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 4. AGRICULTURE
PART 1. TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 4. PRESCRIBED BURNING BOARD ENFORCEMENT PROGRAM
SUBCHAPTER A. ENFORCEMENT, INVESTIGATION, PENALTIES AND PROCEDURES

4 TAC §4.2
The Texas Department of Agriculture (the Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 4, Subchapter A, Enforcement, Investigation, Penalties and Procedures, §4.2.

The proposed amendments to §4.2 revise the Prescribed Burning Board's Schedule of Violations.

The proposed amendments are necessary to update the source law column of the Schedule of Violations and clarify abbreviations and certain provisions in the penalty matrix. No substantive changes are proposed to the amount of the penalties or the conduct that may lead to the assessment of a penalty.

Patrick Dudley, Coordinator for Agricultural Commodity Boards and Producer Relations, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government or effect to a local economy.

Mr. Dudley has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed changes to the penalty matrix will be made it easier to read the matrix and find the source law for violations enumerated on the matrix. There will be no increased economic costs to persons required to comply with the proposed revisions in the penalty matrix, because Texas certified and insured prescribed burn managers are already subject to the rule and no substantive changes have been made to the penalty matrix. Additionally, TDA does not anticipate that there will be an adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed revisions to the penalty matrix.

Mr. Dudley has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

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 expand, limit, or repeal an existing regulation;
7. the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed rules do not positively or adversely affect the state's economy.

Written comments on the proposal may be submitted to Patrick Dudley, Coordinator for Agricultural Commodity Boards and Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78771, or by email to: RuleComments@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The amendment is proposed under §153.102 of the Natural Resources Code, which provides the Department with the authority to adopt a schedule of disciplinary sanctions that the department may impose for violations of Chapter 153 of the Natural Resources Code, and Section 12.016 of the Agriculture Code, which provides that the department may adopt rules as necessary for the administration of its powers and duties under the code.

Chapter 153 of the Texas Natural Resources Code is affected by the proposal.

§4.2. Schedule of Disciplinary Sanctions.
Pursuant to §153.102(b) of the Natural Resources Code, the department has established the following schedule of disciplinary sanctions for violations of the Act, and rules adopted thereunder by the Prescribed Burning Board and/or the department.

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 May 4, 2020.
TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

The Texas Education Agency (TEA) proposes the repeal of §61.1033, an amendment to §61.1036, and new §61.1040, concerning school facilities. The proposed rule actions would remove an obsolete rule, provide an end date for the current school facilities standards rule, and create a new rule to implement the safety standards required by Senate Bill (SB) 11, 86th Texas Legislature, 2019.


SB 11, 86th Texas Legislature, 2019, added TEC, §7.061, which requires the commissioner to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment.

To implement SB 11, proposed new §61.1040 would establish updated school facilities standards beginning with facilities constructed on or after September 1, 2020. The standards reflect recommendations from a school facilities standards committee convened by the Texas Association of School Administrators. Except for the safety and security standards identified in the proposed new rule, the standards would not apply to open-enrollment charter schools.

Proposed new §61.1040 would address definitions; requirements for school districts with and without local building codes; minimum standards, including the requirement for school districts to have educational specifications and long-range facilities plans; safety and security standards; square footage requirements for common areas and special spaces; and methods to demonstrate compliance with the standards.

Section 61.1036 would be amended to provide an end date that corresponds with the start date of the new standards. In addition, §61.1033 would be repealed as those standards are obsolete.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

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: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation, limit an existing regulation, and create a new regulation. Section 61.1033 would be repealed as it is obsolete. The standards in §61.1036 would be limited by specifying that the standards apply to facilities constructed before September 1, 2020; currently the standards apply to all facilities built on or after January 1, 2004, with no specific end date. Proposed new §61.1040 would be added to address facilities constructed on or after September 1, 2020.

The proposed rulemaking 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 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: The proposal would ensure that building standards for instructional facilities and other school district and open-enrollment charter school facilities provide a secure and safe environment. 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: The 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: The public comment period on the proposal begins May 15, 2020, and ends June 29, 2020. 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 May 15, 2020. 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/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

SUBCHAPTER CC. COMMISSIONER’S RULES CONCERNING SCHOOL FACILITIES 19 TAC §61.1033
STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.061, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment; TEC, §46.001, which provides a definition for instructional facility; TEC, §46.002, which allows the commissioner to adopt rules for administering instructional facility programs; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.061, 46.001, 46.002, and 46.008.

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 May 4, 2020.
TRD-202001764
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 475-1497

19 TAC §61.1036, §61.1040

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §7.061, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment; TEC, §46.001, which provides a definition for instructional facility; TEC, §46.002, which allows the commissioner to adopt rules for administering instructional facility programs; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code, §§7.061, 46.001, 46.002, and 46.008.

§61.1036. School Facilities Standards for Construction before September 1, 2020 [as of or after January 1, 2004].
(a) (No change.)
(b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations approved by a school district board of trustees on or after January 1, 2004, and before September 1, 2020 [for which the construction documents have been approved by a school district board of trustees, or a board’s authorized representative, on or after January 1, 2004, for projects for which a school district approved the construction documents prior to January 1, 2004, if a school district makes changes or revisions to the design of the projects on or after January 1, 2004, and before the end of construction, the changes or revisions are subject to the standards specified in §61.1033 of this title (relating to School Facilities Standards for Construction before January 1, 2004). For projects funded from bond elections passed prior to October 1, 2003, and for which a contract for construction has been awarded no later than December 31, 2005, a school district may comply with the standards specified in §61.1033(d)(2)(B)(ii) of this title in lieu of the standards specified in subsection (d)(5)(C)(iii) of this section, and with the standards specified in §61.1033(d)(9)(D)(ii) of this title in lieu of the standards specified in subsection (d)(5)(D)(ii) of this section].
(c)-(f) (No change.)

(a) Applicability. Except for the safety and security standards identified in subsection (d)(4) of this section, this section does not apply to open-enrollment charter schools.
(b) Definitions and procedures. The following words, terms, and procedures, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

1. Abbreviations--
   (A) ANSI--American National Standards Institute;
   (B) IBC--International Building Code;
   (C) ICC--International Code Council;
   (D) IFC--International Fire Code;
   (E) IMC--International Mechanical Code;
   (F) NFPA--National Fire Protection Association; and
   (G) OSHA--Occupational Safety and Hazard Administration.

2. Architect--An individual registered as an architect under the Texas Occupations Code, Chapter 1051, and responsible for compliance with the architectural design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1051.

3. Certification or certify--An indication that an architect or engineer has reviewed the standards contained in this section and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the state of Texas in executing the construction documents.

4. Engineer--An individual registered as an engineer under the Texas Occupations Code, Chapter 1001, and responsible for compliance with the engineering design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1001.

5. Hazardous chemical--This term is defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.

6. Inclusive design--Design that considers the full range of human diversity with respect to ability, language, culture, gender, age, and other forms of human difference.

7. Instructional space--All interior general learning spaces.

8. Portable, modular building--An industrialized building as defined by the Texas Occupations Code, §1202.003, or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

9. Primary entrance--The main entrance to an instructional facility that is closest to or directly connected to the reception area as well as any entrance used by visitors during school hours.

10. Qualified building code consultant--A person who maintains, as a minimum, a current certification from the ICC.

11. Qualified, independent third-party inspector--A person who maintains, as a minimum, a current certification from the ICC.
as a combination commercial inspector and commercial energy inspector.

(12) School level--
   (A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;
   (B) middle school level--a school facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or a school facility that includes only Grade 6;
   (C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9; and
   (D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12.

(13) Secondary entrance--Any entrance used:
   (A) by students during school hours to go outside to access another building or outdoor instructional space or program; or
   (B) by students, staff, or visitors outside school hours.

(14) Square feet per room--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(15) Square feet per pupil--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.

(c) Administration.

(1) Implementation date. The requirements for school facility standards under this section shall apply to capital improvement projects for which the budget has been publicly approved by the school district board of trustees on or after September 1, 2020. For projects where action was taken by the board of trustees prior to September 1, 2020, the school district may elect to comply with the standards specified in §61.1036 of this title (relating to School Facilities Standards for Construction before September 1, 2020). A board of trustees meets the standards under this section by either:
   (A) adoption of a fiscal year maintenance and operations budget where a capital improvement project title and budget are delineated; or
   (B) calling a bond election where a capital improvement project title and budget are delineated.

(2) Trigger language. If a project scope requires a school district to hire an architect or engineer per the Texas Occupations Code, the project is required to comply with the standards under this section. If additional scopes of work are added to the triggering project scope that alone would not trigger these standards, the affected areas of the additional scopes of work are not required to be brought into compliance with these standards.

(3) Compliance. Every project required to comply with the standards under this section must meet the requirements of this subsection and subsection (d) of this section and one of the two methods of compliance described in subsections (e) and (f) of this section.

(4) Designation. The school board shall designate either a qualitative or quantitative method of compliance prior to the solicitation of a licensed design professional.

(5) Educational adequacy. A facility meets the threshold of educational adequacy if the design is based on the requirements of:
   (A) the minimum standards under subsection (d) of this section, including the educational specifications under subsection (d)(2) of this section and the long-range facility plan under subsection (d)(3) of this section;
   (B) at least one method of compliance under subsection (e) or (f) of this section.

(6) Certification of design and construction.
   (A) The architect or engineer must certify that the certification of design and construction conforms to the provisions of this section, except as indicated on the certification.
   (B) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.
   (C) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.
      (i) The school district shall provide the architect or engineer the educational specifications and long-range facility plan approved by the board of trustees as required by this section, and any district-approved design standards for the facility.
      (ii) The architect or engineer shall perform a building code search under applicable regulations that may influence the project and shall certify that the design has been researched before it is final.
      (iii) The architect or engineer shall certify that the facility has been designed according to the provisions of this section, based on the educational specifications, long-range facility plan, building code specifications, and all documented changes to the construction documents provided by the district. The design professional shall be required to provide certification on or within 30 calendar days of the date the construction documents are signed and sealed for bidding.
      (iv) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in clause (iii) of this subparagraph. If the school district acts as general contractor, it shall make the certification required by this paragraph. The contractor or construction manager shall be required to provide certification on or within 30 calendar days of the date of providing the certificate of substantial completion.
      (v) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph. The owner of the facility shall be required to provide certification on or within 30 calendar days of written approval to occupy the building by the authority having jurisdiction.
      (vi) The certifications specified in clauses (i)-(v) of this subparagraph shall be gathered on the "Certification of Project Compliance" form developed by Texas Education Agency (TEA). The school district will retain this form in its files indefinitely until review and/or submittal is required by representatives of TEA.

(7) Life safety code coordination.
   (A) Authority having jurisdiction. If a local authority having jurisdiction deletes an entire chapter of a locally adopted code,
the school district or design professional may choose to use that section for code compliance purposes.

(B) Districts with existing building codes.

(i) A school district located in an area that has adopted local construction codes shall comply with those codes, including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes. The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third-party inspector, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third-party architect or engineer. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(ii) For school facilities projects subject to the standards under this section, and where not otherwise required by local code, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(iii) As part of its school facilities projects and where not otherwise required by local code, a school district shall consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. In absence of a local code, each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(iv) If the local building authority does not conduct reviews and inspections during the course of construction of the facility, then a qualified, independent third-party inspector, not employed by the design architect, engineer, or contractor, shall perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design.

(C) Districts without existing building codes.

(i) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third-party inspector, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third-party architect or engineer. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(ii) For school facilities projects subject to the standards under this section, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(iii) As part of its school facilities projects, a school district shall consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. Each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(iv) A qualified, independent third-party inspector, not employed by the design architect, engineer, or contractor, shall perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design.

(D) Special provisions for portable, modular buildings. Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a school district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of this section. Effective September 1, 2020, the following additional provisions shall apply to any portable, modular building that is purchased or leased for use as a school facility by a school district.

(i) A school district located in an area that has adopted local construction codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by the local building authority for compliance with the mandatory building codes or approved designs, plans, and specifications. The school district is not required to seek additional inspection of the portable, modular building other than what is required by the local building authority. If the local building authority does not perform inspections, then a qualified, independent third-party inspector, not employed by the design architect, engineer, contractor, or manufacturer, shall inspect the facility, including the construction of the foundation system and the erection and installation of the facility on the foundation, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 calendar days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third-party inspector makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory
building codes or approved designs, plans, and specifications in lieu of an inspection by the local building authority or an independent third-party inspector for a portable, modular building constructed on or after January 1, 1986. However, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(ii) A school district located in an area that has not adopted local building codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by a qualified, independent third-party inspector, not employed by the design architect, engineer, contractor, or manufacturer, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 calendar days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third-party inspector makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by an independent third-party inspector for a portable, modular building constructed on or after January 1, 1986. However, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(iii) A school district that has purchased or leased a portable, modular building for use as a school facility on or after September 1, 2007, and before the effective date of this section, shall have the inspections required by this subsection performed within 60 calendar days of the effective date of this section. Any items of non-compliance identified during the inspections shall be brought into compliance by the school district within 90 calendar days of the date of the inspections.

(iv) Portable, modular buildings are required to comply with the minimum standards for safety and security established in subsection (d)(4) of this section.

(E) Other provisions.

(i) For school facilities projects subject to the standards in this section, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall consider the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.

(ii) As part of its school facilities projects, a school district shall consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. A school district may use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under Texas Health and Safety Code, Chapter 385. A school district may also use the “Indoor Air Quality Tools for Schools” program administered by the U.S. Environmental Protection Agency.

