(d) would require school systems to submit information related to events requiring an emergency response, including the discovery of a firearm on a campus or at a school-sponsored event in accordance with TEC, §37.1083(h)(1), to TEA in a manner determined by the agency.

**FISCAL IMPACT:** James Finley, deputy chief of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no fiscal implications to the state. There may be additional costs to school districts to meet the requirement for armed peace officers at extracurricular activities with more than 500 attendees. However, since hosting an extracurricular activity is voluntary and since decisions about extracurricular activities are made at the local district level, it is difficult to estimate the fiscal impact on any given district. To help offset district costs associated with safety and security initiatives, approximately \$500 million was added to school safety allotment funding during the 89th legislative session.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** Although the proposal imposes a cost on regulated persons, another state agency, a special district, or local government, Texas Government Code, §2001.0045, does not apply because the rule is necessary to protect the health, safety, and welfare of the residents of this state, per Texas Government Code, §2001.0045(c)(9).

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** The proposed rulemaking would create a new regulation to ensure the safety of students, staff, and spectators during extracurricular activities sponsored or sanctioned by a school system.

It would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Finley has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school systems with requirements and considerations that better ensure the safety of students, staff, and spectators during extracurricular activities. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins April 17, 2026, and ends May 18, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 10, 2026. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The new section is proposed under TEC, §37.108(f)(8), as amended by HB 121, 89th Texas Legislature, Regular Session, 2025, which grants TEA authority to determine provisions ensuring the safety of students, staff, and spectators during extracurricular activities sponsored or sanctioned by a school system; and TEC, §37.1083(h)(1), as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which allows TEA to require a school district to submit notices of events requiring a district's emergency response, including the discovery of a firearm on a campus.

**CROSS REFERENCE TO STATUTE.** The new section implements TEC, §37.108(f)(8), as amended by HB 121, 89th Texas Legislature, Regular Session, 2025, and §37.1083(h)(1), as added by HB 3, 88th Texas Legislature, Regular Session, 2023.

*§103.1217. Safety During Extracurricular Activities.*

(a) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Extracurricular activity--A term that has the meaning assigned by §76.1001 of this title (relating to Extracurricular Activities). For the purpose of this section, large events including, but not

limited to, graduation and prom are considered extracurricular activities.

(2) Rivalry event--A school-sponsored athletic contest or extracurricular competition between entities with a recognized competitive relationship, often marked by heightened student, alumni, and community engagement due to shared history, tradition, or geographic proximity.

(3) School system--A term that has the meaning assigned by §103.1215 of this chapter (relating to School Safety Requirements).

(b) Multihazard emergency operations plans. In accordance with Texas Education Code (TEC), §37.108, school systems must adopt and implement multihazard emergency operations plans and must certify that written plans are reviewed, amended, and retained to ensure the safety of students, staff, and spectators during extracurricular activities occurring on property owned, leased, or otherwise under the control of a school system. Written plans must be submitted to the Texas Education Agency (TEA) upon request.

(c) Written plan for extracurricular activities. Each school system must include the following in their written plan when addressing extracurricular activities.

(1) Adverse Weather Planning. Protocols for extreme weather conditions such as lightning, heavy rain, or extreme heat shall be developed. Plans must include the location of temporary emergency shelter sites or emergency evacuation measures for event participants and spectators.

(2) Communication.

(A) School systems must establish clear communication channels between school administration, coaches, emergency services, and law enforcement.

(B) School systems should be able to relay emergency communications to participants and spectators including, but not limited to, public address announcements.

(C) A telephone or other communication device is required to be on site during extracurricular activities to contact medical services and law enforcement immediately.

(D) In accordance with TEC, §37.1131, participating school systems must adopt a policy for parental notification regarding violent incidents occurring or being investigated at an extracurricular activity. Participating school systems/teams are responsible for notification to the parents of students in their own districts.

(3) Crowd control measures. School systems must prevent overcrowding to maintain order and mitigate safety hazards and potential conflicts.

(4) Designated incident commanders. School systems shall ensure there is an on-site designated incident commander to handle emergencies.

(5) Emergency equipment location and maintenance. School systems shall develop a policy to perform and document on-site readiness checks of equipment and maintenance.

(A) In accordance with Texas Health and Safety Code, Chapter 779, an automated external defibrillator (AED) must be available and accessible at all practices and events and inspected monthly.

(B) In accordance with TEC, §22.902, athletic coaches or sponsors, physical education instructors, marching band directors, cheerleading coaches, and students who serve as athletic trainers must be certified in cardiopulmonary resuscitation and the use of an AED.

(C) In accordance with §76.1003 of this title (relating to Extracurricular Athletic Activity Safety Training Requirements), coaches or sponsors for an extracurricular athletic activity, trainers, marching band directors, and physicians employed by or volunteering for a school system to assist with extracurricular athletic events must complete a TEA-adopted extracurricular athletic activity safety training program.

(6) Evacuation plans. School systems must designate evacuation routes and assembly points in case of an evacuation. Plans must be able to be communicated to event participants and staff. School systems should consider conducting drills to familiarize individuals with evacuation procedures.

(7) Event security.

(A) Host school systems must provide at least one uniformed peace officer per 750 attendees for events exceeding 500 attendees. School systems should consider providing armed security for any event that exceeds 250 attendees. If a school system hosts an event, whether or not they are participating in the event, the hosting school system is responsible for security.

(B) For rivalry events or events where there is a propensity for violence or confrontation based on available intelligence from hosting and visiting districts or publicly available information, school systems must provide an appropriate number of uniformed peace officers.

(C) Considerations for the number of armed officers needed for an event should include:

(i) the number of spectators and participants projected to attend an event;

(ii) the size of the event venue; and

(iii) an increased risk of confrontation or violence at the event.

(D) When participating in extracurricular activities at facilities not under the control of a school system, school system staff should:

(i) familiarize themselves with security and medical plans implemented by the facility, which may include:

(I) in-person safety briefings provided by the host facility; and

(II) distributed safety plans including evacuation routes, locations of emergency equipment, and emergency contact numbers; and

(ii) obtain contact information for the host facility to ensure communication in the event of an emergency.

(8) Injury protocol planning. School systems shall coordinate with local first responders to create structured plans to manage injuries, inclusive of immediate first aid.

(9) Patrons.

(A) In accordance with TEC, §37.105, school administrators, school resource officers, or school district peace officers may refuse to allow a person to enter property under the school system's control or they may eject a person if the person refuses to leave peacefully.

(B) A referee, judge, or other official may eject an individual, including spectators, staff, volunteers, or participants, without the need to first issue a verbal warning, and even if the behavior that subjects the individual(s) to ejection is not persistent, inappropriate be-

havior. A single incident of inappropriate, threatening, or dangerous behavior is sufficient cause for ejection, subject to the discretion of the appropriate official.

(10) Risk assessment. Before any event, a thorough risk assessment of potential risks, such as venue, weather conditions must be conducted. For extracurricular activities hosted by another school system or an outside organization, school systems should be familiar with security and medical plans for that entity, as described in paragraph (7)(D) of this section.

(11) Written plan for event locations. To ensure a safe and secure environment for events, school systems must develop and implement written security and medical plans for each specific event location exceeding 250 attendees. School systems must ensure coaches, band directors, event and school administrators, and cheer coaches are familiar with the written plan.

(d) Emergency response incidents. In accordance with §103.1213 of this chapter (relating to Required Reporting through Sentinel), all school systems shall submit information related to an incident requiring an emergency response, including the discovery of a firearm or other weapon at a school-sponsored activity, in accordance with TEC, §37.1083(h)(1), to TEA in Sentinel. Submission of information to TEA does not substitute for the requirement for law enforcement notification of certain activities outlined in TEC, §37.015.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 6, 2026.

TRD-202601479

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

#### **CHAPTER 133. LICENSING FOR ENGINEERS SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS**

##### **22 TAC §§133.21, 133.23, 133.25, 133.27**

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 133, Subchapter C, regarding professional engineer license application requirements, specifically §133.21 Application for Standard License, §133.23 Applications from Former Standard License Holders, §133.25 Applications from Engineering Educators, and §133.27 Application for Temporary license for Engineers Currently Licensed Outside the United States.

##### **BACKGROUND AND SUMMARY**

The rule amendments make changes as part of an initiative to revise and improve the experience reporting requirements for engineering applicants. The new structure will align with national and international experience reporting standards and clarify and improve the alignment of expectations for applicants, mentors, and agency reviewers. This will improve the quality of applications and streamline the review process.

##### **SECTION-BY-SECTION SUMMARY**

The proposed rules amend §133.21 to change the name of the experience reporting section of the application.

The proposed rules amend §133.23 to change the name of the experience reporting section of the application.

The proposed rules amend §133.25 to change the name of the experience reporting section of the application.

The proposed rules amend §133.27 to change the name of the experience reporting section of the application.

##### **FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT**

Mr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

##### **LOCAL EMPLOYMENT IMPACT STATEMENT**

Mr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

##### **PUBLIC BENEFITS**

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be improved experience reporting and the clarification and accuracy of board rules.

##### **PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL**

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

##### **FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES**

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

##### **ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT**

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

#### PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, by email to [rules@pels.texas.gov](mailto:rules@pels.texas.gov) or sent by postal mail to the Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741.

#### STATUTORY AUTHORITY

The proposed amendments are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the

Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed amendments are pursuant to Texas Occupations Code §1001.302(a)(3) and §1001.302(b) which set out requirements for an engineering applicant to demonstrate applicable experience for licensure.

#### §133.21. Application for Standard License.

(a) To be eligible for licensure as a professional engineer, one must submit a completed application.

(b) All persons must pass the examination on the fundamentals of engineering or be eligible for a waiver from the examination on the fundamentals of engineering before submitting an application.

(c) Applicants must speak and write the English language. Proficiency in English may be evidenced by an accredited degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550, a computer based score of at least 200 or an internet based score of at least 95, or other evidence such as significant academic or work experience in English acceptable to the executive director.

(d) Applicants for a license shall submit:

(1) an application in a format prescribed by the board and shall:

(A) list his or her full, legal name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) list social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(4) Experience Report [~~supplementary experience record~~] as required under §133.41 of this chapter (relating to Experience Report [~~Supplementary Experience Record~~]);

(5) reference statements as required under §133.51 of this chapter (relating to Reference Providers);

(6) documentation of a passing score on examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable;

(7) verification of a current license, if applicable;

(8) a completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);

(9) TOEFL scores, if applicable;

(10) information regarding any judgments of convictions, deferred judgments or pre-trial diversions for a misdemeanor or felony

provided in a form prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(11) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act; and

(12) if applicable, written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, TOEFL documentation, or a commercial evaluation of non-accredited degrees and a statement supporting the request(s).

(e) At the time the application is filed, an applicant may request in writing that any transcripts, reference statements, evaluations, experience records or other similar documentation previously submitted to the board be included in a current application; however, such documentation may not meet the requirements of the board at the time of the subsequent application and new or updated information may be required.

(f) The NCEES record may be accepted as verification of an original transcript, licenses held, examinations taken, experience record and reference documentation to meet the conditions of subsection (d)(3) - (7) of this section.

(g) Once an application is accepted for review, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(h) An applicant who is a citizen of another country shall show sufficient documentation to the board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(i) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

*§133.23. Applications from Former Standard License Holders.*

(a) A former standard license holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new license. This section does not apply to a former holder of a temporary license.

(b) A former standard license holder applying for a license under the current law and rules must have the documentation requested in §133.21 of this chapter (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, Experience Records [~~supplementary experience records~~] or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board;

(2) pay the application fee established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(4) submit an Experience Report [a ~~supplementary experience record~~] that includes at least the last four years of engineering experience, which may include experience before the previous license expired;

(5) submit also at least one additional reference statement conforming to §133.51 of this chapter (relating to Reference Providers), regarding [~~in which a professional engineer shall verify at least four years of~~] the updated Experience Report [~~supplementary experience record~~]; and

(6) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act, unless previously submitted to the board.