(iii) As part of its school facilities projects, a school district shall consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility’s impact on the environment through energy and resource efficiency.

(iv) School district facilities shall comply with the 2010 Americans with Disabilities Act Standards for Accessible Design as well as the Texas Accessibility Standards of 2012.

(v) School district facilities shall comply with all other local, state, and federal requirements, as applicable.

(d) Minimum standards.

(1) Requirement. All projects shall comply with the requirements of this section.

(2) Educational specifications.

(A) Written document. The educational specification must be in writing and include pertinent information regarding the school district mission, vision, goals, and pedagogy, as well as preliminary details related to facility type, grades served, and a maximum population. The educational specification shall include:

(i) the pertinent provision of the district/campus emergency operations plan relating to the constructed environment; and

(ii) a written statement that includes:

(I) the definition of inclusive design principles supported by the district; and

(II) how inclusive design principles will be addressed in new and renovated facility designs.

(B) Compliance. The requirement for an educational specification is met when a school district completes the referenced template and makes it available to the architect or engineer.

(C) Exemptions. The following projects are exempt from the application of this section:

(i) a project that consists solely of maintenance upgrades; or

(ii) a building or facility constructed, renovated, or modified on a temporary or emergency basis.

(D) Schedule. An educational specification shall be created for each campus type. Unique project types require a separate educational specification. Educational specifications shall be initiated upon the first proposed project of its type and must be completed prior to initiating the planning or programming phase of a project. Each educational specification shall be updated after five years.

(3) Long-range facility plan.

(A) Elements. A school district shall develop a long-range facility plan. The long-range facility plan may include:

(i) existing instructional programs at each campus, including, but not limited to, special education, dual language, course offerings, and partnerships;

(ii) the age and condition of all buildings and systems at each campus;

(iii) site evaluation of each campus, including, but not limited to, overall size; shape; useable land; suitability for intended use as well as planned improvements; adequate vehicular, pedestrian, and emergency access; queuing; parking; and site amenities;

(iv) the district’s educational specifications; and

(v) the district’s enrollment projections.
(B) Process. The process of developing the long-range facility plan shall consider the inclusion of input from teachers, students, parents, taxpayers, and other district stakeholders.

(C) Plan. The school district's long-range facility plan shall include all facilities owned or operated by the district and shall include recommendations related to sequencing of proposed improvements at each campus.

(D) Compliance. The requirement for a long-range facility plan is met when a school district completes the applicable long-range facility plan template available on the TEA website. The applicable template shall be determined based on the types, scope, and funding of the campus needs. The long-range facility plan shall be updated after five years.

(E) Exceptions. A school district is exempt from the requirements of this section:

(i) When facilities experience catastrophic damage that invokes the emergency provision of the Texas Education Code (TEC); or

(ii) In a situation deemed urgent that warrants immediate action that, left unresolved, would impair the conduct of classes.

(4) Safety and security:

(A) Compliance.

(i) Communications infrastructure. All instructional facilities are required to provide the necessary infrastructure to comply with the operational communications provisions of TEC, §37.108(a)(3), that ensure school district or charter school communications technology and infrastructure are adequate to allow for communication during an emergency.

(ii) Additional standards based on cost. The following standards apply to all projects until an instructional facility fully complies with all of the additional safety and security standards specified in subparagraph (B) of this paragraph.

(I) If a project's construction budget is $1 million to $5 million, the facility is required to comply with at least one additional safety and security standard specified in subparagraph (B) of this paragraph.

(II) If a project's construction budget is $5 million to $10 million, the facility is required to comply with at least two additional safety and security standards specified in subparagraph (B) of this paragraph.

(III) If a project's construction budget is over $10 million, the facility is required to comply with all of the additional safety and security standards specified in subparagraph (B) of this paragraph.

(iii) Exceptions to additional standards based on cost. A project at a school district or charter school instructional facility may opt out of the requirements specified in clause (ii) of this subparagraph if:

(I) The building may cease operations as an instructional facility within three years of the project; and

(II) The five-year long-range facility plan clearly states that prior to the end date of the plan the campus will be in compliance with at least two additional safety and security standards specified in subparagraph (B) of this paragraph if ceasing operation does not occur. The plan must specify which two standards will be used.

(B) Additional safety and security standards.

(i) Exterior door numbering. All instructional facilities shall be required to include graphically represented numerical characters located on both the interior and exterior of doors. The front door shall always be door 0 and is the only door or set of doors that does not require graphical numbering. Numbering sequence shall be clockwise. The architect shall coordinate this requirement with any and all accessibility requirements related to signage. Exterior numbering shall comply with the IFC §505.

(ii) Visitor management. All primary entrances to instructional facilities must provide the necessary design elements to provide for the following operations:

(I) Observation of a person prior to the person's entrance to the building;

(II) Prevention of immediate access to students by merely entering the building; and

(iii) A visitor check-in and check-out process.

(iii) Security cameras. All instructional facilities shall be required to include a security camera at all primary and secondary entrances.

(iv) Exterior door access control. All exterior doors to instructional facilities shall be locked from the outside during school hours.

(5) Common areas.

(A) Library.

(i) A school district may consider the School Library Standards and Guidelines as adopted under TEC, §33.021, when developing, implementing, or expanding library services.

(ii) The sum total square footage of all library-related areas shall meet the following minimum square feet (SF) requirements based on maximum student capacity and may be contiguous or dispersed:

(I) For 100 students or fewer, a minimum of 1,400 SF;

(II) For 101-500 students, 1,400 SF plus an additional 4 SF for each student in excess of 100;

(III) For 501-2,000 students, a minimum of 3,000 SF plus an additional 3 SF for each student in excess of 500; and

(IV) For 2,001 or more students, a minimum of 7,500 SF plus an additional 2 SF for each student in excess of 2,000.

(iii) A school district that plans to locate more than 12 student computers in the library shall add 25 SF of space for each additional computer anticipated.

(B) Gymnasium. Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 SF at the elementary school level, 4,800 SF at the middle school level, and 7,500 SF at the high school level.

(6) Special spaces.

(A) Combination science classroom/laboratory.

(i) A combination science classroom/laboratory for Kindergarten-Grade 5 shall provide a minimum of 50 SF per student. The room shall consider a maximum of 22 students, not to exceed 25. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 linear feet (LF) of horizontal laboratory countertop support space shall be
provided for equipment and materials for investigations, activities, or student projects.

(ii) A combination science classroom/laboratory for Grades 6-8 shall provide a minimum of 58 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(iii) A combination science classroom/laboratory for Grades 9-12 shall provide a minimum of 58 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(B) Science laboratory.

(i) A science laboratory for Grades 6-8 shall be a minimum of 42 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(ii) A science laboratory for Grades 9-12 shall be a minimum of 42 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(C) Science classrooms. Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the secondary level. The science laboratories shall be located convenient to the science classrooms they serve.

(D) Fume hoods. A built-in fume hood shall be provided in each high school level chemistry or Advanced Placement (AP) chemistry laboratory or combination science classroom/laboratory. A built-in fume hood should also be provided in each high school level integrated physics and chemistry (IPC) laboratory or classroom/laboratory. The exhaust shall be vented to the outside above the roof and away from air vents. A built-in fume hood should be provided in each middle school preparation room.

(E) Preparation/storage rooms. One preparation/storage room at a minimum 10 SF per student shall be provided adjacent to each combination science classroom/laboratory. One preparation/storage room at a minimum of 10 SF per student shall be provided per science classroom and be located adjacent to its partner science laboratory.

(F) Chemical storage room. If hazardous or vaporous chemicals are to be used in a science laboratory or combination science classroom/laboratory, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students or non-authorized adults. One chemical storage room may be shared among multiple laboratories or classrooms/laboratories. Refer to NFPA, IPC, and OSHA for additional requirements.

(G) Eye/face wash. A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room serving Grades 5-12 where hazardous chemicals or eye irritants are used by instructors and/or students. The eye/face wash shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season shall consider a tepid water system with a heated source.

(H) Safety shower. A built-in safety shower shall be provided in each high school level chemistry or AP chemistry laboratory or classroom/laboratory and IPC laboratory or classroom/laboratory. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season shall consider a tepid water system with a heated source.

(I) Exhaust fan and ventilation system. Refer to IMC, ANSI, OSHA, and NFPA for project requirements.

(J) Emergency shut-off controls. If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each in a location accessible to the instructor but not easily accessible to students. It shall not be located at any doorway leading to a corridor or hallway.

(K) Special education. Specialized classrooms shall be a minimum of 45 SF per student.

(e) Qualitative method of compliance. To satisfy this method of compliance, the school district shall complete Criteria 1 as specified in paragraph (1) of this subsection and must satisfy either Criteria 2 as specified in paragraph (2) of this subsection or Criteria 3 as specified in paragraph (3) of this subsection.

(1) Criteria 1. The school district shall complete a process that answers all applicable questions from the Association for Learning Environments Comprehensive Planning Checklist.

(2) Criteria 2. The architect or engineer of record or the firm with which the architect or engineer is employed shall have a minimum of 10 years of experience or designed $500 million in school facilities in Texas.

(3) Criteria 3. The school district shall comply with the following requirements to demonstrate a high level of transparency during the planning and design processes.

(A) The school district must involve a minimum number of stakeholders, including at least five teachers related to the grades served and/or project type; five community members, including parents and business owners; two school board members, and five administrators.

(B) The school district must publicly disclose, from the district's internet homepage, the district educational specification, long-range facility plan, and the relevant project scoping documents.

(f) Quantitative method of compliance.

(1) Process. To satisfy this method of compliance, the project shall meet the minimum total square footage based on the
campus's flexibility level as specified in subparagraphs (A)-(D) of this paragraph and maximum student capacity of the campus as specified in paragraph (2) of this subsection. Administration spaces, support spaces, dining, library spaces, any elective program spaces, athletics spaces, fine arts spaces, staff-only spaces, storage, and circulation may not be counted as part of the total square footage of instructional space required under this method of compliance. The minimum total square footage may be divided and dispersed however the school district and design professional choose.

(A) Flexibility Level 1 (L1). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging; furniture is exclusively attached student desk/chair with an expectation of very infrequent rearrangement; minimal multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with partial access to mobile devices.

(B) Flexibility Level 2 (L2). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging, but outdoor spaces may be visible from classrooms; furniture includes detached student desk/chair with an expectation of very infrequent rearrangement; moderate multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with moderate access to mobile devices.

(C) Flexibility Level 3 (L3). Multiple student/teacher presentation spaces; organization of spaces allows for proximal outdoor access that is visible from classrooms; flexible and mobile furniture that is easily rearranged; high use of multipurpose walls, including digital touchscreen and other functionalities; learner-centric digital instruction with high levels of access to a range of mobile devices.

(D) Flexibility Level 4 (L4). Multiple student/teacher presentation spaces that are likely mobile; organization of spaces allows for direct outdoor access that is visible from classrooms; highly flexible and mobile furniture that is easily rearranged by students independently or collectively; maximized inclusion of multipurpose walls, including digital capabilities and reconfiguration; learner-centric digital instruction with high levels of access to a range of mobile devices incorporating an "anytime/anywhere" instructional philosophy.

(2) Minimum square footage by campus type and flexibility level.

(A) Elementary schools (prekindergarten-Grade 5):
   (i) L1 36 SF per pupil (pp);
   (ii) L2 36 SF pp;
   (iii) L3 42 SF pp; and
   (iv) L4 42 SF pp.

(B) Middle schools (Grades 6-8):
   (i) L1 32 SF pp;
   (ii) L2 32 SF pp;
   (iii) L3 36 SF pp; and
   (iv) L4 36 SF pp.

(C) High schools (Grades 9-12):
   (i) L1 32 SF pp;
   (ii) L2 32 SF pp;
   (iii) L3 36 SF pp; and

(iv) L4 36 SF pp.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL
SUBCHAPTER AA. TEACHER APPRAISAL
19 TAC §150.1014, §150.1015


BACKGROUND INFORMATION AND JUSTIFICATION: House Bill 3, 86th Texas Legislature, 2019, added TEC, §21.3521, which establishes a local optional teacher designation system. Proposed new §150.1014 and §150.1015 would implement the new statute by specifying performance standards for teacher designations and requirements for local optional designation systems to issue designations based on data from previous school years.

Following is a description of proposed new §150.1014 and §150.1015.

§150.1014. Teacher Designation Performance Standards

Proposed new subsection (a) would establish that teacher designations would be determined by meeting teacher appraisal scores assigned using the Texas Teacher Evaluation and Support System (T-TESS) or an equivalent score on a locally developed rubric, and student achievement on expected growth targets.

Proposed new subsection (b) would specify the standards for the recognized, exemplary, and master designation levels based on the teacher observation and student growth components established in T-TESS.

Proposed new §150.1014 would complement provisions found in proposed new §150.1012, Local Optional Teacher Designation System, that has been proposed separately. These rules are being proposed separately due to time needed to calculate the standards.

§150.1015. Local Optional Teacher Designation System Extenuating Circumstances

Proposed new subsections (a) and (b) would establish the requirements and limitation for local optional teacher designation systems to issue designations based on data from previous
school years in light of extenuating circumstances arising from the COVID-19 pandemic.

Proposed new subsection (c) would establish July 31, 2021, as the expiration date of this section.

FISCAL IMPACT: Tim Regal, associate commissioner for educator support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

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: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations by implementing the statutory requirements of TEC, §21.3521, regarding local optional teacher designation systems.