(c) Once an application from a former standard license holder is received, the board will follow the procedures in §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application.

(d) Any license issued to a former standard license holder shall be assigned a new serial number.

(e) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

(f) Any enforcement action taken against an expired license holder in accordance with §139.31 (relating to Enforcement Actions for Violations of the Act or Board Rules) and any enforcement action that was pending when a license expired, and has remained expired for two or more years, may be considered in the evaluation of an application for a new license.

*§133.25. Applications from Engineering Educators.*

(a) Persons whose current, primary employment is as an engineering educator instructing engineering courses in a recognized institution of higher education in Texas, as defined in §131.2 of this title (relating to Definitions) are permitted to seek licensure utilizing an alternate application.

(b) The minimum educational qualifications are as follows:

(1) Earned doctoral degree in engineering from a college or university that offers an undergraduate or master's degree program in a related branch of engineering that is approved by the EAC/ABET as published in the current version of the ABET Accreditation Yearbook and or the current version of the ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(2) Earned doctoral degree in engineering or another related field of science or mathematics assessed and approved by the board.

(c) An engineering educator, applying under the alternate process, shall submit:

(1) an application in a format prescribed by the board;

(2) an Experience Report [a ~~supplementary experience record~~]:

(A) For tenured faculty (or those approved for promotion), submit a dossier including a comprehensive resume or

curriculum vitae containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the Experience Report [supplementary experience record];

(B) For non-tenured faculty, a standard Experience Report [supplementary experience record] with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(7) Information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(8) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act;

(9) documentation of passing scores on examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable; and

(10) written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

(d) Once an alternative application from an engineering educator is received, the board will follow the procedures in §133.85 of this chapter (relating to Additional Review of and Action on Applications) to review and approve or deny the application.

(e) This section does not prohibit any engineering educator from applying for licensure under the standard application process.

(f) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

§133.27. *Application for Temporary License for Engineers Currently Licensed Outside the United States.*

(a) Pursuant to §1001.311 of the Act, a temporary license may be issued under this section for applicants who:

(1) are citizens of the Commonwealth of Australia, Canada, or the Republic of Korea or the United Mexican States;

(2) are seeking to perform engineering work in Texas for three years or less;

(3) are currently licensed or registered in good standing with Engineers Australia, at least one of the jurisdictions of Canada, the Korean Professional Engineers Association or the United Mexican States; and

(4) meet the following experience requirements:

(A) Applicant currently registered in Australia, Canada or the Republic of Korea shall have at least seven years of creditable engineering experience, three of which must be practicing as a registered or chartered engineer with Engineers Australia, the Korean Professional Engineers Association or Engineers Canada and one of which must be working with or show familiarity with U.S. codes, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(B) Applicant currently licensed in United Mexican States shall:

(i) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(ii) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(b) The applicant applying for a temporary license from Australia, Canada, or the Republic of Korea or the United Mexican States shall submit:

(1) an application in a format prescribed by the board;

(2) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(3) an Experience Report [a supplementary experience record] as required under §133.41(1) - (4) of this chapter (relating to Experience Report [Supplementary Experience Record]) or a verified curriculum vitae and continuing professional development record;

(4) at least three reference statements as required under §133.51 and §133.53 of this chapter (relating to Reference Providers and Reference Statements);

(5) passing score of TOEFL as described in §133.21(c) of this chapter (relating to Application for Standard License)

(6) information regarding judgments of convictions, deferred judgments or pre-trial diversions, for a misdemeanor or felony provided in a form prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(7) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act;

(8) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges;

(9) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(10) pay the application fee established by the board; and

(11) a verification of a license in good standing from one of the jurisdictions listed in subsection (a)(3) of this section.

(c) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

(d) A temporary license issued under this section may only be renewed twice for a total maximum duration of three years.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601454

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 440-3080



## SUBCHAPTER E. EXPERIENCE

### 22 TAC §133.41, §133.43

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 133, Subchapter E, regarding experience required for engineering licensure, specifically §133.41 Supplementary Experience Record (to be renamed Experience Report) and §133.43 Experience Evaluation.

#### BACKGROUND AND SUMMARY

The proposed rule amendments make changes as part of an initiative to revise and improve the experience reporting requirements for engineering applicants. The new structure will align with national and international experience reporting standards and clarify and improve the alignment of expectations for applicants, mentors, and agency reviewers. This will improve the quality of applications and streamline the review process.

#### SECTION-BY-SECTION SUMMARY

The proposed rules amend §133.41 to change the format of the experience reporting section of the application for licensure as a professional engineer. Currently, the section is called the Supplementary Experience Record and is a long form description of engineering experience partitioned by job or engagement. The new format aligns with national and international standards to have two parts: Part one is the Experience Summary which is a short form description of engineering experience by engagement and part two is the Professional Competency Profile which is an overview of experience by specific category. The revised format clarifies what type of work experience is required for licensure, so that applicants, mentors and supervisors, and application reviewers are all aligned and aware of the standards.

The proposed rules amend §133.43 to change the name of the experience reporting section of the application to align with changes made in §133.41.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be improved experience reporting and the clarification and accuracy of board rules.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not increase the number of individuals subject to the rule's applicability.

7. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

#### PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, by email to rules@pels.texas.gov or sent by postal mail to the Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741.

#### STATUTORY AUTHORITY

The proposed amendments are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed rules implement the following sections of the law: Texas Occupations Code §1001.302(a)(3) and §1001.302(b) which set out requirements for an engineering applicant to demonstrate applicable experience for licensure.

§133.41. *[Supplementary] Experience Report [Record].*

(a) Applicants shall submit an Experience Report [a supplementary experience record] to the board as a part of the application. The Experience Report [supplementary experience record] is a written summary documenting all of the applicant's engineering experience used to meet the requirements for licensure. The NCEES record experience information may be accepted as all or part of an Experience Report [a supplementary experience record].

(b) The Experience Report shall consist of two parts:

(1) Part 1: Experience Summary. The Experience Summary is a description of qualifying experience divided into employment

engagements that correspond to those listed in the application and shall be written in sufficient detail to allow a board reviewer to document the minimum amount of experience required and to recognize and verify the quality and quantity of the experience claimed.

(2) Part 2: Professional Competence Profile. The Professional Competence Profile is a description of experience across engagements to demonstrate competency in a number of categories related to professional practice. The profile shall be written in sufficient detail to allow a board reviewer and reference provider to determine the suitability of an applicant for professional licensure.

(c) [(+) The Experience Report [supplementary experience record] shall be written by the applicant and shall:

(1) [(A)] provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the engineering work;

(2) [(B)] clearly describe the engineering work that the applicant personally performed;

(3) [(C)] delineate the role of the applicant in any group engineering activity; and

(4) [(D)] include any relevant training or participation in engineering organizations or societies that contribute to the applicant's competence and readiness for licensure (consistent with the requirements listed in §137.17 of this title (relating to Continuing Education Program).

[(2) The supplementary experience record shall be divided into employment engagements that correspond to those listed in the application and shall be written in sufficient detail to allow a board reviewer to document the minimum amount of experience required and to allow a reference provider to recognize and verify the quality and quantity of the experience claimed.]

[(3) Experience that is unsupported by references may not be considered.]

(d) All experience claimed in the Experience Summary to meet the minimum requirements for licensure shall be verified by an individual who has personal knowledge of the applicant's engineering experience at the time of employment. Individuals permitted to submit verifications shall be: [one or more currently licensed professional engineer(s) pursuant to §133.51 of this chapter (relating to Reference Providers).]

(1) A licensed Professional Engineer who was a supervisor, department manager, or in an oversight role of the applicant;

(2) A non-licensed individual who was a supervisor, department manager, or in an oversight role of the applicant; or

(3) An individual in Human Resources or other similar role.

(e) All experience described in the Professional Competency Profile to meet the minimum requirements for licensure shall be reviewed and approved by currently licensed professional engineer reference providers pursuant to §133.51 of this chapter (relating to Reference Providers).

(f) Experience that is unsupported by verification or references may not be considered.

(g) [(4)] Experience from part-time employment must be accounted for proportionally to a standard 40-hour work week, if it was part-time employment.

(h) [(5)] The Experience Report [~~supplementary experience record~~] must cover at least the minimum amount of time needed by the applicant for issuance of a license.

(1) [(A)] Applicants applying under §1001.302(a)(1)(A) of the Act shall provide an Experience Report describing a minimum of [~~supplementary experience records for at least~~] four years of qualifying engineering experience.

(2) [(B)] Applicants applying under §1001.302(a)(1)(B) of the Act shall provide an Experience Report describing a minimum of [~~supplementary experience records for at least~~] eight years of engineering experience.

(3) [(C)] Applicants seeking a waiver from the examination on the fundamentals of engineering and/or the examination on the principles and practices of engineering requirements shall provide an Experience Report describing [~~a supplementary experience record for~~] at least the minimum number of years of experience required for a waiver of examinations under §133.69 of this chapter (relating to Waiver of Examinations).

### §133.43. *Experience Evaluation.*

(a) The board shall evaluate the nature and quality of the experience found in the Experience Report [~~supplementary experience record~~] or the NCEES record experience information and shall determine if the experience [~~work~~] is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the Experience Report [~~supplementary experience record~~] for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) Engineering experience [~~work~~] shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such experience [~~work~~] must be fully described in the Experience Report [~~supplementary experience record~~]. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or professional and communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

(E) engineering for program management and for development of operating and maintenance manuals;

(F) engineering for construction, or review of construction;

(G) performance of engineering surveys, studies, or mapping;

(H) engineering for materials testing and evaluation;

(I) expert engineering testimony;

(J) any other experience [~~work~~] of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance; [~~and~~]

(K) the teaching of engineering subjects by a person who began teaching prior to September 1, 2001; and[.]

(L) other professional skills necessary for the adequate performance of an engineering service.

(2) In the review of engineering experience, the board may consider additional elements including:

(A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(B) whether the quality of the engineering work shows minimum technical competency;

(C) whether the experience was gained in accordance with the provisions of the Act;

(D) whether the experience was gained in one dominant branch;

(E) whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice;

(F) whether short engagements have had an impact upon professional growth;

(G) whether the applicant intends to practice or offer engineering services in Texas; and

(H) whether the experience was supplemented by training courses or participation in engineering organizations or societies that contribute to the applicant's competence and readiness for licensure (consistent with the requirements listed in §137.17 of this title (relating to Continuing Education Program)).

(3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:

(A) the experience is gained during an engagement longer than three months in duration;

(B) the experience, when taken as a whole, meets the minimum time;

(C) the experience is not anticipated and has actually been gained at the time of application;

(D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice; and

(E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed and the calendar time has not been claimed for surveying experience in a surveying application.

(b) Experience credit may be granted for experience gained prior to an applicant's receiving a conferred degree per §133.31 of this chapter (relating to Educational Requirements for Applicants). Effective January 1, 2009, experience gained in this manner is limited to a total of two years, and must:

(1) be substantiated and verified in the Experience Report [~~supplementary experience record and a reference statement provided for the experience~~];

(2) be accounted for proportionally to a standard 40-hour work week, if it was part-time employment; and

(3) reflect that, at the time the experience was gained, the applicant had passed junior and/or senior level engineering or related engineering science courses and applied relevant engineering knowledge in the claimed experience.

(c) One year of experience credit may be granted for each post-baccalaureate engineering degree earned by an applicant, provided:

(1) the applicant has a baccalaureate or other post-baccalaureate degree in engineering meeting the requirements of §133.31(a)(1) of this chapter (concerning Educational Requirements for Applicants); and

(2) the post-baccalaureate degree is from an engineering program where either the graduate or undergraduate degree in the same discipline is accredited or approved by one of the organizations listed in §133.31(a)(1) of this chapter. Experience credit for all post-baccalaureate degrees is limited to a total of two years.

(d) Engineering Educators applying for a waiver of examinations under §133.69 of this chapter (relating to Waiver of Examinations) will not receive additional experience credit pursuant to subsection (c) of this section.

(e) Experience that has received educational credit or has been gained as part of an education will not be credited as experience.

(f) For Engineering Educator applicants applying under §133.25 of this chapter (relating to Applications from Engineering Educators), other acceptable creditable engineering experience may include, but is not limited to, scholarly activity such as publishing papers in technical and professional journals; making technical and professional presentations; publishing books and monographs; performing sponsored research; reporting on research conducted for sponsors; supervising research of undergraduate and graduate students, postdoctoral fellows, or other employees; providing counseling, guidance, and advisement for engineering students; and performing certain other types of formal or informal functions in higher education.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601455

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-3080



## SUBCHAPTER F. REFERENCE DOCUMENTATION

### 22 TAC §133.51, §133.53

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 133, Subchapter F, regarding reference documentation required for engineering licensure, specifically §133.51 Reference Providers and §133.53 Reference Statements.

#### BACKGROUND AND SUMMARY

The proposed rule amendments make changes as part of an initiative to revise and improve the experience reporting requirements for engineering applicants. The new structure will align with national and international experience reporting standards and clarify and improve the alignment of expectations for applicants, mentors, and agency reviewers. This will improve the quality of applications and streamline the review process.

#### SECTION-BY-SECTION SUMMARY

The proposed rules amend §133.51 to change the requirements for reference providers. References were previously provided for the Supplementary Experience Record but will now be provided for only part two of the new Professional Competency Profile as described in the amendments to §133.41.

The proposed rules amend §133.53 to change the requirements for reference providers. References were previously provided for the Supplementary Experience Record but will now be provided for only part two of the new Professional Competency Profile as described in the amendments to §133.41.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be improved experience reporting and the clarification and accuracy of board rules.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not increase the number of individuals subject to the rule's applicability.
7. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

#### PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, by email to [rules@pels.texas.gov](mailto:rules@pels.texas.gov) or sent by postal mail to the Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741.

#### STATUTORY AUTHORITY

The proposed amendments are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed amendments are pursuant to Texas Occupations Code §1001.302(a)(3) and §1001.302(b) which set out requirements for an engineering applicant to demonstrate applicable experience for licensure.

#### §133.51. Reference Providers.

(a) Applicants for licensure shall provide reference statements to verify technical and character suitability for licensure. [and all engineering experience claimed to meet the minimum years of experience required. Reference statements will be used to verify the applicant's character and the factual presentation of the applicant's experience and to determine to the extent the experience is creditable engineering experience.] The NCEES record reference documentation may be accepted as reference statements as specified in this section.

(1) Standard Licensure Procedure. Applicants applying under §1001.302(a)(1)(A) or (B) of the Act, including those applicants licensed in another jurisdiction or previously licensed in Texas, shall provide reference statements from at least three professional engineer reference providers. These reference providers shall be currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review the Professional Competency Profile included in the [all applicable portions of the] applicant's Experience Report [supplementary experience record] and complete the reference statement in full.

(2) Waiver of Examinations Procedure. Applicants requesting a waiver from the examinations on the fundamentals of engineering or principles and practice of engineering shall provide reference statements from at least five reference providers. These reference providers shall be currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review the Professional Competency Profile included in the [all applicable portions of the] applicant's Experience Report [supplementary experience record] and complete the reference statement in full.

~~[(b) Professional engineers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a licensed engineer reference provider; such review shall be noted on the reference statement.]~~

~~(b) [(e)] All professional engineer reference providers shall be individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. If possible, reference providers should be individuals who directly supervised the applicants.~~

~~(c) Professional engineer reference providers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a professional engineer reference provider; such review shall be noted on the reference statement.~~

~~(d) Professional engineer reference providers [engineers who provide reference statements and] who are licensed in a jurisdiction other than Texas shall include [a copy of their pocket card or other] verification to indicate that their license is current and valid.~~

~~(e) Professional engineer reference providers [engineers who provide reference statements] shall not be compensated.~~

~~(f) Reference statements on file with the board from previous applications may be used upon written request of the applicant and with the approval of the executive director. Additional references may be required.~~

(g) The board members and staff may, at their discretion, rely on any, all, or none of the reference statements provided in connection with an application for licensure.

§133.53. *Reference Statements.*

(a) The applicant shall make available to each reference provider, the board's reference statement form and a complete copy of the Professional Competency Profile portion of the applicant's Experience Report [applicable portion(s) of the supplementary experience record].

(b) Persons providing reference statements verifying an applicant's engineering experience shall:

(1) complete and sign the reference statement in a format prescribed by the board; and

(2) review, evaluate, and confirm on the reference statement form [sign all applicable portions of the supplementary experience record(s)]. The [ ] that the reference provider [provider's signature indicates that he] has read the Professional Competency Profile [supplementary experience record(s)], that the information included is [record(s) are] correct to the best of his knowledge, and that the experience is relevant to licensure. If the reference provider disagrees with or has comments or clarification to the information provided by the applicant, the reference provider should submit written comments or concerns to the board.

(3) for the purposes of this section, a reference statement and any associated portions of the applicant's Experience Report [supplementary experience record] submitted directly to the board through a secure method prescribed by the board will be considered "signed" as required in this subsection.

(c) The reference provider shall submit to the board [both] the reference statement form [and the supplementary experience record].

(d) For any reference statement to meet the requirements of the board, the reference statement must be securely submitted in a manner acceptable to the board. Any tampering of the reference statements by the applicant could result in denial of the application.

(e) Secured reference envelopes shall be submitted to the board by the applicant or reference provider.

(f) Reference documents submitted directly to the board by the reference provider in a method prescribed by the board will meet the requirements of subsection (d) of this section.

(g) Evidence of retaliation by an applicant against a person who provides reference material for an application may be considered in the application process as described in §133.81 of this chapter (relating to Receipt of Applications).

(h) The NCEES record reference documentation may be accepted as reference statements as specified in this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 440-3080



## CHAPTER 139. ENFORCEMENT

### SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

#### 22 TAC §139.37

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes an amendment to 22 Texas Administrative Code, Chapter 139, Subchapter C, regarding enforcement proceedings, specifically §139.37 Sanctions and Penalties - Surveying.

#### BACKGROUND AND SUMMARY

The proposed rule amendment updates citations in the sanction table for surveyors that were previously pointing to the incorrect statutory reference.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification and accuracy of board rules.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

## GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not increase the number of individuals subject to the rule's applicability.
7. The proposed rules do not positively or adversely affect this state's economy.

## TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

## ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

## PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, by email to [rules@pels.texas.gov](mailto:rules@pels.texas.gov) or sent by postal mail to the Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741.

## STATUTORY AUTHORITY

The proposed amendments are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed rules implement the following sections of the law: Texas Occupations Code §1001.451 which sets out the disciplinary powers of the Board.

§139.37. *Sanctions and Penalties - Surveying.*

(a) The board, the executive director, an administrative law judge, and the participants in an informal settlement conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. Pursuant to §1001.502(a) of the Act, the maximum administrative penalty shall be \$1,500.00 per violation of Chapter 1071 or a rule adopted or order issued under that chapter. Each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of prior violations of the respondent;
- (3) the severity of penalty necessary to deter future violations;
- (4) efforts or resistance to efforts to correct the violations;
- (5) the economic harm to property or the environment caused by the violation; and
- (6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued may be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list "suspension", all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.

Figure: 22 TAC §139.37(b) (No change.)

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

Figure: 22 TAC §139.37(c) (No change.)

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules involving firm registration. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

Figure: 22 TAC §139.37(d)

[Figure: 22 TAC §139.37(d)]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-3080



# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

### CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §§114.2, 114.53, and 114.87.

If adopted, amended §§114.2, 114.53, and 114.87 will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

#### Background and Summary of the Factual Basis for the Proposed Rules

Eighteen counties in Texas are subject to 30 TAC Chapter 114 Inspection and Maintenance (I/M) rules: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Travis and Williamson Counties in the Austin-Round Rock area; El Paso County; and, beginning November 1, 2026, Bexar County. All I/M counties would be subject to this rulemaking.

The 88th Texas Legislature, 2023, Regular Session, passed Senate Bill (SB) 2102, which amended Texas Health and Safety Code (THSC), §382.202 to extend the initial registration and inspection period for new rental vehicles from two years to three years and to require that the emissions inspection fees that would have applied in the additional exemption year be collected. A rulemaking and SIP revision were adopted on September 24, 2025, to allow one additional year of exemption from emissions inspections for new rental vehicles; however, the fee component of the legislation was not addressed in those rule and SIP actions (Project Nos. 2025-012-114-AI and 2025-013-SIP-NR).

Senate Bill 1729, 89th Texas Legislature, 2025, Regular Session, further amended THSC, §382.202 by consolidating amendments made by SB 2102. The rental vehicle provisions were added to THSC, §382.202(d-2)(1) and (2) with SB 2102 amendments and relocated to THSC, §382.202(d-2) with SB 1729 amendments but were otherwise unaffected.

The proposed rulemaking would add necessary provisions to 30 TAC Chapter 114 to fully implement the statutory requirements in THSC, §382.202(d-2), as added by SB 2102 and amended by SB 1729. Section 382.202(d-2) of the THSC provides that, with U.S. Environmental Protection Agency approval of a revision to the SIP, the initial registration and emissions inspection period for new rental vehicles is increased from two years to three years. Additionally, THSC, §382.202(d-2) requires that TCEQ establish and assess fees for the emissions inspection of a new rental vehicle in amounts calculated to provide the same revenue for a three-year registration and inspection period that would be provided if the vehicle was inspected annually or biennially. The change to a three-year registration and inspection period is also required to be revenue neutral.

Emissions inspection fees are not required for new vehicles at initial registration for the first two years. THSC, §382.202(d-2) extends compliance with vehicle emissions inspection require-

ments to three years for new rental vehicles, pending SIP approval; however, the state must still collect the vehicle emissions inspection fee for the second year even though no inspection is required because THSC, §382.202(d-2) requires revenue neutrality.

The proposed rulemaking and associated SIP revision (Project No. 2026-004-SIP-NR) would assess emissions inspection fees for rental vehicles at the time of initial registration to comply with the statutory requirement to provide the same revenue that would be provided if the vehicle was inspected annually or biennially. The proposed rulemaking would not change any fee amounts in 30 TAC Chapter 114.

#### Demonstrating Noninterference under Federal Clean Air Act (FCAA), §110(l)

Under FCAA, §110(l), EPA cannot approve a SIP revision if it would interfere with attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The commission provides the following information to demonstrate why the proposed changes to the I/M program rules in Chapter 114 will not negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone or carbon monoxide (CO) NAAQS.

The proposed amendments would revise 30 TAC Chapter 114, Subchapters A and C to implement the additional remittance to the state specified in THSC, §382.202(d-2), as added by SB 2102 and consolidated by SB 1729, necessary to maintain the revenue neutral impact of adding an additional year to the initial vehicle registration period for rental vehicles. These amendments do not affect EPA-approved I/M program testing requirements, and therefore, do not interfere with control measures or negatively impact the state's progress towards attainment or reasonable further progress of the 2008 and 2015 eight-hour ozone NAAQS or maintenance of the CO NAAQS in El Paso County, which is under an approved limited maintenance plan.

#### Section by Section Discussion

The proposed amendments would revise the I/M program rules to provide for full implementation of THSC, §382.202(d-2), as added by SB 2102 and consolidated by SB 1729. The proposed amendments include the addition of two I/M definitions and provide that the payment of the emissions inspection fee waived for rental vehicles under THSC, §382.202(d-2) be made at the time of initial vehicle registration. This proposed amendment meets the THSC, §382.202(d-2) requirement that the one-year extension of emissions inspections for rental vehicles be revenue neutral.