The proposed rulemaking 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. Regal 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 implementation of current law by providing school districts and open-enrollment charter schools with clear performance standards and guidelines to designate teachers in a local optional teacher designation system. 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: The 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: The public comment period on the proposal begins May 15, 2020, and ends June 15, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education no more than 14 calendar days after notice of the proposal has been published in the Texas Register on May 15, 2020. 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/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valdez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY.

The new sections are proposed under Texas Education Code (TEC), §21.3521, as added by House Bill 3, 86th Texas Legislature, 2019, which specifies that the commissioner: (1) shall establish performance standards; (2) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (3) shall prioritize high needs campuses; (4) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (5) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (6) may adopt fees to implement the local optional teacher designation system; and (7) may adopt rules to implement the local optional teacher designation system.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §21.3521, as added by House Bill 3, 86th Texas Legislature, 2019.

§150.1014. Teacher Designation Performance Standards.

(a) Teacher designations shall be determined by:

(1) a teacher meeting a minimum average appraisal score based on:

(A) Domains II and III of the Texas Teacher Evaluation and Support System (T-TESS), as specified in §150.1002 of this title (relating to Assessment of Teacher Performance), measured on a scale of 1-5 with minimum dimension scores of proficient, as specified in §150.1002(c)(3) of this title; or

(B) a locally developed rubric with a score equivalent to the score specified in subparagraph (A) of this paragraph, as determined by Texas Education Agency (TEA); and

(2) a minimum percentage of the teacher's students meeting or exceeding expected growth targets.

(b) Teacher designations shall be assigned in accordance with subsection (a) of this section using the following categories.

(1) Recognized. A recognized designation shall be determined by:

(A) a teacher generally meeting a minimum average score of 3.7 across Domains II and III of the T-TESS or equivalent score on a locally developed rubric as determined by TEA; and

(B) generally a minimum of 55% of the teacher's students meeting or exceeding expected growth targets.

(2) Exemplary. An exemplary designation shall be determined by:

(A) a teacher generally meeting a minimum average score of 3.9 across Domains II and III of the T-TESS or equivalent score on a locally developed rubric as determined by TEA; and

(B) generally a minimum of 60% of the teacher’s students meeting or exceeding expected growth targets.
(3) Master. A master designation shall be determined by:
   (A) a teacher generally meeting a minimum average score of 4.5 across Domains II and III of the T-TESS or equivalent score on a locally developed rubric as determined by TEA; and
   (B) generally a minimum of 70% of the teacher's students meeting or exceeding expected growth targets.
§150.1015. Local Optional Designation System Extenuating Circumstances.
(a) General provisions.
   (1) Approved local optional designation systems that have been paying teachers in the 2019-2020 school year may issue designations for the 2020-2021 school year with:
       (A) the teacher observation component of §150.1012(c)(2)(A)(i) of this title (relating to Local Optional Teacher Designation System) or the student growth component of §150.1012(c)(2)(A)(ii) of this title for the 2019-2020 school year;
       (B) the student growth component of §150.1012(c)(2)(A)(ii) of this title measured for mid-year growth for the 2019-2020 school year;
   (C) the teacher observation component of §150.1012(c)(A)(ii) of this title and the student growth component of §150.1012(c)(A)(ii) of this title for the 2018-2019 school year and the requirements of subparagraph (A) or (B) of this paragraph.
   (2) A school district that submitted a letter of intent to initially apply for a local designation system based on 2019-2020 data to the Texas Education Agency by March 23, 2020, may be issued a provisional approval of one year if its system is approved based on one of the following data options:
       (A) the teacher observation component of §150.1012(c)(2)(A)(i) of this title or the student growth component of §150.1012(c)(2)(A)(ii) of this title for the 2019-2020 school year;
       (B) the student growth component of §150.1012(c)(2)(A)(ii) of this title measured for mid-year growth for the 2019-2020 school year;
   (C) the teacher observation component of §150.1012(c)(2)(A)(i) of this title and the student growth component of §150.1012(c)(2)(A)(ii) of this title for the 2018-2019 school year and the requirements of subparagraph (A) or (B) of this paragraph.
(b) Limitation. A school district with provisional approval status cannot add eligible teaching assignments to its local optional designation system.
(c) Expiration. This section expires July 31, 2021.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to Board rules 22 Tex Admin. Code, Chapter 133, §133.21 regarding Application for Standard License, §133.23 regarding Applications from Former Standard License Holders, §133.25 regarding Applications from Engineering Educators, §133.27 regarding Application for Temporary License for Engineers Currently Licensed Outside the United States, §133.73 regarding Examination Results and Analysis, and §133.89, regarding Processing of Administratively Withdrawn Applications. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapters 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

The proposed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019).

As required by HB 1523, the proposed rules modify the citations in Board rules to correctly identify the specific section of Chapter 1001 of the Texas Occupations Code.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §§133.21, 133.23, 133.25, 133.27, and 133.89 by changing the citations for Texas Occupations Code §1001.3035 to §1001.272, as modified by HB 1523.

The proposed rules amend §133.73 by changing the citation for Texas Occupations Code §1001.306 to §1001.273, as modified by HB 1523.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. 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.

Dr. 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

Dr. 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

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be corrected and clarified citations in the Board rules, in compliance with HB 1523.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

TITLE 22. EXAMINING BOARDS
Dr. 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 rule because the changes are to citation references.

**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 amendments 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, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@pels.texas.gov.

**SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS**

22 TAC §§133.21, 133.23, 133.25, 133.27

**STATUTORY AUTHORITY**

The amendments are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The proposed amendments are proposed in compliance with HB 1523.

No other statutes, articles or codes are affected by the proposed amendments.


(a) - (c) (No change.)

(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 and complete 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 naturalization 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) supplementary experience record as required under §133.41 of this chapter (relating to Supplementary Experience Record);

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

(6) documentation of passage of examination(s), which may include official verifications from the National Council of Engineers 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;
§133.23. Applications from Former Standard License Holders.

(a) (No change.)

(b) A former standard license holder applying for a license under the current law and rules must have submitted the requested items described in §133.31 of this chapter (relating to Application) recorded on file with the board and may request in writing that any transcripts, reference statements, evaluations, 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 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 reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which a professional engineer shall verify at least four years of the updated supplementary experience record; and

(6) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 [§1001.3035] 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 Executive Director Review, Evaluation and Processing 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) (No change.)

§133.25. Applications from Engineering Educators.

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

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

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

(2) 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 supplementary experience record;

(B) For non-tenured faculty, a standard 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 Civil Engineering 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 format 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 [§1001.3035] of the Act;

(9) documentation of passage of examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.31 of this chapter (relating to Engineering Examinations), if applicable; and

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

(d) - (f) (No change.)

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

(a) (No change.)

(b) The applicant applying for a temporary license from Australia, Canada, 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) a supplementary experience record as required under §133.41(1) - (4) of this chapter (relating to Supplementary Experience
§133.73.  Review process of applications and license issuance.

22 TAC §133.79

STATUTORY AUTHORITY

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The proposed amendment is proposed in compliance with HB 1523.

No other statutes, articles or codes are affected by the proposed amendment.

§133.79.  Processing of Administratively Withdrawn Applications.

(a)  To reactivate an administratively withdrawn application, the applicant must submit:

(1)  a reactivation fee as established by the board;

(2)  a new application form complete with signatures;

(3)  updated supplementary experience records for the time period since the application was first submitted; and

(4)  documentation of submittal of fingerprints for criminal history record check as required by §1001.272 (§1001.305) of the Act, unless previously submitted to the board.

(b)  (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 27, 2020.

TRD-202001805

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: June 14, 2020

For further information, please call: (512) 440-7723

♦  ♦  ♦
SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §§137.7, 137.9, 137.13

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to Board rules 22 Texas Administrative Code, Chapter 137, §137.7 regarding License Expiration and Renewal, §137.9 regarding Renewal for Expired License, and §137.13 regarding Inactive Status. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 137 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

The proposed rules implement necessary changes as required by House Bill (HB) 1523 and Senate Bill (SB) 37, 86th Legislature, Regular Session (2019).

As required by HB 1523, the proposed rules modify the citations in Board rules to correctly identify the specific section of Chapter 1001 of the Texas Occupations Code.

As required by SB 37, the proposed rules repeal a section prohibiting the renewal of an engineer license based on the loan default proceedings of the Texas Guaranteed Student Loan Corporation which have been removed by the bill.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §137.7 by correcting an incorrect citation to Texas Occupations Code §1001.351; changing the citation for §1001.352 to §1001.275; and changing the citation for §1001.3535 to §1001.277, as modified by HB 1523.

The proposed rules amend §137.9 by repealing section (f) and renumbering the remaining subsections. This repeal is required by SB 37.

The proposed rules amend §137.13 by changing the citation for Texas Occupations Code §1001.3535 to §1001.277, as modified by HB 1523.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rule is 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 rule.

Dr. Kinney has determined that for each year of the first five years the proposed rule is 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 rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rule 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

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be corrected and clarified citations in the Board rules, in compliance with HB 1523 and SB 37.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. 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 rule because the changes are to citations. The repeal §137.9(f), as directed by SB 37, will permit a licensee to renew their engineering license without an economic barrier due to outstanding student loans.

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 ruled 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. One of the proposed rules repeals an existing regulation, as directed by SB 37.
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, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@pe.texas.gov.

STATUTORY AUTHORITY

The amendments are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rules or bylaws necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying, and in compliance with HB 1523 and SB 37.

No other statutes, articles or codes are affected by the proposed amendments.

§137.7. License Expiration and Renewal.

(a) Pursuant to §1001.351 [§1001.352] of the Act, the license holder must renew the license annually to continue to practice engineering under the provisions of the Act. If the license renewal requirements are not met by the expiration date of the license, the license shall expire and the license holder may not engage in engineering activities that require a license until the renewal requirements have been met.

(b) Pursuant to §1001.375 [§1001.352] of the Act, the board will mail a renewal notice to the last recorded address of each license holder at least 30 days prior to the date a person's license is to expire. Regardless of whether the renewal notice is received, the license holder has the sole responsibility to pay the required renewal fee together with any applicable late fees at the time of payment.

(c) A license holder may renew a license by submitting:

(1) the required annual renewal fee. Payment may be made by personal, company, or other checks drawn on a United States bank (money order or cashier's check), or by electronic means, payable in United States currency;

(2) the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license; and

(3) documentation of submittal of fingerprints for criminal history record check as required by §1001.277 [§1001.352] of the Act, unless previously submitted to the board.

(d) - (f) (No change.)

§137.9. Renewal for Expired License.

(a) - (c) (No change.)

(f) In strict accordance with the provisions of the Texas Education Code §57.491, pertaining to the loan default proceedings of the Texas Guaranteed Student Loan Corporation (TGSLC), if a license holder's name has been provided by the TGSLC as being in default of a loan, the board shall not renew the license of the license holder, unless the TGSLC certifies that the individual has entered into a repayment agreement with TGSLC, or is not in default on a loan. Such license holder may request an informal hearing, similar to that provided by §139.33 of this title (relating to Informal Proceedings), before any action concerning the denial of a renewal of a license is taken under this subsection. A defaulted loan shall not bar the board's issuance of an initial license if the applicant is otherwise qualified for licensure.

§137.13. Inactive Status.

(a) - (c) (No change.)

(d) To return to active status, a license holder whose license is inactive must:

(1) submit a request in writing for reinstatement to active status;

(2) pay the fee for annual renewal, as applicable;

(3) provide documentation of submittal of fingerprints for criminal history record check as required by §1001.277 [§1001.352] of the Act, unless previously submitted to the board; and

(4) comply with the continuing education program requirements for inactive license holders returning to practice as prescribed in §137.17(o) of this chapter (relating to Continuing Education Program).

(e) - (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 27, 2020.

TRD-202001677
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 440-7723

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 281. APPLICATIONS PROCESSING
SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §281.18

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §281.18, concerning Applications Returned.

Background and Summary of the Factual Basis for the Proposed Rule

According to §281.1, concerning Purpose, it is the intent of the TCEQ to establish a general policy for the processing of applications in order to achieve the greatest efficiency and effectiveness possible. However, §281.18 requires notices of application deficiencies to be sent to the applicant via certified, return receipt mail and allows the applicant 30 days to provide a response. The proposed rulemaking would amend §281.18 to allow the use of electronic mail (email) for communicating application deficiencies and receiving responses from applicants. The proposed changes would modernize communications between TCEQ and applicants; reduce TCEQ postage costs; and improve the efficiency of application processing.

Section Discussion

§281.18, Applications Returned

The commission proposes to amend §281.18(a) to include email as a method of communicating application deficiency notices to applicants and allow the commission to establish a timeframe of less than 30 days for applicants to provide the requested information. The purpose of this change is to reduce the timeframes for obtaining necessary information and to reduce postage costs to the TCEQ. Additionally, the commission proposes to amend §281.18(a) by parsing a portion of the requirements into proposed paragraphs (1) and (2) to improve readability. Proposed §281.18(a)(1) provides the timeframe for the executive director to review additional information submitted by the applicant. Proposed §281.18(a)(2) provides the executive director's course of action if the applicant fails to submit the requested information within the established timeframe.

The commission proposes to require at least one deficiency notice to be sent via certified mail, return receipt requested providing the applicant 30 days to respond before an application may be returned.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, the agency would experience fiscal implications due to cost savings as a result of administration or enforcement of the proposed rule.