The commission also proposes non-substantive changes to update the rules in accordance with current Texas Register style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

#### *Subchapter A: Definitions*

##### *§114.2. Inspection and Maintenance Definitions*

Implementation of THSC, §382.202(d-2) creates a novel vehicle registration process whereby new rental vehicles may be initially

registered for three years rather than two years as is the case for other vehicles subject to emissions inspections. Since THSC, §382.202(d-2) requires revenue neutrality, assessment of emissions inspection fees for new rental vehicles must be collected at initial vehicle registration for the additional exempt year and then annually, the same as all other applicable vehicles. To differentiate between emissions inspection fee assessment at initial registration of rental vehicles and annually for all subject vehicles, the proposed revisions would add a definition for "annual vehicle registration" in §114.2(1) and a definition for "initial rental vehicle registration" in §114.2(2). The remaining definitions would be renumbered as appropriate.

*Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties*

#### §114.53. Inspection and Maintenance Fees

The proposed revisions would amend §114.53(d) to ensure that emissions inspection fees would be paid at the time of initial registration of rental vehicles to comply with THSC, §382.202(d-2). The proposed revisions would not amend fee amounts in §114.53.

The proposed revisions would amend §114.53(d)(1)(A) - (C), (d)(2)(A) - (C), (d)(3)(A) - (C), and (d)(4) to add "initial rental vehicle registration" to the registration processes in which vehicle emissions inspections fees are paid in the El Paso County, DFW, HGB, and Bexar County program areas. TCEQ is authorized under THSC, §382.202(e), to assess vehicle emissions inspection fees. Some vehicle emissions inspection fees are not paid to the state through vehicle registration while others are. The fees under §114.53(a) include amounts that vehicle owners pay at inspection stations that are retained by the stations and not paid to the state through registration. By contrast, the fees under §114.53(d) are paid to the state at the time of annual registration.

To fully comply with THSC, §382.202(d-2) requirements, all of the vehicle emissions inspection fees that would be paid to the state at the time of annual vehicle registration need to be included in the initial rental vehicle registration process. These fees need to be paid up front during initial rental vehicle registration because the state cannot ensure that the rental vehicle would be registered in Texas at the time of its first annual registration.

These vehicle emissions inspection fees include the amounts from \$2.00 to \$6.00 under §114.53(d)(1) - (3) to fund the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The LIRAP was established to enhance the objectives of the I/M program. The 77th Texas Legislature, 2001, Regular Session, enacted House Bill 2134, which created the LIRAP to allow I/M program counties to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. Participation by an I/M program county is not mandatory. On June 12, 2017, Governor Greg Abbott vetoed the legislative appropriations for the LIRAP for Fiscal Years (FY) 2018 and FY 2019. All 16 participating counties subsequently opted out of the LIRAP and no counties have opted back in. No further appropriations for the LIRAP have been made. These vehicle emissions inspection fees, including fees associated with the LIRAP, would be paid to the state during these registration processes when a county is participating in the LIRAP under §114.53(d)(1)(A), (d)(2)(A),

and (d)(3)(A) or in the process of opting out of the LIRAP under §114.53(d)(1)(B), (d)(2)(B), or (d)(3)(B).

These vehicle emissions inspection fees also include the \$2.50 vehicle emissions inspection fee under §114.53(d)(1) - (4) that would be paid to the state during these registration processes. With these amendments, the registration processes in which vehicle emissions inspections fees are paid in the El Paso County, DFW, HGB, and Bexar County program areas would be "annual vehicle registration" and "initial rental vehicle registration."

#### §114.87. Inspection and Maintenance Fees

The proposed revisions would amend §114.87(d)(1) - (3) to add "initial rental vehicle registration" to the registration processes in which vehicle emissions inspections fees are paid in Travis and Williamson Counties, similar to the changes described in the Section by Section discussion for §114.53. In order to implement the requirement in THSC, §382.202(d-2) that the amounts calculated provide the same revenue that would be provided if the vehicle was inspected annually or biennially, all of the vehicle emissions inspection fees that would be paid to the state at the time of annual vehicle registration would need to be included in the initial rental vehicle registration process. These fees need to be paid up front during initial rental vehicle registration because the state cannot ensure that the rental vehicle would be registered in Texas at the time of its first annual registration. The proposed revisions would not amend fee amounts in §114.87.

These vehicle emissions inspection fees include \$2.00 under §114.87(d)(1) and (2) to fund the LIRAP that would be paid to the state during these registration processes when a county is participating in the LIRAP under §114.87(d)(1) or in the process of opting out of the LIRAP under §114.87(d)(2). Travis and Williamson Counties opted out of the LIRAP and have not opted back in. These fees also include the \$2.50 vehicle emissions inspection fee under §114.87(d)(1) - (3) that would be paid to the state during these registration processes. With these amendments, the registration processes in which vehicle emissions inspections fees are paid in Travis and Williamson Counties would be "annual vehicle registration" and "initial rental vehicle registration."

#### Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

#### Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, specifically SB 2102 from the 88th Regular Legislative Session (2023) and SB 1729 from the 89th Regular Legislative Session (2025). The proposed rulemaking will not result in fiscal implications for individuals during the first five-year period the proposed rule is in effect. The proposed rulemaking will not result in any additional costs for businesses, and the only fiscal impact is that owners of rental vehicles in I/M counties would incur emissions inspections fees (\$2.50 per vehicle) at the time of initial registration and annually starting in the third year rather than annually starting in the second year after initial registration.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule," which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a "Major environmental rule,"

the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The specific intent of the proposed rules is to make changes to fully implement the statutory requirements in THSC, §382.202(d-2), as added by SB 2102 and consolidated by SB 1729, as discussed elsewhere in this preamble. As vehicle I/M programs are specifically required for certain nonattainment areas by the FCAA any changes that would affect the commission's ability to implement those programs must be submitted to and approved by EPA.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to comply with federal requirements on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. If a state does not comply with its obligations under 42 U.S.C. §7410 (FCAA, §110) to submit SIPs, states are subject to discretionary sanctions under 42 U.S.C. §7410(m) (FCAA, §110(m)) or mandatory sanctions under 42 U.S.C. §7509 (FCAA, §179); as well as the imposition of a federal implementation plan (FIP) under 42 U.S.C. §7410 (FCAA, §110(c)).

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by SB 633 during the 75th legislative session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a "Major environmental rule" that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis contemplated by SB 633. Requiring a full regulatory impact analysis for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB,

the that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the proposed rules do not impose burdens greater than required to comply with federal law, as discussed elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA applying the standard of "substantial compliance" specified in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As presented in this analysis and elsewhere in this preamble, the evidence supports the conclusion that the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rules support implementation of the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to comply with federal law and will not exceed any standard set by state or federal law. These proposed rules are also an express requirement of state law, as discussed elsewhere in this preamble. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410 (FCAA, §110). The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, 382.017, and 382.202(d-2). Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person

at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, Chapter 2007. The primary purpose of this proposed rulemaking action is to make changes to fully implement the statutory requirements in THSC, §382.202(d-2), as added by SB 2102 and consolidated by SB 1729, as discussed elsewhere in this preamble. As vehicle I/M programs are specifically required for certain nonattainment areas by the FCAA any changes that would affect the commission's ability to implement those programs must be submitted to and approved by EPA. Therefore, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Texas Government Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the proposed rulemaking implements requirements of FCAA, 42 U.S.C. §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C. §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, I/M programs are specifically required by the FCAA. The SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C. §7410. States are not free to ignore the requirements of 42 U.S.C. §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the

FCAA. If a state does not comply with its obligations under 42 U.S.C. §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 U.S.C. §7410(m) or mandatory sanctions under 42 U.S.C. §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 U.S.C. §7410, FCAA, §110(c).

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action is taken to fully implement the statutory requirements in THSC, §382.202(d-2), as added by SB 2102 and consolidated by SB 1729, as discussed elsewhere in this preamble, which provided for changes to the vehicle I/M program which is a required element of the state implementation plan for ozone which addresses real and substantial threats to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules fulfill the FCAA requirement for states to create plans including control strategies to attain and maintain the NAAQS, as discussed elsewhere in this preamble. The proposed rules would assist in achieving the timely attainment of the ozone or CO NAAQS and reduced public exposure to ozone or CO. The NAAQS are promulgated by EPA in accord with the FCAA, which requires EPA to identify and list air pollutants that "cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diversion mobile or stationary sources," as required by 42 U.S.C. §7408. For those air pollutants listed, EPA then is required to issue air quality criteria identifying the latest scientific knowledge regarding on adverse health and welfare effects associated with the listed air pollutant, in accord with 42 U.S.C. §7408. For each air pollutant for which air quality criteria have been issued, EPA must publish proposed primary and secondary air quality standards based on the criteria that specify a level of air quality requisite to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air, as required by 42 U.S.C. §7409. As discussed elsewhere in this preamble, states have the primary responsibility to adopt plans designed to attain and maintain the NAAQS.

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program, and will,

therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will offer a virtual public hearing on this proposal on May 14, 2026, at 2:00 p.m. Central Daylight Time (CDT). The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 1:30 p.m. CDT.

Individuals who plan to attend the virtual hearing and want to provide oral comments and/or want their attendance on record should register by May 7, 2026. To register for the hearing, please e-mail [siprules@tceq.texas.gov](mailto:siprules@tceq.texas.gov) and provide the following information: your name, your affiliation, your e-mail address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on May 12, 2026, to those who register for the hearing.

The hearing will be conducted in English, and instructions for participating in the hearing will also be provided in Spanish. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2026-003-114-AI. The comment period closes on May 19, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Stephen Cruz, Air Quality Planning Section, at [stephen.cruz@tceq.texas.gov](mailto:stephen.cruz@tceq.texas.gov), (512) 239-1922 or Stephen Cruz, Texas Commission on Environmental Quality, MC 206, P.O. Box 13087, Austin, Texas 78711-3087.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §114.2

#### Statutory Authority

The rules are proposed under the authority of Texas Water Code (TWC), §5.102, concerning general powers; TWC, §5.103, concerning rules; TWC, §5.105, concerning general policy; and Texas Health & Safety Code (THSC), §382.017, concerning rules.

The rules are also proposed under THSC, §382.002, concerning the policy and purpose which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning general powers and duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State air control plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.202, concerning the vehicle emissions inspection and maintenance program, which provides authority for the program; THSC, §382.203, concerning vehicles subject to program, exemptions, which provides authority for the inspection of specific vehicles; and THSC, §382.205, concerning inspection equipment and procedures, which provides authority vehicle inspection equipment and procedures.

The proposed rules implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.202, and 382.205.

The amended rules are also proposed under and implement the provisions of Senate Bill (SB) 2102, 88th Legislature, Regular Session, 2023 and SB 1729, 89th Legislature, Regular Session, 2025.

#### §114.2. *Inspection and Maintenance Definitions.*

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties), have the following meanings, unless the context clearly indicates otherwise.

(1) Annual vehicle registration--The yearly process of officially recording a motor vehicle with the Texas Department of Motor Vehicles (DMV) for a duration of one year. This process begins when a vehicle becomes two years old, except for a rental vehicle, as defined in paragraph (9) in this section, for which this process begins when the vehicle becomes three years old.

(2) Initial rental vehicle registration--The process of initially registering a rental vehicle, as defined in this section, for a duration of 36 months. This process only applies to a new passenger car or light truck registering as a rental vehicle.

(3) [(4)] Motorist--A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(4) [(2)] On-board diagnostic (OBD) system--The computer system installed in a vehicle by the manufacturer that monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

(5) [(3)] On-road test--Utilization of remote sensing technology to identify vehicles operating within the inspection and maintenance program areas that have a high probability of being high-emitters.

(6) [(4)] Out-of-cycle test--Required emissions test not associated with vehicle safety inspection testing cycle.

(7) [(5)] Primarily operated--Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

(8) [(6)] Program area--County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the Texas Inspection and Maintenance State Implementation Plan. These program areas include:

(A) the Dallas-Fort Worth program area, consisting of the following counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant;

(B) the El Paso program area, consisting of El Paso County;

(C) the Houston-Galveston-Brazoria program area, consisting of Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties; and

(D) the Bexar County program area, consisting of Bexar County.

(9) [(7)] Rental vehicle--A motor vehicle for which a rental certificate has been furnished as provided by Texas Tax Code, §152.061.

(10) [(8)] Retests--Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(11) [(9)] Testing cycle--The annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601467

Amy L. Browning

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 239-2678

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## SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

### DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

#### 30 TAC §114.53

## Statutory Authority

The rules are proposed under the authority of Texas Water Code (TWC), §5.102, concerning general powers; TWC, §5.103, concerning rules; TWC, §5.105, concerning general policy; and Texas Health & Safety Code (THSC), §382.017, concerning rules.

The rules are also proposed under THSC, §382.002, concerning the policy and purpose which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning general powers and duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State air control plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0622, concerning clean air act fees, which provides authority for various fees collected by the commission; THSC, §382.202, concerning the vehicle emissions inspection and maintenance program, which provides authority for the program; THSC, §382.203, concerning vehicles subject to program, exemptions, which provides authority for the inspection of specific vehicles; and THSC, §382.205, concerning inspection equipment and procedures, which provides authority vehicle inspection equipment and procedures.

The proposed rules implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.0622, 382.202, and 382.205.

The amended rules are also proposed under and implement the provisions of Senate Bill (SB) 2102, 88th Legislature, Regular Session, 2023 and SB 1729, 89th Legislature, Regular Session, 2025.

### §114.53. *Inspection and Maintenance Fees.*

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) Any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1) of this title (relating to Vehicle Emissions Inspection Requirements) in El Paso County must collect a fee not to exceed \$11.50, and any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1) of this title in the Dallas-Fort Worth and Houston-Galveston-Brazoria program areas must collect a fee not to exceed \$18.50.

(2) In the Bexar County program area beginning November 1, 2026, any emissions inspection station in Bexar County required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed \$18.50.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the Texas Department of Public Safety (DPS), must be the same as the amounts set forth in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must charge a motorist for an out-of-cycle emissions inspection in the amount speci-

fied in subsection (a) of this section resulting from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Vehicle owners shall remit the amount of the vehicle emissions inspection fee that is required to be remitted to the state as part of the fees [annual vehicle registration fee] collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at annual vehicle registration, as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), and initial rental vehicle registration, as defined in §114.2 of this title. [the amount of the vehicle emissions inspection fee that is required to be remitted to the state.]

(1) In El Paso County, the following requirements apply.

(A) If participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

(C) If not participating in the LIRAP, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

(2) In the Dallas-Fort Worth program area, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as de-

fined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

(4) In the Bexar County program area, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Amy L. Browning

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678

◆ ◆ ◆  
DIVISION 3. EARLY ACTION COMPACT  
COUNTIES

**30 TAC §114.87**

Statutory Authority

The rules are proposed under the authority of Texas Water Code (TWC), §5.102, concerning general powers; TWC, §5.103, concerning rules; TWC, §5.105, concerning general policy; and Texas Health & Safety Code (THSC), §382.017, concerning rules.

The rules are also proposed under THSC, §382.002, concerning the policy and purpose which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning general powers and duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State air control plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0622, concerning clean air act fees, which provides authority for various fees collected by the commission; THSC, §382.202, concerning the vehicle emissions inspection and maintenance program, which provides authority for the program; THSC, §382.203, concerning vehicles subject to program, exemptions, which provides authority for the inspection of specific vehicles; and THSC, §382.205, concerning inspection equipment and procedures, which provides authority vehicle inspection equipment and procedures.

The proposed rules implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.0622, 382.202, and 382.205.

The proposed rules are also proposed under and implement the provisions of Senate Bill 2102, 88th Legislature, Regular Session.

*§114.87. Inspection and Maintenance Fees.*

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed; and the retest is conducted within 15 days of the initial emissions test. In Travis and Williamson Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must collect a fee not to exceed \$11.50 for each emissions test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS must be the same as the amounts specified in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) In Travis and Williamson Counties, the following requirements apply.

(1) Vehicle owners in counties participating in Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(2) Vehicle owners in counties participating in the LIRAP and in the process of opting out shall remit \$4.50 for motor vehicles subject to emissions inspection to the DMV or county tax assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

(3) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspection to the DMV or county tax-assessor-collector at the time of annual vehicle registration, as defined in §114.2 of this title, and initial rental vehicle registration, as defined in §114.2 of this title, as part of the vehicle emissions inspection fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Amy L. Browning

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) Subchapters C, D, and E, more specifically §§356.32, 356.42, 356.52, and 356.54.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes amendments to Subchapters C, D, and E, 31 TAC Chapter 356, containing the agency's rules related to Groundwater Management. The TWDB proposes to amend the rules to implement relevant provisions of House Bill 2078, 89th Regular Session (HB 2078) and Senate Bill 1583, 89th Regular Session (SB 1583). TWDB is proposing this rulemaking primarily to modernize, update, and clarify rule language to facilitate groundwater management in the state and to clarify requirements for groundwater conservation districts.

HB 2078 amended Chapter 36 of the Water Code by requiring groundwater conservation district representatives within a groundwater management area to review each district's management plan at least once during each five-year planning period. In reviewing management plans, districts in the groundwater management area must consider the degree to which each district is achieving desired future conditions through the implementation of its management plan and rules. Additionally, the districts and district representatives within a groundwater management area are required to adopt and identify interim values for the desired future conditions for each 50-year planning period. This proposed rulemaking implements HB 2078's additional responsibilities of the groundwater conservation district representatives.

HB 2078 amended Chapter 36 of the Water Code by adding additional information that groundwater conservation districts must include in a groundwater management plan. The groundwater management plan must include an explanation in plain language of how the district monitors and tracks desired future conditions and how the district has performed in achieving the desired future conditions of the preceding five-year joint planning period. SB 1583 amended Chapter 36 of the Water Code by requiring groundwater conservation districts to include the most recently approved desired future conditions in the groundwater management plan. This proposed rulemaking implements HB 2078's and SB 1583's additional groundwater management plan requirements.

SB 1583 amended Chapter 36 of the Water Code by clarifying which desired future condition and modeled available groundwater amounts a groundwater conservation district must include in its management plan in the event a petition is filed challenging the reasonableness of a groundwater conservation district's desired future condition. The groundwater conservation district management plan is considered administratively complete by the TWDB Executive Administrator if the plan includes, in addition to the information required by Section 36.1071(a) and (e), the most recently approved desired future conditions, the amount of modeled available groundwater corresponding to those desired future conditions, and a statement on the status of the petition. This applies until a final order is issued or the desired future condition is found to be unreasonable, requiring a newly adopted desired future condition. This proposed rulemaking implements SB 1583's clarification for which desired future condition and modeled available groundwater amounts should be included for an administratively complete groundwater conservation district management plan in the event there is a contested desired future condition.

SB 1583 amended Chapter 36 of the Water Code by requiring a groundwater conservation district to amend the management plan prior to the second anniversary of adopting new desired future conditions. This proposed rulemaking implements

SB 1583's required approval for a groundwater conservation district management plan.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

##### Section 356.32. Desired Future Conditions Package.

The amendment proposes to add §356.32(b) to implement HB 2078's additional responsibilities of the groundwater conservation district representatives in adopting desired future conditions. An amendment is also proposed to rename §356.32 to §356.32(a) for clarification.

##### Section 356.42. Petition: Mediation of Issues.

The amendment proposes adding §356.42(e) to implement SB 1583's clarification of management plan requirements for administrative completeness in the event that a desired future condition is challenged for reasonableness.

The amendment proposes adding 356.42(f) to implement SB 1583, which establishes application of the management review process when a desired future condition is challenged.

##### Section 356.52. Required Content of Management Plan.

The amendment proposes to add §356.52(a)(8) to implement SB 1583's most recently approved desired future conditions requirement for a groundwater conservation district's groundwater management plan. The amendment proposes to add §356.52(a)(9) to implement HB 2078's additional groundwater management plan requirements. Amendments are also proposed for §356.52(a)(6)(A) to account for the addition of proposed criterion and for §356.52(c) to correct an error.

##### Section 356.54. Approval.

The amendment proposes §356.54(a) to implement SB 1583's requirements for an administratively complete groundwater conservation district management plan, including management plans with petitions challenging the reasonableness of a desired future condition.

The amendment proposes to add §356.54(d) to implement SB 1583's required amended management plan prior to the second anniversary of the adoption of desired future conditions.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Georgia Sanchez, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments from the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments and there is no change in costs with the proposed amendments to the rule because the proposed rule revisions are to modernize and clarify existing rule language. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules

are necessary for groundwater management resources of this state as authorized by the Texas Water Code and are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as the rules are necessary for groundwater management resources of this state. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the proposed rule as these requirements are imposed by statute and clarify rule language to facilitate groundwater management in the state.

#### ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislation.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency

instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §§15.001, 16.012, 36.101, 36.1071, 36.1072, 36.1073, 36.108, 36.1083 and 36.1085. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to update and clarify existing rules that are necessary for groundwater management in the state and certain requirements for groundwater conservation districts. The proposed rule would substantially advance this stated purpose by aligning definitions with agency and industry practice and providing greater detail for desired future conditions packages and required elements of groundwater management plans.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviewed groundwater conservation management plans for the applicable financial assistance programs.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule updates the state's existing rules that facilitate groundwater management without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an

increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. If sent via email, all public comments should be sent directly to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov). Please do not submit comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 356." in the subject line of any comments submitted.

### SUBCHAPTER C. SUBMISSION OF DESIRED FUTURE CONDITIONS

#### 31 TAC §356.32

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code Sections 15.001, 16.012, 36.101, 36.1071, 36.1072, 36.1073, 36.108, 36.1083 and 36.1085.

Additionally, this rulemaking is proposed under the authority of Texas Water Code Chapters 15 and 16.

This rulemaking affects Water Code, Chapters 15, 16, and 36.

#### §356.32. *Desired Future Conditions Package.*

(a) A designated representative of the groundwater management area must provide the following to the executive administrator no later than 60 days following the date on which the district representatives in the groundwater management area adopted the desired future condition(s):

(1) a copy of the desired future conditions explanatory report addressing the information required by Texas Water Code §36.108(d-3) and the criteria in Texas Water Code §36.108(d);

(2) non-relevant aquifer documentation required by §356.31(c) of this subchapter (relating to Desired Future Condition Package Submission Date);

(3) a copy of the resolution of the groundwater management area adopting the desired future conditions as required by Texas Water Code §36.108(d-3);

(4) a copy of the notice that was posted for the joint planning meeting at which the districts collectively adopted the desired future condition(s) as required by Texas Water Code §36.108(e) and §36.108(c-2);

(5) the name of a designated representative of the groundwater management area;

(6) any groundwater availability model files or aquifer assessments acceptable to the executive administrator used in developing

the adopted desired future condition with documentation sufficient to replicate the work; and

(7) any other information the executive administrator may require to be able to estimate the modeled available groundwater.

(b) The district representatives shall:

(1) adopt desired future conditions under Texas Water Code §36.108 for each approximately 50-year planning period identified by the executive administrator for the preparation of state and regional water plans; and

(2) identify interim values for the desired future conditions adopted under Texas Water Code §36.108 for time periods not to exceed 10 years solely to assist the districts in monitoring interim progress in achieving the desired future conditions adopted for the approximately 50-year planning period.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ashley Harden

General Counsel

Texas Water Development Board

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## SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

### 31 TAC §356.42

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code Sections 15.001, 16.012, 36.101, 36.1071, 36.1072, 36.1073, 36.108, 36.1083 and 36.1085.