The agency estimates an annual savings of approximately $3,924 as a result of implementing this proposed rulemaking. Per the agency's records, 77% of the 750 wastewater permit applications have application deficiencies, and under the current rules, the agency sends each a certified letter at the cost of $6.80 per applicant to communicate the deficiencies. The proposed rulemaking would allow the agency to send this information electronically for a total savings of $3,924 per year for the next five years.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated would be improved agency efficiency and an annual cost savings of state funds. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

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 would not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendment 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 rule is 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 would not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would 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 would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking 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.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory impact 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 that statute. 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. The specific intent of the rulemaking is not to protect the environment or reduce risks to human health from environmental exposure and the proposed rule is not anticipated to have an adverse effect.
in a material way 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. The intent of the proposed amendment is to reduce the timeframes for obtaining necessary information from applicants and to reduce postage costs to the TCEQ.

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

The commission evaluated this rulemaking and performed an analysis of whether the proposed rule would constitute a takings. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part 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 Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part 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% 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 determined that this proposed rule would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rule would not affect any landowners' rights in private real property and there are no burdens that would be imposed on private real property by the proposed rule; the proposed rule is solely procedural and does not impact real property.

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 §505.11(b)(4), 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.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and would have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-108-281-OW. The comment period closes on June 16, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Laurie Fleet, Wastewater Permitting Section, (512) 239-5445.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.128, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §§361.011, 361.017, and 361.024, which establish the commission's jurisdiction over the regulation, management, and control of municipal solid waste, industrial solid waste, and municipal hazardous waste, and authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, Solid Waste Disposal Act, §361.018 and THSC, Texas Radiation Control Act, §§401.011, 401.051, and 401.412, which establish the commission's jurisdiction and gives the commission the authority to adopt rules necessary to carry out its responsibilities to regulate the disposal of radioactive substances and the recovery and processing of source material.

The proposed amendment implements THSC, Chapter 361.

§281.18. Applications Returned.

(a) If an application or petition is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies by electronic mail or certified mail return receipt requested prior to expiration of the applicable review period established by §281.3(a), (b) and (d) of this title (relating to Initial Review). (b) If certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the)

(1) The executive director will evaluate the additional information within eight working days of receipt and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). For applications for radioactive material licenses, the executive director shall evaluate the information received in response to a notice of deficiency within thirty days.

(2) If the required information is not received from the applicant within the timeframe specified in [30 days of the date of receipt of] the deficiency notice, the executive director shall return the incomplete application to the applicant. The executive director shall send at least one deficiency notice via certified mail return receipt requested, providing the applicant 30 days to respond, before an application may be returned.

(b) For applications involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses, the executive director may grant an extension of an additional 60 days beyond the original 30 days allowed under the rule for a total response time of 90 days upon sufficient
proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn. However, if applicable, the applicant is responsible for the cost of any notice provided under §281.17 of this title and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.

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 May 1, 2020.

TRD-202001740
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-1806

CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §290.39 and §290.122.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 3552, passed by the 86th Texas Legislature, 2019, authored by the Honorable J.D. Sheffield, Texas House of Representatives, amends Texas Health and Safety Code (THSC), §341.033 to require an owner, agent, manager, operator, or other person in charge of public water systems to notify their customers prior to permanently terminating the addition of fluoride to drinking water. HB 3552 took effect on September 1, 2019. This rulemaking proposes to amend §290.39 and §290.122. While HB 3552 lists owner, agent, manager, operator, or other person in charge of public water systems, the proposed amendments to §290.39 and §290.122 lists owners or operators in order to remain consistent with current TCEQ rules.

Section by Section Discussion

The commission is also correcting references and typographical errors as required by Texas Register formatting requirements.

§290.39, General Provisions

The commission proposes to add §290.39(j)(5) to require public water systems to notify the executive director of proposed termination of fluoridation prior to notifying customers of the water system.

§290.122, Public Notification

The commission proposes to add §290.122(j) to require public water systems to notify their customers 60 days prior to terminating the fluoridation of the drinking water. This notification would be required to be sent to customers using direct delivery methods. The water system would be required to send the executive director a copy of the public notice and Certificate of Delivery, certifying that the public notice was sent to customers.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state government as a result of administration or enforcement of the proposed rules. No significant fiscal implications are anticipated for units of local government.

This rulemaking addresses necessary changes in order to implement HB 3552 which requires public water systems to notify customers prior to permanently terminating the addition of fluoride to drinking water. If a public water system decides to terminate the addition of fluoride to drinking water, then they would have a one-time minimal cost of mailing a notice, as required by law.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be improved access to information regarding the fluoridation of drinking water and compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

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 would not adversely affect a local economy in a material way for the first five years that the proposed rule would be in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rules would be 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 rulemaking for the first five-year period the proposed rules would be 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 rulemaking would not adversely affect a small or micro-business in a material way for the first five years the proposed rules would be in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would 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 would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking 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.
Draft Regulatory Impact Analysis Determination

The commission 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. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a 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, 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 proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement HB 3552 by requiring notification to the executive director and the customers of a public water system prior to a permanent termination of the addition of fluoride to drinking water. Additionally, it is not a rulemaking 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. It is not anticipated that the cost of complying with the proposed rules would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). 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 proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of water supply systems; 2) does not exceed any express requirements of THSC, Chapter 341 relating to the minimum standards of sanitation and health protection measures; 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.

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.

Takeings Impact Assessment

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to implement HB 3552 relating to certain notice requirements regarding fluoridation of a water supply system. The proposed rules would advance this stated purpose by making the commission's rules consistent with HB 3552. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply because this action does not affect private real property.

Promulgation and enforcement of these rules would constitute neither a statutory nor a constitutional taking of private real property. These rules would not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking would not burden nor restrict the owner's right to property. These provisions would not impose any burdens or restrictions on private real property. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-007-290-OW. The comment period closes on June 16, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Patrick Kading, Drinking Water Special Functions Section, (512) 239-4670.

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §290.39

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code (THSC), §341.0315, which requires public drinking water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendment implements House Bill 3552 passed by the 86th Texas Legislature, 2019.

(a) Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the state. The statute requires that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems not exempted by THSC, §341.035(d). The statute also requires the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. Texas Water Code (TWC), §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster.

(b) Reason for this subchapter and minimum criteria. This subchapter has been adopted to ensure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality, or within 1/2-mile of the corporate boundaries of a district, or other political subdivision providing the same service; or within 1/2-mile of a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) written application for service was made to that provider; and

(B) all application requirements of the service provider were satisfied, including the payment of related fees.

(2) A person may submit a request for an exception to the requirements of paragraph (1) of this subsection if the application fees will create a hardship on the person. The request must be accompanied by evidence documenting the financial hardship.

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.


(A) Each public water system that is also an affected utility, as defined by §290.38 of this title (relating to Definitions), is required to submit to the executive director, receive approval for, and adopt an emergency preparedness plan in accordance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) using either the template in Appendix G of §290.47 of this title (relating to Appendices) or another emergency preparedness plan that meets the requirements of this section. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(B) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under subparagraph (A) of this paragraph provision for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(C) The executive director shall review an emergency preparedness plan submitted under subparagraph (A) of this paragraph. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(D) Each affected utility shall install any required equipment to implement the emergency preparedness plan approved by the executive director immediately upon operation.

(E) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(d) Submission of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed professional engineer. All engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by this subchapter will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed ac-
cording to approved plans and must notify the executive director in writing upon completion of all work. Planning materials shall be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 159, P.O. Box 13087, Austin, Texas 78711-3087.

(c) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:
   
   (A) statement of the problem or problems;
   (B) present and future areas to be served, with population data;
   (C) the source, with quantity and quality of water available;
   (D) present and estimated future maximum and minimum water quantity demands;
   (E) description of proposed site and surroundings for the water works facilities;
   (F) type of treatment, equipment, and capacity of facilities;
   (G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and
   (H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

   (A) The relative location of all facilities which are pertinent to the specific project shall be shown.
   (B) The location of all abandoned or inactive wells within 1/4-mile of a proposed well site shall be shown or reported.
   (C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) A copy of each fully executed sanitary control easement and any other documentation demonstrating compliance with §290.41(c)(1)(F) of this title (relating to Water Sources) shall be provided to the executive director prior to placing the well into service. Each original easement document, if obtained, must be recorded in the deed records at the county courthouse. For an example, see commission Form 20698.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(6) For public water systems using reverse osmosis or nanofiltration membranes, the engineering report must include the requirements specified in paragraph (1)(A)- (H) of this subsection, and additionally must provide sufficient information to ensure effective treatment. Specifically:

   (A) Provide a clear identification of the proposed raw water source.
   (i) If the well has been constructed, a copy of the State of Texas Well Report according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), a cementing certificate (as required by §290.41(c)(3)(A) of this title), and a copy of the complete physical and chemical analysis of the raw water from the well as required by §290.41(c)(3)(G) of this title; or
   (ii) If the well has not been constructed, the approximate longitude and latitude for the new well and the projected water quality.

   (B) Provide a description of the pretreatment process that includes:
   (i) target water quality of the proposed pretreatment process;
   (ii) constituent(s) to be removed or treated;
   (iii) method(s) or technologies used; and
   (iv) operating parameters, such as chemical dosages, filter loading rates, and empty bed contact times.

   (C) The design of a reverse osmosis or nanofiltration membrane system shall be based on the standard modeling tools of the manufacturer. The model must be run for both new membranes and end-of-life membranes. All design parameters required by the membrane manufacturer's modeling tool must be included in the modeled analysis. At a minimum, the model shall provide:
   (i) system flow rate;
   (ii) system recovery;
   (iii) number of stages;
   (iv) number of passes;
   (v) feed pressure;
   (vi) system configuration with the number of vessels per stage, the number of passes (if applicable), and the number of elements per vessel;
   (vii) flux (in gallons per square foot per day) for the overall system;
   (viii) selected fouling factor for new and end-of-life membranes; and
   (ix) ion concentrations in the feed water for all constituents required by the manufacturer's model and the projected ion concentrations for the permeate water and concentrate water.

   (D) In lieu of the modeling requirements as detailed in subparagraph (C) of this paragraph, the licensed professional engineer may provide either a pilot study or similar full-scale data in accordance with §290.42(g) of this title (relating to Water Treatment). Altern-
tively, for reverse osmosis or nanofiltration units rated for flow rates less than 300 gallons per minute, the design specifications can be based on the allowable operating parameters of the manufacturer.

(E) Provide documentation that the components and chemicals for the proposed treatment process conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 60 for Drinking Water Treatment Chemicals and ANSI/NSF Standard 61 for Drinking Water System Components.

(F) Provide the details for post-treatment and re-mineralization to reduce the corrosion potential of the finished water. If carbon dioxide and/or hydrogen sulfide is present in the reverse osmosis permeate, include the details for a degasifier for post-treatment.

(G) For compliance with applicable drinking water quality requirements in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), provide the projected water quality at the entry point to the distribution system and the method(s) used to make the water quality projections.

(H) When blending is proposed, provide the blending ratio, source of the water to be blended, and the calculations showing the concentrations of regulated constituents in the finished water.

(I) Provide a description of the disinfection byproduct formation potential based on total organic carbon and other precursor sample results.

(J) Provide the process control details to ensure the integrity of the membrane system. The engineering report shall identify specific parameters and set points that indicate when membrane cleaning, replacement, and/or inspection is necessary.

(i) The parameters shall be based on one, or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(ii) Define the allowable change from baseline performance.

(7) Before reverse osmosis or nanofiltration membrane systems can be used to produce drinking water, but after the reverse osmosis or nanofiltration membrane system has been constructed at the water system, the licensed professional engineer must submit an addendum to the engineering report required by paragraph (6) of this subsection to the executive director for review and approval. The addendum shall include the following verification data of the full-scale treatment process:

(A) Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, and salt rejection (or salt passage) must be documented when the reverse osmosis or nanofiltration membrane systems are placed online.

(B) Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s).

(C) If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report were inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report.

(D) Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance. Refer to paragraph (6)(C) of this subsection and §290.45(a)(6) of this title for specific considerations.

(E) Provide a complete physical and chemical analysis of the water. The analyses shall be in accordance with §290.41(c)(3)(G) of this title for the raw water (before any treatment), the water produced from the membrane systems, and the water after any post-treatment. Samples must be submitted to an accredited laboratory for chemical analyses.

(8) The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director may order the prospective owner or operator to demonstrate financial assurance to operate the system in accordance with applicable laws and rules as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems), or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at minimum, the following elements:

(1) description of areas and population to be served by the potential system;

(2) description of drinking water supply systems within a two-mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;

(3) time line for construction of the system and commencement of operations;

(4) identification of and costs of alternative sources of supply;

(5) selection of the alternative to be used and the basis for that selection;

(6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by TWC, §13.002:
(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;

(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by TWC, §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision;

(4) is a Class A utility, as defined by TWC, §13.002, that has applied for or been granted an amendment of a certificate of convenience and necessity under TWC, §13.258, for the area in which the construction of the public drinking water supply system will operate; or

(5) is a noncommunity, non-transient [nontransient] water system and the person has demonstrated financial assurance under THSC, Chapter 361 or Chapter 382 or TWC, Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) The executive director shall be notified in writing by the design engineer or the owner before construction is started.

(3) Upon completion of the water works project, the engineer or owner shall notify the executive director in writing as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) Changes in previously approved plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director.

(1) Public water systems shall submit plans and specifications to the executive director for the following significant changes:

(A) proposed changes to existing systems which result in an increase or decrease in production, treatment, storage, or pressure maintenance capacity;

(B) proposed changes to the disinfection process used at plants that treat surface water or groundwater that is under the direct influence of surface water including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points;

(C) proposed changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system;

(D) proposed changes in existing distribution systems when the change is greater than 10% of the number of connections, results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title, or involves interconnection with another public water system; and

(E) any other material changes specified by the executive director.