Additionally, this rulemaking is proposed under the authority of Texas Water Code Chapters 15 and 16.

This rulemaking affects Water Code, Chapters 15, 16, and 36.

§356.42. *Petition: Mediation of Issues.*

(a) In accordance with Texas Water Code §36.1083(j), a district may seek assistance of the agency in mediating the issues raised in the petition.

(b) If the agency's assistance is sought by the district, the executive administrator or his designee shall hold at least one meeting with the district and the affected person and shall establish procedures to mediate the issues raised in the petition.

(c) Depending on the details and technical complexity of issues in the petition, the executive administrator may direct agency staff to mediate the issues raised in the petition or contract with an independent mediator.

(d) The executive administrator will notify the Office if the petition issues are resolved or not resolved as a result of mediation.

(e) If a petition challenging the reasonableness of a desired future condition is filed under Texas Water Code §36.1083(b) and until the district issues a final order under Texas Water Code §36.1083(n) or, if the desired future condition is found to be unreasonable in the final order, a new desired future condition is adopted under Texas Water Code §36.108 or §36.1083 (p), the executive administrator shall consider the management plan administratively complete if the district includes:

(1) the most recently approved desired future conditions adopted under Texas Water Code §36.108;

(2) the amount of modeled available groundwater corresponding to those desired future conditions;

(3) a statement of the status of the petition challenging the reasonableness of a desired future condition; and

(4) the information required by §356.52 of this chapter (relating to Required Content of Management Plan).

(f) Subsection (e) of this section applies until either:

(1) the district issues a final order under Texas Water Code §36.1083(n); or

(2) if a desired future condition is found to be unreasonable in the final order, a new desired future condition is adopted pursuant to Texas Water Code §36.108 or §36.1083(p).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel

Texas Water Development Board

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## SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

### 31 TAC §356.52, §356.54

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code Sections 15.001, 16.012, 36.101, 36.1071, 36.1072, 36.1073, 36.108, 36.1083 and 36.1085.

Additionally, this rulemaking is proposed under the authority of Texas Water Code Chapters 15 and 16.

This rulemaking affects Water Code, Chapters 15, 16, and 36.

§356.52. *Required Content of Management Plan.*

(a) A management plan must contain, unless explained in detail as not applicable, the following elements:

(1) Management goals:

(A) providing the most efficient use of groundwater;

(B) controlling and preventing waste of groundwater;

- (C) controlling and preventing subsidence;
- (D) addressing conjunctive surface water management issues;
- (E) addressing natural resource issues which impact the use and availability of groundwater, and which are impacted by the use of groundwater;
- (F) addressing drought conditions;
- (G) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement and brush control, where appropriate and cost-effective; and
- (H) addressing the desired future conditions adopted by the district under Texas Water Code §36.108;

(2) Management objective(s) for each management goal. Management objectives are specific, measurable, and time-based statements of future outcomes that the district will use to achieve each management goal in paragraph (1) of this subsection. Each future outcome must be the result of actions that can be taken by the district during the five years following the effective date of the adopted management plan;

(3) Performance standard(s) for each management objective. Performance standards are indicators or measures used to evaluate the effectiveness and efficiency of district activities. Evaluation of the effectiveness of district activities measures the performance of the district. Evaluation of the efficiency of district activities measures how well district resources are used to produce an output, such as the amount of resources devoted for each management action;

(4) Details of how the district will manage groundwater supplies in the district, including a methodology by which the district will track its progress in achieving its management goals. At least one goal must be tracked on an annual basis; however, other goals may be defined and tracked over a longer time period as appropriate;

(5) The actions, procedures, performance, and avoidance that are or may be necessary by the district to effect the plan, including specifications and proposed rules;

(6) Estimates of the following:

(A) modeled available groundwater in the district as provided by the executive administrator based on the most recently approved desired future condition established under Texas Water Code §36.108;

(B) the amount of groundwater being used within the district on an annual basis taken from either the water use survey data provided by the executive administrator or the district's own estimate;

(C) the annual amount of recharge from precipitation, if any, to each aquifer within the district, as provided by the executive administrator;

(D) the annual volume of water that discharges from each aquifer within the district to springs and any surface water bodies, including lakes, streams, and rivers, as provided by the executive administrator;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, as provided by the executive administrator;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected water demand for water in the district according to the most recently adopted state water plan. ~~and~~

(7) Details of the district's consideration of:

(A) Water supply needs within the district according to the most recently adopted state water plan, emphasizing those needs that impact groundwater supply within the district; and

(B) Water management strategies sourced from within the district boundaries according to the most recently adopted state water plan, emphasizing strategies that are or will be impacted by district actions.

(8) The most recently approved desired future conditions adopted under Texas Water Code §36.108; and

(9) Explanation in plain language how:

(A) the district is monitoring and tracking the achievement of the desired future conditions established under Texas Water Code §36.108; and

(B) the district has performed in achieving the desired future conditions established under Texas Water Code §36.108 over the preceding five-year joint planning period.

(b) The management goals, management objectives, and performance standards required in subsection (a)(1), (2), and (3) of this section must be consistent with the established desired future conditions of the district's groundwater management area(s).

(c) Estimates required in subsection ~~(a)(6)~~ ~~[(a)(5)]~~ of this section must be developed with groundwater availability modeling information provided by the executive administrator in conjunction with the district's best available site-specific information and data.

*§356.54. Approval.*

(a) The executive administrator will approve a plan as administratively complete when it contains the information required by Texas Water Code §36.1071(a) and (e) or, if applicable, meets the requirements of Texas Water Code §36.1071(b-2). The executive administrator will notify the district in writing of the determination.

(b) If approval is denied, the executive administrator will provide written reasons for the denial with the notice of denial. A district has 180 days from receipt of notice to submit a revised management plan for review and approval. A revised ~~or amended~~ management plan must comply with all requirements of this subchapter.

(c) An approved management plan remains in effect until:

(1) the district fails to readopt a management plan at least 90 days before the plan expires;

(2) the district fails to submit the district's readopted management plan to the executive administrator at least 60 days before the plan expires; or

(3) the executive administrator determines that the readopted management plan does not meet the requirements for approval and the district has exhausted all appeals to the board or court in accordance with Texas Water Code §36.1072(f).

(d) A district shall amend a management plan before the second anniversary of the adoption of desired future conditions included under Texas Water Code §36.108.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601466

Ashley Harden  
General Counsel  
Texas Water Development Board  
Earliest possible date of adoption: May 17, 2026  
For further information, please call: (512) 475-1673



## CHAPTER 358. STATE WATER PLANNING GUIDELINES

### SUBCHAPTER B. DATA COLLECTION

#### 31 TAC §358.6

The Texas Water Development Board (TWDB) proposes the repeal of 31 Texas Administrative Code (TAC) §358.6 as part of a reorganization.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

This rulemaking implements House Bill (HB) 29 from the 89th Texas Legislative Session, codified as Texas Water Code §16.0122. HB 29 created certain new responsibilities for municipally owned utilities that provide potable water through more than 150,000 service connections. This rulemaking covers the portions of Texas Water Code §16.0122 that deal with the Texas Water Development Board's responsibilities.

In a separate filing with the Texas Register, the TWDB proposes new sections within 31 TAC Chapter 358, within a new Subchapter C (relating to Water Loss Audits). With that rulemaking, the TWDB proposes to reorganize the subchapter. The existing text of §358.6, with some proposed amendments, will remain in those proposed new sections.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

##### Section 358.6. Water Loss Audits.

TWDB proposes to repeal this section to renumber the section with proposed changes to the text filed separately in this issue of the *Texas Register*.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Georgia Sanchez, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rule. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because this repeal is proposed to renumber sections. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers and other stakeholders. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute.

#### ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB borrowers and other stakeholders by better organizing these rules.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.0121. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers and other stakeholders. The proposed rule would substantially advance this stated purpose by reorganizing the rules in an easier to read manner.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements certain provisions related to water loss audits and validations included in HB 29.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule repeals certain sections for renumbering. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov) or by fax to (512) 475-

2053. If sent via email, all public comments should be sent directly to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov). Please do not submit comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include Chapter 358 in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The repeal is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §16.0121.

This rulemaking affects Water Code, Chapter 16.

#### §358.6. *Water Loss Audits.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601462

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 475-1673



## SUBCHAPTER C. WATER LOSS AUDITS

### 31 TAC §§358.10 - 358.15

The Texas Water Development Board (TWDB) proposes new 31 Texas Administrative Code (TAC) §§358.10 - 358.15.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

This rulemaking implements House Bill (HB) 29 from the 89th Texas Legislative Session, codified as Texas Water Code §16.0122. HB 29 created certain new responsibilities for municipally owned utilities that provide potable water through more than 150,000 service connections. This rulemaking covers the portions of Texas Water Code §16.0122 that deal with the TWDB's responsibilities.

In a separate filing with the Texas Register, the TWDB proposes a repeal within 31 TAC Chapter 358. With this proposed rulemaking, the TWDB proposes to reorganize that chapter and add a new subchapter. The existing text of §358.6, with some proposed amendments, will remain in the new sections proposed in this rulemaking.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

##### Subchapter C. Water Loss Audits.

The TWDB proposes to add a new subchapter within chapter 358 to better organize the chapter.

##### Section 358.10 Definitions.

The TWDB proposes to include definitions for the subchapter for ease of reading. All but one of these definitions were previ-

ously included in old §358.6 with no proposed changes. The definitions are proposed to be reordered alphabetically. The TWDB proposes to add one new defined term in subsection (6) for "Large Municipally Owned Utilities." As some requirements from HB 29 only apply to certain utilities, the TWDB proposes to add a defined term for "large municipally owned utilities" to cover the applicability of those statutory requirements. This term would be defined as "A municipally owned utility, as defined by Texas Water Code §13.002, that provides potable water through more than 150,000 service connections," which directly implements the language of HB 29.

#### Section 358.11. Water Loss Audits.

The TWDB proposes to move previously numbered §358.6 to new §358.11. The TWDB proposes to move the defined terms to a new definitions section. The TWDB proposes to move the provisions related to water loss audit validations, water loss thresholds, and technical assistance to separate sections within the same chapter.

The TWDB proposes to update the language within new §358.11 to correct cross references for the provisions that the TWDB proposes to move. This rulemaking does not include any other changes to the text of previously numbered §358.6.

#### Section 358.12. Water Loss Audit Validations.

The TWDB proposes to move previously numbered §358.6(b)(5) to its own new section. The TWDB proposes to extend the deadline for water loss audit validations from 3 months to 180 days to better align with HB 29. The TWDB proposes to add the requirements from HB 29 to this rule text. The TWDB also proposes to update internal cross references and add clarifying language. New subsection (b) within this new section reflects the new requirements from HB 29.

#### Section 358.13. Water Loss Thresholds.

The TWDB proposes to move previously numbered §358.6(e) and (f) to their own new section related to water loss thresholds. The only proposed language changes are to change the reference to "total water loss" to reference "real or apparent water loss," which matches agency practice and to update internal cross-references based on renumbering.

#### Section 358.14. Water Loss Audit Technical Assistance.

The TWDB proposes to move previously numbered §358.6(g) and (h) to their own new section related to water loss technical assistance. TWDB does not propose any changes to the language.

#### Section 358.15. Water Loss Mitigation Plan.

The TWDB proposes new section 358.15 to include a new requirement for water loss mitigation plans from HB 29.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Georgia Sanchez, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration. The cost for municipally owned water utilities with more than 150,000 service connections to complete a water loss audit validation conducted by a third-party certified validator is required by legislation and is not a new requirement imposed by these rules.

These rules are not expected to result in reductions in costs to either state or local governments. These rules are not expected to have any impact on state or local revenues. The rules do not require an increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

Although these rules themselves do not impose any requirements that would increase or decrease costs to local governments, the rules do implement legislation that could result in additional costs for certain municipally owned utilities.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for certain municipally owned utilities and encourages better data and analysis related to water loss. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute.

#### ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to

clarify requirements for certain municipally owned utilities and encourage better data and analysis related to water loss.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rule-making because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.0121. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for certain municipally owned utilities and encourage better data and analysis related to water loss. The proposed rule would substantially advance this stated purpose by reorganizing the subchapter in a clearer way and delineating responsibilities and duties for different utilities.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that receives water loss audits, receives and conducts certain water loss audit validations, establishes water loss thresholds, and receives and reviews water conservation plans.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule implements legislation that requires certain municipally owned water utilities to conduct water loss audit validations and develop water loss mitigation plans. Therefore, the proposed

rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

This rule implements state legislation.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov) or by fax to (512) 475-2053. If sent via email, all public comments should be sent directly to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov). Please do not submit comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 358" in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The rules are proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §16.0121.

This rulemaking affects Water Code, Chapter 16.

#### §358.10. Definitions.

Unless otherwise indicated, in this subchapter the following terms shall have the meanings assigned.

(1) Allowed apparent loss--A unique number for allowable apparent loss calculated for each utility.

(2) Annual real loss--A unique number calculated for each utility based on the utility's real loss on an annualized basis.

(3) Apparent loss--Unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

(4) Average system operating pressure--System operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

(5) Executive Administrator--The executive administrator of the board.

(6) Large Municipally Owned Utility--A municipally owned utility, as defined by Texas Water Code §13.002, that provides potable water through more than 150,000 service connections.

(7) Mitigation--An action or actions taken by a retail public utility to reduce the amount of total water loss in a system. Mitigation may include a detailed water loss assessment, pipe or meter replacement, or addition or improvement of monitoring devices to detect water loss.

(8) Real loss--Loss from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

(9) Retail public utility or utility--A retail public utility as defined by Texas Water Code §13.002.

(10) Service connection density--The number of a retail public utility's connections on a per mile basis.

(11) Total water loss--The sum of a utility's real loss and apparent loss.

(12) Validation--The process of examining water loss audit inputs to identify and correct inaccuracies in water loss audit data and the application of methodology to evaluate and communicate the uncertainty inherent in water loss audit data.

§358.11. Water Loss Audits.

(a) A retail public utility that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has more than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) The water loss audit must be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator will provide the necessary forms and methodologies to the retail public utility.

(4) A water loss audit must be performed by a person who has completed water loss audit training developed by the executive administrator. The executive administrator will make such training available without charge on the agency website and may also provide such training in person or by video.

(b) The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided, the audit is completed by a person who has been trained to conduct water loss auditing as described in subsection (a)(4) of this section, and the audit has been validated as described in §358.12 of this subchapter (relating to Water Loss Audit Validations). In the event the executive administrator

determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility.

(c) A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, G, H, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

(d) The executive administrator shall publicly post on the board's official website a summary of:

(1) the information included in the water audits required by Texas Water Code §16.0121(b) and §16.0121(b-1) according to category of retail public utility and according to regional water planning area;

(2) the measures taken by retail public utilities to reduce water loss; and

(3) a list of those retail public utilities receiving technical assistance as established under §358.14 of this subchapter (relating to Water Loss Technical Assistance), including details related to use of the board's financial assistance to mitigate a retail public utility's total water loss.

§358.12. Water Loss Audit Validations.

(a) A retail public utility that provides potable water required to submit a water loss audit annually as described in §358.11(a)(1)(B) of this subchapter (relating to Water Loss Audits) or that is applying for financial assistance will be required to have its most current water loss audit validated within 180 days of submittal or prior to consideration of a request for financial assistance from the board, in accordance with TWDB's validation guidance. The executive administrator will validate the submitted water loss audit in conference with the retail public utility. Alternatively, the utility may elect to have the water loss audit validated by a person other than the executive administrator. Should a water loss audit be validated by a person other than the executive administrator's staff, validation must follow TWDB's validation guidelines and be performed by a person other than the person submitting the water loss audit, who has completed water loss audit validation training and is certified to conduct such validation.

(b) A large municipally owned utility required to submit a water loss audit annually as described in §358.11(a)(1) of this subchapter will be required to have its most current water loss audit for the current reporting year validated within 180 days of submittal. The validation must be conducted by someone other than the executive administrator. Validation must follow TWDB's validation guidelines and be performed by a person other than the person submitting the water loss audit, who has completed water loss audit validation training and is certified to conduct such validation. A validation conducted under this subsection can be used to satisfy the requirements of subsection (a) of this section if done according to the deadlines in subsection (a) of this section.

§358.13. Water Loss Thresholds.

(a) The following thresholds shall apply to certain retail public utilities:

(1) For a retail public utility with a service connection density more than or equal to 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 30 gallons per connection per day.

(2) For a retail public utility with a service connection density less than 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 57 gallons per connection per day.

(3) For a utility that has a volume of wholesale water sales that flow through the retail water distribution system:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss, expressed as gallons per connection per day and including a wholesale factor that takes into account the wholesale water volume, must be less than the applicable real loss threshold described in paragraphs (1)(B) or (2)(B) of this subsection.

(b) If a retail public utility meets or exceeds the real or apparent water loss threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

§358.14. Water Loss Technical Assistance.

(a) The board will provide technical assistance to retail public utilities to conduct water loss audits required to be submitted to the board and to apply for financial assistance from the board to mitigate a retail public utility's water loss.

(1) A retail public utility required to conduct and submit to the executive administrator a water loss audit in accordance with the provisions of this subchapter may request from the board assistance to:

(A) conduct a water loss audit as required by this subchapter; or

(B) apply for financial assistance from the board to mitigate a retail public utility system's total water loss, as determined by a recent water loss audit.

(2) In complying with the requirements in paragraph (1) of this subsection, the board may contract with or partner with other entities as permitted by law to conduct the water loss audit of a retail public utility or contract with or partner with other entities to assist with an eligible retail public water utility's application to the board for financial assistance to mitigate a system's total water loss, as determined by a recent water loss audit.

(b) The executive administrator shall prioritize technical assistance offered by the board according to the criteria identified in Texas Water Code §16.0121(k) including:

(1) the water loss audits submitted to the board;

(2) the population served by the retail public utility;

(3) the system integrity of the retail public utility as evidenced by the quality of data submitted in its water loss audit; and

(4) other relevant factors as determined by the executive administrator.

§358.15. Water Loss Mitigation Plans.

A large municipally owned utility required to submit a water loss audit annually as described in §358.11(a)(1) of this subchapter (relating to Water Loss Audits) will be required to develop and submit to the board a water loss mitigation plan, that meets the requirements of Texas Water Code §16.0122, not later than the first anniversary of the date the audit was filed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 475-1673



## CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

#### DIVISION 2. GENERAL APPLICATION PROCEDURES

##### 31 TAC §363.12, §363.15

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §363.12 and §363.15.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

This rulemaking implements House Bill (HB) 29 from the 89th Texas Legislative Session, codified as Texas Water Code §16.0122. HB 29 created certain new responsibilities for municipally owned utilities that provide potable water through more than 150,000 service connections, including changes to those entities' water conservation plans. This rulemaking covers the portions of Texas Water Code §16.0122 that deal with the TWDB's responsibilities.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

##### Section 363.12. General, Legal, and Fiscal Information.

The TWDB proposes to renumber certain sections within Chapter 358 of this Title in a separate filing within this issue of the *Texas Register*. The TWDB proposes to amend this section to update a cross-reference that is renumbered in that separate filing.

##### Section 363.15. Required Water Conservation Plan.

The TWDB proposes to add language to §363.15 to implement HB 29. HB 29 requires large municipally owned utilities to develop water loss mitigation plans and incorporate those plans into their water conservation plans. Those utilities must also incorporate their progress in implementing that water loss mitiga-

tion plan in their annual reports. These new requirements included in Texas Water Code §16.0122 by HB 29 are proposed to be included in the TWDB's rule on water conservation plans.

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))**

Ms. Georgia Sanchez, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

Although these rules themselves do not impose any requirements that would increase or decrease costs to local governments, the rules do implement legislation that could result in additional costs for certain municipally owned utilities.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

**PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))**

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for certain municipally owned utilities and encourages better data and analysis related to water loss and water conservation plans. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute.

**ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)**

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

**DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)**

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for certain municipally owned utilities and encourage better data and analysis related to water loss and water conservation plans.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.0121. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

**TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)**

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for certain municipally owned utilities and encourage better data and analysis related to water loss and water conservation plans. The proposed rule would substantially advance this stated purpose by delineating responsibilities and duties for certain utilities to clarify new requirements in statute.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews water conservation plans.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule implements legislation that requires certain municipally owned water utilities develop water loss mitigation plans and incorporate those into their water conservation plans and report progress in implementing those water loss mitigation plans in their annual reports. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

This rule implements state legislation.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. If sent via email, all public comments should be sent directly to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov). Please do not submit comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 363" in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §16.402 and 16.4021.

This rulemaking affects Water Code, Chapter 16.

#### §363.12. *General, Legal, and Fiscal Information.*

An application will be in the form and in numbers prescribed by the executive administrator.

- (1) (No change.)

(2) The following information is required on all applications to the board for financial assistance to be considered an administratively complete application:

- (A) - (D) (No change.)

(E) Required water loss audit. An applicant that is a retail public utility that provides potable water shall submit its most recent water loss audit in accordance with §358.11 [§358-6] of this title (relating to Water Loss Audits), unless it has previously been submitted.

- (F) - (G) (No change.)

#### §363.15. *Required Water Conservation Plan.*

- (a) (No change.)

(b) The water conservation plan required under subsection (a) of this section must be new or revised to include five-year and ten-year targets for water savings, unless the applicant has implemented an approved water conservation plan that meets the requirements of this section, and that has been in effect for less than five years. The water conservation plan shall include an evaluation of the applicant's water and wastewater system and customer water use characteristics to identify water conservation opportunities and shall set goals to be accomplished by water conservation measures. The water conservation plan shall provide information in response to the following minimum requirements. If the plan does not provide information for each minimum requirement, the applicant shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. Water conservation plans shall include the following elements:

(A) a utility profile including, but not limited to, information regarding population and customer data, water use data, water supply system data, and wastewater system data at the most detailed level of water use data currently available and in accordance with the methodology and guidance for calculating water use and conservation developed and maintained by the executive administrator in coordination with the commission under Water Code §16.403. The utility profile must include the classification of water sales and uses for the following sectors, as appropriate:

- (i) residential;
  - (I) single-family;
  - (II) multi-family;
- (ii) commercial;
- (iii) institutional;
- (iv) industrial;
- (v) agricultural; and
- (vi) wholesale.

(B) specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in total gallons per capita per day and residential gallons per capita per day. As used herein, "municipal use" means the use of potable water or sewer effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses by an individual or entity that supplies water to the public for human consumption;

(C) a schedule for implementing the plan to achieve the applicant's targets and goals;

(D) a method for tracking the implementation and effectiveness of the plan;

(E) a master meter to measure and account for the amount of water diverted from the source of supply;

(F) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(G) measures to determine and control water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections, abandoned services, etc.);

(H) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system;

(I) a program of continuing public education and information regarding water conservation;

(J) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(K) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the applicant; and

(ii) a description of the authority by which the applicant will implement and enforce the conservation plan;

(L) documentation that the regional water planning groups for the service area of the applicant have been notified of the applicant's water conservation plan; ~~and~~

(M) a current drought contingency plan which includes specific water supply or water demand management measures and, at a minimum, includes~~;~~ trigger conditions, demand management measures, initiation and termination procedures, a means of implementation, and measures to educate and inform the public regarding the drought contingency plan; ~~and~~[-]

(N) for a large municipally owned utility, as that term is defined in §358.10 of this title (relating to Definitions), any water loss mitigation plan required under Texas Water Code §16.0122.