(2) Public water systems shall notify the executive director in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water. These are considered to be significant changes that require written approval from the executive director.

(A) Examples of long-term treatment changes that could impact the corrosivity of the water include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants, and switching corrosion inhibitor products. Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(B) After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the water system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section.

(3) Plans and specifications may not be required for changes that are specifically addressed in paragraph (1)(D) of this subsection in the following situations:

(A) Unless plans and specifications are required by Chapter 293 of this title (relating to Water Districts), the executive director will not require another state agency or a political subdivision to submit planning material on distribution line improvements if the entity has its own internal review staff and complies with all of the following criteria:

(i) the internal review staff includes one or more licensed professional engineers that are employed by the political subdivision and must be separate from, and not subject to the review or supervision of, the engineering staff or firm charged with the design of the distribution extension under review;

(ii) a licensed professional engineer on the internal review staff determines and certifies in writing that the proposed distribution system changes comply with the requirements of §290.44 of this title (relating to Water Distribution) and will not result in a violation of any provision of §290.45 of this title;
(iii) the state agency or political subdivision includes a copy of the written certification described in this subparagraph with the initial notice that is submitted to the executive director.

(B) Unless plans and specifications are required by Chapter 293 of this title, the executive director will not require planning material on distribution line improvements from any public water system that is required to submit planning material to another state agency or political subdivision that complies with the requirements of subparagraph (A) of this paragraph. The notice to the executive director must include a statement that a state statute or local ordinance requires the planning materials to be submitted to the other state agency or political subdivision and a copy of the written certification that is required in subparagraph (A) of this paragraph.

(4) Public water systems shall notify the executive director in writing of proposed replacement or change of membrane modules, which may be a significant change. After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section. In its notification to the executive director, the system shall include the following information:

(A) The membrane module make/type, model, and manufacturer;

(B) The membrane plant's water source (groundwater, surface water, groundwater under the direct influence of surface water, or other);

(C) Whether the membrane modules are used for pathogen treatment or not;

(D) Total number of membrane modules per membrane unit; and

(E) The number of membrane modules being replaced or changed for each membrane unit.

(5) Public water systems that furnish for public or private use drinking water containing added fluoride may not permanently terminate the fluoridation of water unless it provides both written notice to the executive director 60 days before the termination and written notice to customers as required by §290.122(j) of this title (relating to Public Notification).

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of this subchapter will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception shall precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(4) The executive director may establish site-specific requirements for systems that have been granted an exception. The requirements may include, but are not limited to: site-specific design, operation, maintenance, and reporting requirements.

(5) Water systems that are granted an exception shall comply with the requirements established by the executive director under paragraph (4) of this subsection.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title.

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC, §341.035, that has a history of noncompliance with THSC, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section;

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director.

(A) The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director.

(B) The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title and will be as specified by the executive director.

(C) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title and released only with the approval of the executive director.


(1) Each public water system that is also an affected utility and that exists as of November 1, 2011 is required to adopt and submit to the executive director an emergency preparedness plan in accordance with §290.45 of this title and using the template in Appendix G of §290.47 of this title or another emergency preparedness plan that meets the requirements of this subchapter no later than February 1, 2012. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.
(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under this subsection provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(3) The executive director shall review an emergency preparedness plan submitted under this subsection. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with the commission rules, an emergency preparedness plan must include all of the options listed in §290.45(h)(1)(A) - (H) of this title.

(4) Not later than June 1, 2012, each affected utility shall implement the emergency preparedness plan approved by the executive director.

(5) An affected utility may file with the executive director a written request for an extension not to exceed 90 days, of the date by which the affected utility is required under this subsection to submit the affected utility's emergency preparedness plan or the date by which the affected utility is required under this subsection to implement the affected utility's emergency preparedness plan. The executive director may approve the requested extension for good cause shown.

(6) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

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 May 1, 2020.

TRD-202001742

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 14, 2020

For further information, please call: (512) 239-1806

SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEM

30 TAC §290.122

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code (THSC), §341.0315, which requires public drinking water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendment implements House Bill 3552 passed by the 86th Texas Legislature, 2019.

§290.122. Public Notification.

(a) Tier 1 public notification requirements for acute violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure which require a Tier 1 public notice as described in this subsection. The owner or operator of a public water system must notify persons served by their system of any maximum contaminant level (MCL), maximum residual disinfectant level (MRDL), treatment technique violation, or other situation that poses an acute threat to public health. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Situations that pose an acute threat to public health include:

(A) a violation of the Escherichia coli (E. coli) MCL as described in §290.109(g)(1)(A) - (D) of this title (relating to Microbial Contaminants);

(B) an acute turbidity issue at a treatment plant that is treating surface water or groundwater under the direct influence of surface water, specifically:

(i) a combined filter effluent turbidity level above 5.0 nephelometric turbidity units (NTU);

(ii) a combined filter effluent turbidity level above 1.0 NTU at a treatment plant using membrane filters;

(iii) a combined filter effluent turbidity level above 1.0 NTU at a plant using other than membrane filters at the discretion of the executive director after consultation with the system;

(iv) failure of a system with treatment other than membrane filters to consult with the executive director within 24 hours after a combined filter effluent reading of 1.0 NTU;

(v) failure of a system to meet turbidity level, monitoring, and/or reporting requirements as described in §290.111(i)(3) of this title (relating to Surface Water Treatment); or

(vi) failure of a system to meet treatment, turbidity level, monitoring, and/or reporting requirements as described in §290.111(i)(4) of this title;

(C) a violation of the MCL for nitrate or nitrite as defined in §290.106(f)(2) of this title (relating to Inorganic Contaminants);

(D) a violation of the acute MRDL for chlorine dioxide as defined in §290.110(f)(5)(A) or (B) of this title (relating to Disinfectant Residuals);

(E) occurrence of a waterborne disease outbreak;

(F) Detection of E. coli or other fecal indicators in source water samples as specified in §290.109(h)(2) of this title, which requires a public notice to be issued within 24 hours of notification of the positive sample;

(G) other situations that have the potential to have serious adverse effects on health as a result of short-term exposure; and

(H) at the discretion of the executive director, other situations may require a Tier 1 public notice based on a threat to public health.
(2) The initial Tier 1 acute public notice and/or boil water notice required by this subsection shall be issued as soon as possible, but in no case later than 24 hours after the violation or situation is identified. The initial public notice for an acute violation or situation shall be issued in one or more of the following manners that are reasonably calculated to reach persons served by the public water system within the required time period.

(A) The owner or operator of a public water system with an acute microbiological or turbidity violation as described in paragraph (1)(A) or (B) of this subsection shall include a boil water notice issued in accordance with the requirements of §290.46(q) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems). Public water systems are not required to issue a boil water notice under the conditions as referenced in paragraph (1)(B)(vi) of this subsection, unless required at the discretion of the executive director in accordance with §290.46(q)(5) of this title.

(B) The owner or operator of a community water system shall furnish a copy of the notice to the radio and television stations serving the area served by the public water system.

(C) The owner or operator of a community water system shall publish the notice in a daily newspaper of general circulation in the area served by the system. If the area is not served by a daily newspaper of general circulation, notice shall instead be issued by direct delivery or by continuous posting in conspicuous places within the area served by the system. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(D) The owner or operator of a noncommunity water system shall issue the notice by direct delivery or by continuously posting the notice in conspicuous places within the area served by the system. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(E) If notice is provided by posting, the posting must remain in place for as long as the violation or situation exists or seven days, whichever is longer.

(3) The owner or operator of a water system required to issue an initial notice for an acute MCL or treatment technique violation shall issue additional notices. The additional public notices for acute violations shall be issued in the following manner.

(A) Not later than 45 days after the violation, the owner or operator of a community water system shall notify persons served by the system using mail (by direct mail or with the water bill) or hand delivery. The executive director may waive mail or hand delivery if it is determined that the violation was corrected within the 45-day period. The executive director must make the waiver in writing and within the 45-day period.

(B) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists.

(C) If the owner or operator of a noncommunity water system issued the initial notice by continuous posting, posting must continue for as long as the violation exists and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) Copies of all notifications required under this subsection must be submitted to the executive director within ten days of its distribution.

(b) Tier 2 public notification requirements for other MCL, MRDL, or treatment technique violations and for variance and exemption violations which are violations and situations with potential to have serious adverse effects on human health, as defined in this subsection. The owner or operator of a public water system must notify persons served by their system of any MCL, MRDL, or treatment technique violation other than those described in subsection (a)(1) of this section and of any violation involving a variance or exemption requirement. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification under this subsection include:

(A) any violation of an MCL, MRDL, or treatment technique not listed under subsection (a) of this section;

(B) failure to comply with the requirements of any variance or exemption granted under §290.102(d) of this title (relating to General Applicability);

(C) failure for a groundwater system to take corrective action, including uncorrected significant deficiencies, or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the executive director) before or at the first customer under §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

(D) failure to perform any three months of raw surface water monitoring as required by §290.111(b) of this title or request bin classification from the executive director under §290.111(c)(3)(A) of this title;

(E) other violations or situations deemed by the executive director to have significant potential to have serious adverse effects on human health as a result of short-term exposure may require a Tier 1 public notice as described in subsection (a)(2) of this section; or

(F) failure of a public water system to conduct Level 1 assessment(s) or Level 2 assessment(s) or failure to complete corrective/expedited action(s) as required by §290.109 of this title or failure of a system to conduct seasonal start-up procedures as required by §290.109 of this title.

(2) The initial Tier 2 public notice for any violation, situation, or significant deficiency identified in this subsection must be issued as soon as possible, but in no case later than 30 days after the violation is identified. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by:

(i) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (i) of this subparagraph. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.) Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide drinking water to others (e.g., apartment building owners or large private employers); continuous posting in conspicuous public places within the area served by the system or on the Internet; electronic de-
livery or alert systems (e.g., reverse 911); or delivery to community organizations.

(B) The owner or operator of a noncommunity water system shall issue the notice by:

(i) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of e-mail to notify employees or students; electronic delivery or alert systems (e.g., reverse 911); or, delivery of multiple copies in central locations (e.g., community centers).

(C) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by direct delivery, for as long as the violation exists.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(c) Tier 3 public notification requirements for other violations, situations, variances, exemptions as defined in this subsection. The owner or operator of a public water system who fails to perform monitoring required by this chapter, fails to comply with a testing procedure established by this chapter, or is subject to a variance or exemption granted under §290.102(b) of this title shall notify persons served by the system. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations or other situations that require notification as described in this subsection include:

(A) exceedance of the secondary constituent levels (SCL) for fluoride;

(B) failure to perform monitoring or reporting required by this subchapter;

(C) failure to comply with the analytical requirements or testing procedures required by this subchapter;

(D) operating under a variance or exemption granted under §290.102(b) of this title;

(E) failure to maintain records on recycle practices as required by §290.46(f)(3)(C)(iii) of this title;

(F) a community and nontransient, noncommunity public water system shall notify its customers of the availability of unreg-
whichever
requirements
and
(notices,
remain
in
death
the
case
section,
may
be
used
for
delivering
the
initial
Tier
3
public
notice
and
all
required
repeat
(notices,
under
the
following
conditions.

(i) The CCR is provided to persons served no later
than
12
months
after
the
public
water
system
learns
of
the
violation
or
situation
as
described
under
paragraph
(1)
of
this
subsection.

(ii) The Tier 3 notice contained in the CCR follows
the
content
requirements
under
§290.272
of
this
title
(relating
to
Content
of
the
Report).

(iii) The CCR is distributed following the delivery
requirements
under
§290.274
of
this
title
(relating
to
Report
Delivery
and
Recordkeeping).

(D) If notice is provided by posting, the posting
must
remain in
place
for
as
long
as
the
violation
exists
or
seven
days,
whichever
is
longer.

(3) The owner or operator of a system required
to
issue
an
initial
violation
notice
shall
issue
additional
notices.
The
additional
notices
shall
be
issued
in
the
following
manner.

(A) The owner or operator of a community water
system
shall
issue
repeat
notices
at
least
once
every
12
months
by
delivery
(by
direct
mail
or
with
the
water
bill)
or
by
hand
delivery,
for
as
long
as
the
violation
exists
or
variance
or
exemption
remains
in
effect.
Repeat
public
notice
may
be
included
as
part
of
the
CCR
as
described
in
paragraph
(2)
of
this
subsection.

(B) If the owner or operator of a noncommunity
water system
issued
the
initial
notice
by
continuously
posting
the
notice,
the
Posting
must
continue
for
as
long
as
the
violation
exists,
and
in
no
case
less
than
seven
days.
If
the
owner
or
operator
of
a
noncommunity
water
system
issued
the
initial
notice
by
direct
delivery,
notice
by
direct
delivery
must
be
repeated
at
least
every
12
months
for
as
long
as
the
violation
exists.

(d) Each
d Public
notice
must
conform
to
the
following
general
requirements.

(1) The notice must contain a clear and readily
understandable
explanation
of
the
violation,
significant
deficiency,
or
situation
that
led
to
the
notification.
The
notice
must
not
contain
very
small
print,
unduly
technical
language,
formatting,
or
other
items
that
frustrate
or
defeat
the
purpose
of
the
notice.

(2) If
the
notice
is
required
for
a
specific
event
or
significant
deficiency,
must
state
when
the
event
occurred
or
the
date
the
significant
deficiency
was
identified
by
the
executive
director.

(3) For
notices
required
under
subsections
(a),
(b),
or
c(m)(1)(A)
of
this
section,
the
notice
must
describe
potential
adverse
health
effects.