(2) Additional conservation strategies. The water conservation plan may also include any other water conservation practice, method, or technique that the applicant deems appropriate.

(c) - (f) (No change.)

(g) Annual reports.

(1) Each entity that is required to submit a water conservation plan to the board or the commission, other than a recipient of financial assistance from the board, shall file a report annually not later than May 1st to the executive administrator on the entity's progress in implementing each of the minimum requirements in the water conservation plan.

(2) Recipients of financial assistance from the board shall maintain an approved water conservation plan in effect until all financial obligations to the state have been discharged and shall file a report with the executive administrator on the applicant's progress in implementing each of the minimum requirements in its water conservation plan and the status of any of its customers' water conservation plans required by contract, within one year after closing on the financial assistance and annually thereafter until all financial obligations to the state have been discharged.

(3) Annual reports prepared for the Commission providing the information required by this subsection may be provided to the board to fulfill the board's reporting requirements.

(4) A large municipally owned utility, as that term is defined in §358.10 of this title, must include in the annual report the utility's progress in implementing a water loss mitigation plan in accordance with Texas Water Code §16.0122.

(h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2026.

TRD-202601463

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 475-1673



## TITLE 34. PUBLIC FINANCE

### PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 85. FLEXIBLE BENEFITS

##### 34 TAC §85.5

The Employees Retirement System of Texas (ERS) proposes an amendment to 34 Texas Administrative Code (TAC) Chapter 85, concerning Flexible Benefits, by amending §85.5 (Benefits).

ERS administers a constitutional trust fund and was established by the Texas Constitution, as currently set forth in Tex. Const. art. XVI, §67, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 et seq.

An amendment to §85.5 is proposed in order to reflect a change in federal law regarding the maximum contribution amount for dependent care flexible spending accounts.

#### GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amendment will be in effect:

(1) the proposed amendment will not eliminate a government program;

(2) implementation of the proposed amendment will not require the creation of new employee positions or eliminate existing employee positions;

(3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amendment will not require an increase or decrease in fees paid to the agency;

(5) the proposed amendment will not create a new rule or regulation;

(6) the proposed amendment will not expand an existing rule or regulation and will not repeal an existing rule or regulation;

(7) the proposed amendment will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the proposed amendment will not positively or adversely affect the state's economy.

Mr. Blaise Duran, Director of Group Benefits, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government or local economies as a result of enforcing or administering the amendment; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendment does not constitute a taking. Mr. Duran has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the amendment as proposed, and the proposed amendment does not impose a cost on regulated persons. Increasing the maximum contribution amount will potentially lead to a reduction in FICA taxes, including the employer portion.

Mr. Duran also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of adopting and complying with the amendment would be greater tax savings to individuals who are currently paying more than \$5,000 in dependent care costs each year, as well as corresponding savings for those individuals' employers. This change imposes no new requirements on individuals, and taking advantage of the increased contribution limit is at the discretion of the individuals utilizing the benefit.

Comments on the proposed amendment may be submitted to Cynthia C. Hamilton, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at [General.Counsel@ers.texas.gov](mailto:General.Counsel@ers.texas.gov). The deadline for receiving comments is Monday, May 18, 2026, at 10:00 a.m.

The amendment is proposed under Tex. Gov't Code §815.102, which authorizes the ERS Board of Trustees (Board) to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board; Tex. Ins. Code §1551.206, which authorizes the Board to develop, implement, and administer flexible spending accounts and include any benefit that may be included under federal law; and Tex. Ins. Code §1551.458, which authorizes the Board to adopt rules regarding flexible spending accounts.

No other statutes are affected by the proposed amendment.

#### §85.5. *Benefits.*

(a) Benefits available for selection by participants. A participant may elect, in accordance with the procedures set forth in this section, one or both of the following benefits, subject to all the requirements and conditions contained in these rules:

- (1) health care reimbursement plan;
- (2) dependent care reimbursement plan.

(b) Health care reimbursement plan.

(1) General purpose health care reimbursement account. Pursuant to the health care reimbursement plan, a participant may elect to receive reimbursements of certain health care expenses which are excludable from the participant's taxable income. The general purpose health care reimbursement account is intended to be qualified under the

Code, §105, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §105, and Treasury Regulation 1.105-11.

(2) Maximum benefit available. Subject to the limitations set forth in these rules, hereafter referred to as the plan, to avoid discrimination, the maximum amount of flexible benefit dollars that an employee may receive in any plan year for health care expenses under the health care reimbursement plan is the amount permitted under the Code, §105. Even if permitted under the Code, in no event shall the amount available exceed \$5,000 in a plan year. An employee may prepay the health care election amounts for the remainder of the plan year in anticipation of termination, retirement, or a period of leave without pay.

(3) Limited purpose health care reimbursement account. An employee who elects to participate in a consumer directed health plan with a health savings account as permitted by Subchapter J, Chapter 1551, Insurance Code, may elect to participate in a limited purpose health care reimbursement account. This limited purpose health care reimbursement account may only be used to reimburse eligible dental and vision care expenses incurred during the benefit plan year or permitted carryover period. The limited purpose health care reimbursement account is intended to be qualified under the Code, §105, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §105, and Treasury Regulation 1.105-11.

(c) Dependent care reimbursement plan.

(1) Pursuant to the dependent care reimbursement plan, a participant may elect to have payments made or receive reimbursement for dependent care expenses. The dependent care reimbursement plan is intended to be qualified under the Code, §129, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §129.

(2) Maximum benefit available.

(A) Subject to any limitations imposed by these rules, hereafter referred to as the plan, to avoid discrimination, the maximum amount that an employee may receive in any plan year in the form of payment of or reimbursement for dependent care expenses under the dependent care reimbursement plan is the lesser of:

(i) the employee's earned income for the plan year (after all reductions in compensation including the reduction related to dependent care expenses);

(ii) the earned income of the employee's spouse for the plan year; or

(iii) the amount permitted under the Code, §129. [Even if permitted under the Code, in no event shall the amount available exceed \$5,000 in a plan year.]

(B) In the case of a participant's spouse who is a full-time student at an educational institution or who is physically or mentally incapable of caring for himself, such spouse shall be deemed to have earned income of not less than \$200 per month if the participant has one dependent and \$400 per month if the participant has two or more dependents in accordance with the Code, §21.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 31, 2026.  
TRD-202601440



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

##### SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

##### DIVISION 1. GENERAL

##### 40 TAC §700.1335

The Department of Family and Protective Services (DFPS) proposes to amend rules in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter M, relating to the Treatment Foster Family Care (TFFC) Program.

##### BACKGROUND AND PURPOSE

The Treatment Foster Family Care (TFFC) program is a placement option for children with mental and/or social behavioral needs that cannot be met in traditional foster care settings. TFFC is designed to provide innovative, multi-disciplinary treatment services to children in a highly structured family home environment and is a cost-effective alternative to congregate residential treatment. To qualify, a child must be 17 years old or younger and: (1) placed in or recommended to be placed into an RTC, or (2) placed in or at risk of being placed in a psychiatric hospitalization due to a history of a diagnosed emotional disorder. Caregivers are highly trained to meet the specific needs of the child population and abide by requirements set out in contract. A child's TFFC placement cannot exceed nine-months, except for one three-month extension.

Due to the complex mental and/or socio-behavioral needs of children served in the TFFC program, current TAC Section 700.1335(c)(2) limits a foster home's capacity to no more than two foster children at one time. At the time the rule was promulgated, DFPS believed that this was all a TFFC family could handle. However, DFPS now believes there are limited circumstances where children would benefit from being in a TFFC home with more than two foster children. Those circumstances include:

- Respite care and babysitting for other TFFC foster parent(s);
- Keeping siblings together; and
- Placement into kinship TFFC homes.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment of §700.1335 adds an exception allowing a TFFC home to have more than two foster care children in their home at once if they are providing respite care and babysitting services to the additional children. The amendment

also creates a waiver process to keep families together by allowing more than two foster care children in a home if the home is a placement to keep siblings together, the placement is a kinship home, or that DFPS determines an exception is needed to maintain quality of care to the children.

##### FISCAL NOTE

Lea Ann Biggar, Chief Financial Officer, has determined that for each year of the first five years that the section(s) will be in effect, there will not be any fiscal implications to state government as a result of enforcing and administering the section(s) as amended. There will be no effect on local government.

##### GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

- (1) the amended rule will not create or eliminate a government program;
- (2) implementation of the amended rule will not affect the number of employee positions;
- (3) implementation of the amended rule will not require an increase in future legislative appropriations;
- (4) the amended rule will not affect fees paid to the agency;
- (5) the amended rule will not create a new rule;
- (6) the amended rule will expand, limit, or repeal an existing rule
- (7) the amended rule will increase the number of individuals subject to the rule; and
- (8) the amended rule will affect the state's economy.

##### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule does not apply to small or micro-businesses, or rural communities.

##### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section(s) as proposed.

##### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rule amendments because DFPS is exempt per subsection (c) of §2001.0045.

##### PUBLIC BENEFIT

Vicki Kozikoujekian, DFPS General Counsel, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be increased family preservation through the expanding of children allowed in a Treatment Family Foster Home if the foster children are siblings or the home is a kinship foster home, and increased quality of care for Treatment Family Foster homes as the availability of respite and babysitting is expanded.

##### TAKINGS IMPACT ASSESSMENT

DFPS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

DFPS invites comments on the amended rule proposals. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue to the *Texas Register*.

Electronic comments and questions may be submitted to Lauren Villa, Policy Attorney at lauren.villa@dfps.texas.gov or RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

#### STATUTORY AUTHORITY

The rule was implemented to comply with the General Appropriations Act, S.B.1, 85th Legislature, Regular Session, 2017 which required HHSC to set rates for the new TFFC program that DFPS administers.

The rule changes are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

#### CROSS REFERENCE TO STATUTES

The proposed rule implements Texas Family Code Section 264.1073 (Treatment Foster Care).

§700.1335. *What is the Treatment Foster Family Care Program?*

(a) Treatment Foster Family Care is a program designed to provide innovative, multidisciplinary treatment services to a child or youth in a highly-structured family home environment.

(b) Caregivers who participate in the Treatment Foster Family Care Program have specialized training in providing services to children with mental health and/or socio-behavioral needs that cannot be met in traditional foster care settings, including:

- (1) 24-hour supervision to ensure the child's safety and sense of security, which includes frequent one-to-one monitoring with the ability to provide immediate on site response;
- (2) individualized, strengths-based therapeutic services and case management;
- (3) time-limited services which include wrap-around services designed to transition children to a permanent and stable placement; and
- (4) other training specified in the contract.

(c) A Treatment Foster Family Care home includes:

(1) one or two foster parents who are highly-trained to meet the specific needs of this child population. Single parents can participate as long as quality care can be assured;

(2) a limitation of no more than two foster children at one time, except when temporarily providing respite or babysitting for another Treatment Foster Family Care home as the terms babysitting and respite are defined and limited under 26 TAC Chapter 749; and

(3) other characteristics and limitations specified in the contract.

(d) Child placing agencies providing Treatment Foster Family Care Services must:

(1) have a 24 hour on-call crisis person available to provide in-home crisis intervention and placement stabilization services, available to the child and family;

(2) a formal respite system, both routine and available upon request, when determined appropriate;

(3) a standardized case load to support this population of children; and

(4) other requirements specified in the contract

(e) The Department of Family and Protective Services in its discretion, based on the best interest of the child, may waive the limitation on the number of foster children as described in subsection (c)(2) of this section when one of the following conditions applies:

(1) placement is necessary to keep siblings together;

(2) placement is into a verified kinship Treatment Foster Family Care home; or

(3) the Department of Family and Protective Services determines that an exception is needed to address other child specific needs to maintain quality of care.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2026.

TRD-202601471

Sanjuanita Maltos

Rules Coordinator

Department of Family and Protective Services

Earliest possible date of adoption: May 17, 2026

For further information, please call: (512) 945-5978