(A) For
MCL,
MRDL,
or
treatment
value
viola-
tions
or
situations
(including
uncorrected
significant
deficiencies),
the
notice
must
contain
the
mandatory
federal
contaminant-specific
language
contained
in
40
CFR
Part
141,
Subpart
Q,
Appendix
B,
in
addition
to
any
language
required
by
the
executive
director.

(B) For
to
fluoride
SCL
violations,
the
notice
must
contain
the
mandatory
federal
contaminant-specific
language
contained
in
40
CFR
§141.208,
in
addition
to
any
language
required
by
the
executive
director.
(g) Notice to consecutive systems. All public water systems shall provide public notice to persons served by the public water system in accordance with this section. All public water systems that are required to issue public notice to persons in accordance with this section, and that sell or otherwise provide drinking water to other public water systems (i.e., consecutive systems), shall provide public notice to the owner or operator of the consecutive system. The consecutive system is responsible for and shall provide public notice to the persons it serves in accordance with this section.

(h) Notices given by the executive director. The executive director may give the notice required by this section on behalf of the owner and operator of the public water system following the requirements of this section. The owner or operator of the public water system remains responsible for ensuring that the requirements of this section are met.

(i) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the executive director may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the executive director for limiting distribution of the notice must be granted in writing.

(j) The owner or operator of a public water system that furnishes for public or private use drinking water containing added fluoride may not permanently terminate the fluoridation of drinking water unless the owner or operator provides written notice to persons served by the public water system and to the executive director of the termination of fluoridation at least 60 days before the termination. The public notice to persons served by the public water system pursuant to this section shall be issued using the delivery methods described in subsection (c)(2)(A) of this section. Proof of public notification issued pursuant to this subsection shall be submitted in accordance with subsection (f) 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.

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TRD-202001743
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-1806

CHAPTER 293. WATER DISTRICTS
The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§293.3, 293.11, 293.14, 293.15, 293.44, 293.81, 293.94, 293.201, and 293.202; new §§293.90 and §§293.132 - 293.137; and the repeal of §§293.132 - 293.136.

Background and Summary of the Factual Basis for the Proposed Rules
This rulemaking is proposed to implement Senate Bill (SB) 1234 from the 82nd Texas Legislature, 2011; SB 1987 and SB 2014 from the 85th Texas Legislature, 2017; and House Bill (HB) 304, HB 440, HB 2590, HB 2914, SB 239, and SB 911 from the 86th Texas Legislature, 2019.

SB 1234 repealed Texas Government Code, §375.021, which allowed creation of a municipal management district (MMD) outside of a municipality.

SB 1987 amended Texas Local Government Code, §375.022(b), the petition requirements for creations of MMDs. SB 2014 amended Texas Water Code (TWC), §49.181, to revise language relating to creation and organization expenses and change orders; and to add language regarding the issuance of bonds to finance the cost of spreading and compacting fill to remove property from the 100-year floodplain or provide drainage made by a levee improvement district (LID) or a municipal utility district (MUD), respectively, if certain requirements are met.

HB 304 amended Texas Local Government Code, §375.022(b), to include language to place further qualifications on the petitioner of a creation application. HB 440 created Texas Government Code, Chapter 1253, to update requirements for general obligation bonds and the use of unspent bond proceeds. HB 2590 amended TWC, §54.030 and §54.032(a) relating to notice and proof of hearing. HB 2590 also amended TWC, §54.030 to remove the requirement for a commission hearing for the conversion of certain districts to districts operating under the powers of a MUD. Furthermore, HB 2590 amended TWC, §54.234(a) to update language regarding cost analyses for road projects. HB 2914 added TWC, §49.3225 and amended TWC, §54.030(b) to allow the commission to convert a water district to a MUD and to dissolve a district without having a public hearing. SB 239 amended TWC, §49.062 relating to the process for designation of an alternative meeting place. Senate Bill 911 amended TWC, §12.081(a) to add language regarding issuance of a permit under Texas Health and Safety Code (THSC), Chapter 361. SB 911 also amended TWC, §49.102(e) and (f) to add language regarding a temporal component and submittal updates and amended TWC, §49.196(a) to add language regarding on-site audit function.

Section by Section Discussion
The commission proposes non-substantive changes, such as grammatical corrections or to clarify language. These changes are considered non-substantive and not specifically addressed in the Section by Section Discussion of this preamble.

§293.3, Continuing Right of Supervision of Districts and Authorities Created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution
The commission proposes to amend §293.3(a)(1) to reflect the changes made to TWC, §12.081 by SB 911. The commission also proposes §293.3(a)(6) to incorporate the change to TWC, §12.081, which confirmed that the commission may issue a permit under THSC, Chapter 361, regardless of a district’s rule or objection. The subsequent paragraph would be renumbered accordingly. These amendments implement SB 911.

§293.11, Information Required to Accompany Applications for Creation of Districts
The commission proposes to amend §293.11(d)(1) to remove the option for petition by 50 persons if more than 50 people own property in the proposed district to reflect that this option was removed from TWC, Chapter 54 by SB 1987 and SB 2014. The commission also proposes to amend §293.11(d)(9) to update the requirements for temporary directors in accordance with TWC, §54.022. The commission proposes to amend §293.11(j)(1) to clarify that the petitioners for creation of an MMD must be owners of property that would be subject to assessment by the district.
The commission also proposes to amend §293.11(j)(1) to remove the option for petition by 50 persons if more than 50 people own property in the proposed district. The commission proposes to amend §293.11(j)(1)(F) to remove the language that implies that the commission can create MMDs outside of a municipality to reflect changes made to Texas Local Government Code, Chapter 375 which removed the authority of the commission to create a MMD outside of a city. These amendments implement SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304 (86th Texas Legislature).

§293.14, District Reporting Actions Following Creation
The commission proposes to amend §293.14(a) to add a requirement that a district must submit a certified copy of an order canvassing results of a confirmation election no later than the 30th day after the date of the election in accordance with TWC, §49.102(e) and (f). This amendment implements SB 911.

§293.15, Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts
The commission proposes to amend §293.15 to incorporate the revised process for a district conversion in TWC, §§54.030, 54.032, and 54.033. This amendment implements HB 2590 and HB 2914.

§293.44, Special Considerations
The commission proposes §293.44(a)(16)(B) and amends existing §293.44(a)(16)(B) and (D) to differentiate types of expenses incurred by districts. The subparagraphs would be re-lettered accordingly to account for proposed §293.44(a)(16)(B). The commission also proposes §293.44(a)(25) and (26) to allow districts to finance the cost of spreading and compacting fill to remove property from the 100-year flood plain or to provide drainage if the costs are less than constructing or improving drainage facilities. Additionally, the commission proposes §293.44(b)(8) and (9) to limit the issuance of general obligation bonds by districts and to outline how any unspent proceeds may be used. The commission also proposes §293.44(b)(10) to add language regarding the issuance of bonds to use a certain return flow of wastewater. This amendment implements SB 2014 (85th Texas Legislature) and HB 440 (86th Texas Legislature).

§293.81, Change Orders
The commission proposes to amend §293.81 to reflect the changes made to TWC, §49.273(i) by SB 2014. The commission proposes to amend §293.81(1) to better reflect existing statute and to clarify change orders must benefit the district. The commission also proposes §293.81(1)(C) to remove competitive bidding requirements to change orders. These amendments implement SB 2014.

§293.90, Change in Designated Meeting Location
The commission proposes new §293.90 to outline procedures for changing a designated meeting place of a district. Proposed new §293.90 implements SB 239.

§293.94, Annual Financial Reporting Requirements
The commission proposes to amend §293.94(i)(1) and (3) to allow the executive director to review, investigate, conduct on-site audits, and request additional information, and requires a district to submit additional information within 60 days after a request by the executive director. This amendment implements SB 911.

§293.132, Notice of Hearing
The commission proposes the repeal of §293.132 and moves the language to new §293.133.

§293.133, Investigation by the Staff of the Commission
The commission proposes the repeal of §293.133 and moves the language to new §293.134.

§293.134, Order of Dissolution
The commission proposes the repeal of §293.134 and moves the language to new §293.135.

§293.135, Certified Copy of Order to be Filed in the Deed Records
The commission proposes the repeal of §293.135 and moves the language to new §293.136.

§293.136, Filing Fee
The commission proposes the repeal of §293.136 and moves the language to new §293.137.

§293.132, Applications for Order without Hearing
The commission proposes new §293.132 to allow the commission to adopt an order without conducting a hearing if it meets the requirements of TWC, §49.324, and to allow dissolution of districts without a hearing if they meet certain requirements outlined in new §293.132. Proposed new §293.132 implements HB 2914.

§293.133, Notice of Hearing
The commission proposes new §293.133. The language in existing §293.133 is moved to this new section with a change to exclude dissolutions that meet the provisions of §293.132. This change implements HB 2914.

§293.134, Investigation by the Staff of the Commission
The commission proposes new §293.134. The language in existing §293.133 is moved to this new section.

§293.135, Order of Dissolution
The commission proposes new §293.135. The language in existing §293.134 is moved to this new section with a change to include the executive director's authority over an order of dissolution. This amendment implements HB 2914.

§293.136, Certified Copy of Order to be Filed in the Deed Records
The commission proposes new §293.136. The language in existing §293.135 is moved to this new section.

§293.137, Filing Fee
The commission proposes new §293.137. The language in existing §293.136 is moved to this new section.

§293.201, Acquisition of Road Powers by a Municipal Utility District
The commission proposes to amend §293.201(a) to remove the criteria that a road must meet to allow a MUD to acquire road powers.

§293.202, Application Requirements for Commission Approval
The commission proposes to amend §293.202(a)(8) to clarify the language regarding cost analysis for proposed road facilities. This amendment implements HB 2590.

Fiscal Note: Costs to State and Local Government
Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state government as a result of administration or enforcement of the proposed rules. This proposed rulemaking is necessary to bring Chapter 293 in compliance with changes to state law.

Amended §293.44 contains the updates required by SB 2014. This state law allows districts to finance the cost of spreading and compacting fill to provide drainage if the costs are less than constructing or improving drainage facilities. This option may provide a cost savings for units of local government, but its impact cannot be estimated by the agency.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved readability and compliance with state law.

Amended §293.90, implements SB 239 which allows electors within certain special districts to petition the commission to change the location of a meeting place if the district's board fails to designate one. This could be considered a public benefit.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

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 rules are in effect.

Rural Community Impact Statement

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 rules 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 rulemaking 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 updates existing regulations in order to comply with state law. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state’s economy.

Draft Regulatory Impact Analysis Determination

The commission 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 Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended 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.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by: SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304, HB 440, HB 2590, HB 2914, SB 239, and SB 911 (86th Texas Legislature).

These bills require the following changes:

SB 1234 - amends requirements for resolutions of a municipality in support of MMD creations;
SB 1987 - amends the petition requirements for creations of MMDs;
SB 2014 - makes revisions relating to creation and organization expenses and change orders for water districts, as well as adds language regarding LID and MUD bond issuances for spreading and compacting fill to provide drainage;
HB 304 - implements further qualifications on the petitioner of an MMD creation application;
HB 440 - updates requirements for general obligation bonds and the use of unspent bond proceeds for water districts;
HB 2590 - amends notice and proof of hearing language for water districts; and repeals the requirement for a hearing for the conversion of certain districts to districts that operate under the powers of a MUD;
HB 2914 - allows the commission to convert a water district to a MUD without having a public hearing, and allows the commission to dissolve a district without having a public hearing;
SB 239 - adds a new section relating to the process for designating an alternative meeting place for district board meetings; and
SB 911 - adds new language regarding issuance of a permit under THSC, Chapter 361, adds a temporal component and submittal updates in accordance with TWC, Chapter 49, and adds new language regarding on-site audits of districts.

The proposed rulemaking would substantially advance this purpose by amending Chapter 293 rules to incorporate the new statutory requirements.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sec-
tor of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rules is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the areas of contracts, projects, and authority with respect to water districts. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking 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. Finally, the proposed rulemaking is pursuant to the commission’s specific authority in the TWC, §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not proposed solely under the commission’s general powers.

The commission invites public comment of the 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 Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304, HB 440, HB 2590, HB 2914, SB 239, and SB 911 (86th Texas Legislature).

These bills require the following changes:

SB 1234 repealed Local Government Code, §375.021; thus, MMD creation language that reflected such districts can be created outside of a municipality was removed from §293.11(j)(1)(F).

SB 1987 removed the requirement in TWC, §54.014 that petitions for creations of MMDs have to be signed by 50 landowners in the proposed district.

SB 2014 added TWC, §49.181(i) to differentiate types of expenses incurred by districts. SB 2014 added TWC, §49.181(k) to allow districts to finance the cost of spreading and compacting fill to provide drainage in certain situations. SB 2014 also amended TWC, §49.273(i) to clarify that change orders must benefit the district, and removed competitive bidding requirements to change orders.

HB 304 amended Local Government Code, §375.022(b) to require additional information in petitions for creations of MMDs.

HB 440 added Texas Government Code, Chapter 1253 which prohibits political subdivisions from issuing general obligation bonds to purchase or improve property in certain instances where the maturity of the bonds exceeds the economic life of the improvements or property. HB 440 also allows a district to use the unspent proceeds of general obligation bonds for various purposes as identified in HB 440 if certain criteria is met.

HB 2590 amended TWC, Chapter 54 by replacing the requirement that the district request, and the commission holds a hear-

ing for a conversion with the requirement that the district request, and the commission issues an order for conversions.

HB 2914 added TWC, §49.3225 which allows dissolution of districts without a hearing if certain requirements are met. HB 2914 also amended TWC, §54.030(b) by allowing the commission to convert water districts to a MUD without a hearing.

SB 239 amended TWC, §49.062(b) and (c) and added §49.062(c-1) and (e) - (g) to reflect the process for designation of an alternative meeting place.

SB 911 amended TWC, §49.102(e) and (f) to require a district to submit a certified copy of an order canvassing results of a confirmation election no later than the 30th day after the date of the election. SB 911 amended TWC, §49.195(a) to allow the executive director to request additional information from the district after reviewing the audit report, and amended TWC, §49.196(a) to allow the executive director to conduct on-site audits of districts.

SB 911 also amended TWC, §12.081(a) by adding language regarding issuance of a permit under THSC, Chapter 361.

The proposed rulemaking would substantially advance this purpose by amending Chapter 293 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner’s rights in private real property because this rulemaking does not relate to or have any impact on an owner’s rights to property. This proposed rulemaking will primarily affect districts, especially in the areas of creations/conversions, projects, and authority; this would not be an effect on private real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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.

Submittal of Comments

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should refer- ence Rule Project Number 2020-008-293-OW. The comment period closes on June 16, 2020. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jaime Ealey, Districts Section, (512) 239-4739.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.3

Statutory Authority
The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.3, which relates to the commission's continuing right of supervision of districts.

The proposed amendment implements the language set forth in Senate Bill 911 from the 86th Texas Legislature, 2019, which updated the scope of an inquiry into the officers and directors of any district or authority and added new language regarding issuance of a permit under Texas Health and Safety Code, Chapter 361.

§293.3. Continuing Right of Supervision of Districts and Authorities Created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution.

(a) The powers and duties of all districts and authorities created under the Texas Constitution, Article III, §52, and Article XVI, §59, are subject to the continuing right of supervision of the state [State] of Texas, by and through the commission or its successor, and this supervision may include but is not limited to the authority to:

1. inquire into the qualifications [competence, fitness, and reputation] of the officers and directors of any district or authority;
2. require, on its own motion or on complaint by any person, audits, or other financial information, inspections, evaluations, and engineering reports;
3. issue subpoenas for witnesses to carry out its authority under this subsection;
4. institute investigations and hearings;
5. issue rules necessary to supervise the districts and authorities, except that such rules shall not apply to water quality ordinances adopted by any river authority which meet or exceed minimum requirements established by the commission; and
6. issue a permit under Texas Health and Safety Code, Chapter 361, regardless of a district's rule or objection; and
7. [4c] the right of supervision granted in this subsection [herein] shall not apply to matters relating to electric utility operations.

(b) The executive director shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report of any findings made under 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 May 1, 2020.
TRD-202001745
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-6087

SUBCHAPTER B. CREATION OF WATER DISTRICTS
30 TAC §§293.11, 293.14, 293.15

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §§293.11, 293.14, and 293.15, which relates to district creation applications, required actions after district creations, and conversions of districts.

The proposed amendments implement the language set forth in Senate Bill (SB) 1234 from the 82nd Texas Legislature, 2011; SB 1987 and SB 2014 from the 85th Texas Legislature, 2017; and House Bill (HB) 304, HB 2590, HB 2914, and SB 911 from the 86th Texas Legislature, 2019. These bills require, in part, additional information in municipal management district creation petitions; a timeline for submission of district creation election results; and changes in requirements for the conversion of certain districts to municipal utility districts.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

1. $700 nonrefundable application fee;
2. if a proposed district’s purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Texas Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Texas Local Government Code, §42.042, have been followed;
3. if city consent was obtained under paragraph (2) of this subsection, provide the following:
   A. evidence that the application conforms substantially to the city consent; provided, however, that nothing in this chapter [herein] shall prevent the commission from creating a district with less land than included in the city consent; and
   B. evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(c) and (i);
4. a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;
5. evidence of submitting a creation petition and report to the appropriate commission regional office;
6. if substantial development is proposed, a market study and a developer's financial statement;
(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts, are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;
(B) area and boundaries of district;
(C) constitutional authority;
(D) purpose(s) of district;
(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and
(F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;
(B) land use plan;
(C) 100-year flood computations or source of information;
(D) existing and projected populations;
(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;
(F) projected tax rate and water and wastewater rates;
(G) an investigation and evaluation of the availability of dependable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;
(ii) subsidence;
(iii) groundwater level within the region;
(iv) recharge capability of a groundwater source;
(v) natural run-off rates and drainage; and
(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(1) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and
other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal district. [If there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them.] The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(1) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Texas Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §§49.052, 54.022, and §§54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee;

(11) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land
in the proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district; and

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;
(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district’s boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;
(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board;

(E) a request specifying each purpose for which the proposed district is being created; and

(F) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its duly certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year floodplain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement; and

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

(11) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(12) other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;
(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:
   (A) a description of the existing area, conditions, topography, and proposed improvements;
   (B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;
   (C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;
   (D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;
   (E) an evaluation of the effect the district and its projects will have on the following:
      (i) land elevations;
      (ii) subsidence/groundwater level and recharge;
      (iii) natural run-off rates and drainage; and
      (iv) water quality;
   (F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities and
   (G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;
   (4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and
   (5) other data as the executive director may require.

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district that would be subject to assessment by the [ ], or 30 persons who own property in the proposed district, if more than 30 people own real property in the proposed district. The petition shall include the following:
   (A) a boundary description by metes and bounds, by verifiable landmarks, including a road, creek, or railroad line, or by lot and block number if there is a recorded map or plat and survey;
   (B) purpose(s) for which district is being created;
   (C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;
   (D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District;"
   (E) list of proposed initial directors and experience and term of each; and
   (F) a resolution of municipality in support of creation[; if inside a city];

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Texas Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Texas Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee.

§293.14. District Reporting Actions Following Creation.

(a) A certified copy of the order canvassing results of the confirmation election shall be recorded in the office of the county clerk of each county in which a portion of the district lies and shall be submitted to the executive director not later than the 30th day after the date of the election in accordance with Texas Water Code (TWC), §49.102(e) and (f).

(b) The governing board of the district shall submit to the executive director the information required by §293.92 of this title (relating to Additional Reports and Information Required of Certain Districts) and a certificate from the county clerk of each county in which all or part of the district is located showing compliance with TWC [Texas Water Code], §49.455. The certificate shall show on its face the date of the confirmation election, and the date that the information required by TWC [Texas Water Code], §49.455, was filed with the county clerk(s).

§293.15. Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts.

(a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may be converted into a municipal utility district operating under the Texas Water Code (TWC), Chapter 54.

(b) The application for the conversion of a district shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors in accordance with TWC, §54.030(b) as amended by House Bill (HB) 2914, 86th Texas Legislature, 2019 and §54.030(d). The resolution required by this paragraph may be submitted after the hearing required by TWC, §54.030(b) as amended by HB 2590, 86th Texas Legislature, 2019;

(2) a $700 application fee;
(3) unless waived by the executive director, a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

   (A) a description of existing area, conditions, topography, and proposed improvements;
   (B) land use plan;
   (C) 100-year flood computations or source of information;
   (D) existing and projected populations;
   (E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;
   (F) projected tax rate and water and wastewater rates;
   and
   (G) total tax assessments on all land within the district;

and

(5) other data and information as the executive director may require.

(c) Prior to commission action on the application for conversion the following requirements shall be met with evidence of such compliance filed with the chief clerk:

(1) Notice of the conversion application filed with the commission shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks. The notice shall:

   (A) set out the resolution adopted by the district in full;
   and

   (B) notify all interested persons how they may offer comments for or against the proposal contained in the resolution.

(2) Notice of the hearing required by TWC, §54.030(b) as amended by HB 2590, shall be given by publishing notice of the hearing in a newspaper with general circulation in the district. The notice shall be published once a week for two consecutive weeks. The notice shall:

   (A) set out the resolution adopted by the district in full;
   and

   (B) notify all interested persons how they may offer comments for or against the proposal contained in the resolution.

(3) The district shall file its resolution requesting conversion with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with submitting its application for conversion to the commission.

(d) After the hearing required by TWC, §54.030(b) as amended by HB 2590, the resolution required by TWC, §54.030(d) shall be filed with the commission and mailed to each state senator and representative who represents the area in which the district is located.

(e) A special utility district formed pursuant to the TWC, Chapter 65, which applies for conversion to a district having taxing authority that provides water, wastewater, or other public utility services, must comply with the requirements of Texas Local Government Code, §42.042.

(f) [[a]] Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may [be converted into a municipal utility district operating under the Texas Water Code, Chapter 54 or] obtain additional wastewater and/or drainage powers.

(g) [[b]] The application for the addition of wastewater and/or drainage powers shall be accompanied by the following:

   (1) a certified copy of the resolution adopted by the board of directors requesting the commission to hold a hearing on the question of [conversion of the district or] the addition of wastewater and/or drainage powers for the district;
   (2) a $700 application fee;
   (3) unless waived by the executive director, a preliminary plan (22 - 24 [22-24] inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

   (4) unless waived by the executive director, a preliminary engineering report including:

   (A) a description of existing area, conditions, topography, and proposed improvements;
   (B) land use plan;
   (C) 100-year flood computations or source of information;
   (D) existing and projected populations;
   (E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;
   (F) projected tax rate and water and wastewater rates;
   and
   (G) total tax assessments on all land within the district;

and

(5) other data and information as the executive director may require.

(h) [[c]] Prior to the hearing for the addition of wastewater and/or drainage powers, the following requirements shall be met with evidence of such compliance filed with the chief clerk at or prior to the hearing:

   (1) Notice of the hearing in a form issued by the chief clerk shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks with the first publication to be made not less than 14 days before the time set for the hearing. The notice shall:

   (A) state the time and place of the hearing;
Texas Subchapter 45, §293.44.

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 May 1, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-6087

SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.44

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §§5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.44, which relates to several special considerations, including the factors for financing spreading and compacting fill, and the use of bond funds to finance certain district costs and expenses.

The proposed amendment implements the language set forth in Senate Bill 2014 from the 85th Texas Legislature, 2017, which adds language regarding levee improvement district and municipal utility district bond issuances for spreading and compacting fill to provide drainage, and revises creation and organization expenses and change orders for districts; and House Bill 440, 86th Texas Legislature, 2019, which updates requirements for general obligation bonds and the use of unspent bond proceeds.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, wastewater, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or
(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project. Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, regardless of [notwithstanding that] other acceptable or less costly engineering alternatives that may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.
(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Creation and organization expenses are expenses incurred through the date of the canvassing of the confirmation election.

(C) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, operational expenses for a prior time period are no longer eligible. Payment of operational expenses during construction periods is limited to five years in any single bond issue.

(D) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(E) The district may pay interest on the expenses under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, wastewater, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with floodplain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this paragraph, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this paragraph, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(25) The district may issue bonds to finance the costs of spreading and compacting fill to remove property from the 100-year floodplain made by a levee improvement district if the application otherwise meets all the applicable requirements for bond applications.

(26) The district may issue bonds to finance the costs of spreading and compacting fill to provide drainage that is made by a municipal utility district or a district with the powers of a municipal utility district if the costs are less than the cost of constructing or improving drainage facilities.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a licensed professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, wastewater, or drainage, under contracts authorized under Texas Local Government Code, §552.014, or...
other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, wastewater, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided in this paragraph [herein] supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection.

(8) Regardless of any other provision of law, a district may not issue general obligation bonds to purchase, improve, or construct one or more improvements to real property, to purchase one or more items of personal property, assigned by Texas Tax Code, §1.04, or to do both, if the weighted average maturity of the issue of bonds exceeds 120% of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds.

(9) For district bond issues in which an election was held to authorize specific projects, a district may use the unspent proceeds of issued general obligation bonds only:

(A) for the specific purposes for which the bonds were authorized;

(B) to retire the bonds; or

(C) for a purpose other than the specific purposes for which the bonds were authorized if:

(i) the specific purposes are accomplished or abandoned; and

(ii) a majority of the votes cast in an election held in the district approve the use of the proceeds for the proposed purpose.

(I) The election order and the notice of election for an election described by this clause must state the proposed purpose for which the bond proceeds are to be used.

(II) A district must hold an election described by this clause in the same manner as an election to issue bonds in the district.

(10) If a district is approved for the issuance of bonds by the commission to use a certain return flow of wastewater, the approval applies to subsequent bond authorizations unless the district seeks approval to use a different return flow of wastewater.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality

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FOR FURTHER INFORMATION, PLEASE CALL: (512) 239-6087

SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.81, §293.90

Statutory Authority

The amendment and new section are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's...
general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.81, which relates to change orders, and proposes new §293.90, which relates to changes in district board meeting locations.

The proposed amendment and new section implement the language set forth in Senate Bill (SB) 2014, 85th Texas Legislature, 2017; and SB 239, 86th Texas Legislature, 2019. SB 2014 required change orders to benefit the district and removed the competitive bidding requirement to change orders. SB 239 added a process for designating an alternative meeting location for board meetings.

§293.81. Change Orders.

A change order is a change in plans, specifications, or scope of work for construction work that is under contract. For purposes of this section, a variation between estimated quantities and actual quantities or use of supplemental items included in the bid where no change in plans and specifications has occurred is not a change order.

(1) Districts are authorized to issue change orders that are necessary or beneficial to the district as determined by the district's board, which alter the plans, specifications, or scope of work in the contract, subject to the following conditions:

(A) The aggregate of [except as provided in this subparagraph,] change orders that, in aggregate, shall not be issued to increase the original contract price more than 25%. Change orders above 25% may be issued only in response to:

(i) unanticipated conditions encountered during construction, repair, or renovation;

(ii) changes in regulatory criteria; or

(iii) coordination with construction of other political subdivisions or entities.

(B) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(C) The competitive bidding requirements of Texas Water Code, §49.273(d) and (e) shall not apply to change orders issued in accordance with this section.

(2) No commission approval is required if the change order is $50,000 or less. If the change order is more than $50,000, the executive director or his designated representative may approve the change order. For purposes of this section, if either the total additions or total deletions contained in the change order exceed $50,000, even though the net change in the contract price will be $50,000 or less, approval by the executive director is required.

(3) If the change order is $50,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be submitted to the executive director within ten days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required.

(4) Applications for change orders requiring approval shall include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor, and a resolution or letter signed by the board president indicating concurrence with the proposed change;

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a detailed explanation for the change;

(D) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and new contract price or cost estimate;

(E) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) filing fee in the amount of $100; and

(I) other information as the executive director or the commission may require.

(5) Copies of all changes in plans, specifications, and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Commission Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application review.

§293.90. Change in Designated Meeting Location.

(a) The board shall designate one or more places inside or outside the district for conducting the meetings of the board. The meeting place may be a private residence or office, provided that the board, in its order establishing the meeting place, declares the same to be a public place and invites the public to attend any meeting of the board. If the board establishes a meeting place or places outside the district, it shall give notice of the location or locations by filing a true copy of the resolution establishing the location or locations of the meeting place or places and a justification of why the meeting will not be held in the district or within 10 miles of the boundary of the district, if applicable, with the commission and also by publishing notice of the location or locations in a newspaper of general circulation in the district. If the location of any of the meeting places outside the district is changed, notice of the change shall be given in the same manner.

(b) After at least 50 qualified electors are residing in a district, on written request of at least five of those electors, the board shall designate a meeting place and hold meetings within the district. If no suitable meeting place exists inside the district, the board may designate a meeting place outside the district that is located not further than 10 miles from the boundary of the district.

(c) On the failure, after a request is made under subsection (b) of this section, of the board to designate the location of the meeting place within the district or not further than 10 miles from the boundary of the district, five electors may petition the commission to designate a location.
The petition shall include the following items: the name of the district; reason(s) why the current meeting location deprives the residents of a reasonable opportunity to attend district meetings; evidence that the petitioners have requested a change in the meeting location in accordance with subsection (b) of this section; certification that there are at least 50 qualified voters residing in the district; and evidence that the five petitioners are qualified voters residing in the district.

(2) The petition may include proposed new meeting locations and addresses.

(d) If the commission determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings, the commission shall designate a meeting place inside or outside the district which is reasonably available to the public and require that the meetings be held at such place.

(e) After holding a meeting at a place designated under subsection (b) or (c) of this section, the board may hold a hearing on the designation of a different meeting place, including a meeting place outside of the district. The board may hold meetings at the designated meeting place if, at the hearing, the board determines that the new meeting place is beneficial to the district and will not deprive the residents of the district of a reasonable opportunity to attend meetings. The board may not hold meetings at a meeting place outside the district or further than 10 miles from the boundaries of the district if the board receives a petition under subsection (c) of this section.

(f) The commission shall make a determination under subsection (c) of this section not later than the 60th day after the date the commission receives a complete petition.

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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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER H. REPORTS

30 TAC §293.94

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission’s general authority necessary to carry out its jurisdiction; TWC, §§5.103, which establishes the commission’s general authority to adopt rules; and TWC, §§5.105, which establishes the commission’s authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.94, which relates to the financial reporting requirements for districts.

The proposed amendment implements the language set forth in Senate Bill 911, 86th Texas Legislature, 2019, which in part, allows the executive director to request additional information from the district after reviewing the audit report, and allows the executive director to conduct on-site audits of districts.

§293.94. Annual Financial Reporting Requirements.

(a) Statutory provisions for fiscal accountability. All districts as defined in Texas Water Code (TWC), §§49.001(a) are required to comply with the provisions of TWC, §§49.191 - 49.198 requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manual. All districts shall comply with the accounting and auditing manual adopted by the executive director. The manual shall consist of one publication, “Water District Financial Management Guide.” The manual may be revised as necessary by the executive director.

(c) Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district’s fiscal accounts and records audited annually at the expense of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. Districts with limited or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d) Form of audit. The audit shall be performed according to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

(e) Audit report exemption.

(1) A district may elect to submit annual financial reports to the executive director in lieu of the district’s compliance with TWC, §49.191 provided:

(A) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(B) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of $250,000 during the fiscal period; and

(C) the district’s cash and temporary investments were not in excess of $250,000 at any time during the fiscal period.

(2) The annual financial report must be accompanied by an affidavit, attesting to the accuracy and authenticity of the financial report, signed by a duly authorized representative of the district, which conforms with the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(f) Financially dormant districts.

(1) A district may elect to prepare a financial dormancy affidavit rather than an unaudited financial report, as prescribed by subsection (e) of this section, provided:

(A) the district had $500 or less of receipts from operations, taxes assessments, loans, contributions, or any other sources during the calendar year;

(B) the district had $500 or less of disbursements of funds during the calendar year;
(C) the district had no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(D) the district did not have cash or investments in excess of $5,000 at any time during the calendar year.

(2) The required financial dormancy and filing affidavit shall be prepared in a format prescribed by the executive director and shall be submitted by a duly authorized representative of the district. Financial dormancy affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(g) Annual filing affidavit. Each district shall submit annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary. However, each district that submits an audit report must execute and submit, together with the audit, an annual filing affidavit when the audit is submitted with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the executive director.

(h) Submitting of audits, financial reports, and affidavits.

(1) Submittal dates.

(A) Audits. Audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. Audit reports and the accompanying annual filing affidavits submitted by a special water authority, as defined in TWC, §49.001(8), shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year. The governing board of the district or special water authority shall approve the audit before a copy of the report is submitted to the executive director; however, the governing board's refusal to approve the audit shall not extend the submittal deadline for the audit report. If the governing board refuses to approve the audit, the board shall submit to the executive director by the prescribed submittal date the report and a statement providing the reasons for the board's refusal to approve the report.

(B) Financial reports. Financial reports and the annual filing affidavits in a format prescribed by the executive director, must be submitted to the executive director as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year.

(C) Financial dormancy affidavits. Financial dormancy affidavits shall be submitted as prescribed by paragraph (2) of this subsection by January 31st [31st] of each year. The calendar year affidavit affirms that the district met the financial dormancy requirements stated in subsection (f) of this section during part or all of the calendar year immediately preceding the January 31st [31st] filing date.

(2) Submittal locations. Copies of the audit, financial report, or financial dormancy affidavit described in subsections (c), (e), and (f) of this section shall be submitted annually to the executive director, and within the district's office.

(i) Review by executive director.

(1) The executive director may review the audit report of each district. After reviewing the audit report, the executive director may request additional information from the district. The district shall provide the additional information not later than the 60th day after the date the request was received, unless the executive director extends the time allowed for the district to provide additional information for good cause. If the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes or commission rules, or if the executive director has any recommendations, the executive director shall notify the governing board of the district.

(2) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this section, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director. The executive director may review and investigate a district's financial records and may conduct an on-site audit of a district's financial information. The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the executive director considers necessary for the review, analysis, and approval of an audit report, financial report, or financial dormancy affidavit.

(j) Penalties for Noncompliance.

(1) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

(2) A district that fails to comply with the filing provisions of TWC, Chapter 49, may be subject to a civil penalty of up to $100 per day for each day the district willfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

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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Texas Commission on Environmental Quality
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SUBCHAPTER L. DISSOLUTION OF DISTRICTS
30 TAC §§293.132 - 293.136

Statutory Authority
The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts.
The proposed repeal of the sections implements TWC, §§5.102, 5.103, 5.105, 5.013, and 12.081.

§293.132. Notice of Hearing.

§293.133. Investigation by the Staff of the Commission.

§293.134. Order of Dissolution.

§293.135. Certified Copy of Order to Be Filed in the Deed Records.

§293.136. Filing 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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30 TAC §§293.132 - 293.137

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts.

The proposed new sections implement the language set forth in House Bill 2914, 86th Texas Legislature, 2019, which in part, allows the commission to dissolve a district without having a public hearing.

§293.132. Applications for Order without Hearing.

(a) The commission may adopt an order under Texas Water Code (TWC), §49.324 without conducting a hearing if it receives a petition under this section from the owners of the majority in value of the land in the district, as shown by the most recent certified tax roll of the central appraisal district of the county or counties in which the district is located, or the board of directors of the district. A petition for dissolution under this section must include the items required by §293.131(2)(A) - (E), (G), and (H) of this title (relating to Authorization for Dissolution of Water District by the Commission).

(b) Not later than the 10th day after the date a complete petition is submitted under this section, the petitioners shall:

(1) provide notice of the petition by certified mail:

(A) to all the landowners in the district, as shown by the most recent certified tax roll of the central appraisal district of the county or counties in which the district is located, who did not sign the petition; and

(B) if the petition was submitted by the owners of a majority in value of the land in the district, to the board of directors; and

(2) certify in writing to the commission that the requirements of paragraph (1) of this subsection have been met.

(c) A notice provided under subsection (b)(1) of this section must state that the landowner may file a written objection to the dissolution of the district not later than the 30th day after the date the notice was received.

(d) If a landowner files a written objection to the dissolution of the district with the commission within the period specified in the notice, the commission shall hold a hearing on the dissolution of the district. The commission shall mail notice of the hearing by first class mail to:

(1) the petitioners, and the board of directors if the board of directors did not submit the petition; and

(2) each landowner who timely filed a written objection to the dissolution.

(e) A district may not be dissolved under this section or any other provision of law if the district:

(1) has any outstanding bonded indebtedness unless the bonded indebtedness is assumed by a third party, or repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds;

(2) has a contractual obligation to pay money unless the obligation is assumed by a third party, fully paid in accordance with the contract, or waived by the obligee; or

(3) owns, operates, or maintains public works, facilities, or improvements, unless the ownership, operation, or maintenance is assumed by a third party.

§293.133. Notice of Hearing.

For a dissolution that does not meet the provisions of §293.132 of this title (relating to Applications for Order without Hearing), notice of the hearing upon the proposed dissolution of a district will be given by the chief clerk and will describe the reasons for the proceeding, as required by Texas Water Code, §49.322. The notice will be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication will be 30 days before the day of the hearing. Notice of the hearing will be given by the chief clerk by first class mail addressed to the directors of the district according to the last record on file with the executive director.

§293.134. Investigation by the Staff of the Commission.

The executive director will examine the application and the facts and circumstances contained in the application and prepare a written report which will be filed with the chief clerk two weeks prior to the hearing as prepared testimony. A copy of the written report will be mailed to any landowner, director, or other interested party who has filed an application for dissolution of the district or has requested notice of the hearing or otherwise indicated an interest in the proceeding.

§293.135. Order of Dissolution.

For districts created under Texas Water Code, Chapter 49, following the hearing, or for an order without hearing, the commission or executive director will enter an order that the district be dissolved if it finds that the district has performed none of the functions for which it was created for a period of five consecutive years before the day of the proceeding, or petition, and the district has no outstanding bonded indebtedness. The commission or executive director may enter an order that the district not be dissolved if it finds that the application lacks sufficient documentation. If the district is ordered dissolved, the order shall contain a provision that the assets of the district shall escheat to the state of Texas and shall be administered by the state treasurer and disposed of in the manner provided by Texas Property Code, Chapter 74.
§293.136. Certified Copy of Order to be Filed in the Deed Records.
The commission shall cause to be filed a certified copy of the order of
dissolution of the district in the deed records of the county or counties
in which the district is located. If the district was created by a special
act of the legislature, the commission shall cause to be filed a certified
copy of the order of dissolution with the secretary of state of the state
of Texas.

§293.137. Filing Fee.
The fee for filing an application for the dissolution of a water district
shall be $100, plus the cost of required notice.

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

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SUBCHAPTER P. ACQUISITION OF ROAD POWERS BY A MUNICIPAL UTILITY DISTRICT
30 TAC §293.201, §293.202

Statutory Authority

The amendments are proposed under Texas Water Code, (TWC), §5.102, which establishes the commission's general
authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt
rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives
the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules
necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.201 and §293.202 which relates
to the cost analysis for road projects.

The proposed amendments implement the language set forth in
House Bill 2590, 86th Texas Legislature, 2019, which add, in
part, additional powers related to road projects which can be
included in the petition for road powers.

§293.201. Acquisition of Road Powers by a Municipal Utility Dis-

(a) Texas Water Code (TWC), §54.234, authorizes a munici-
pal utility district, or any petitioner seeking the creation of a municipal utility
district, to petition the commission to acquire road powers [for
eligible roads under TWC, §54.234(b)], and any improvement in aid of
the roads, which are to be conveyed to this state, a county, or municipal-
ity for operation and maintenance.

(b) This section and §293.202 of this title (relating to Ap-
llication Requirements for Commission Approval) provide the require-
ments for petitioning the commission for road powers.


(a) A conservation and reclamation district, operating under
Texas Water Code (TWC), Chapter 54, may submit to the executive
director of the commission an application for road powers, which shall
include the following documents:

1. a petition that will include a detailed narrative statement
of the reasons for requesting road powers and the reasons why such
powers will be of benefit to the district and to the land that is included
in the district, signed by an authorized member of the board of directors
of the district;

2. a certified copy of the resolution of the governing board
of the district authorizing the district to petition the commission for
road powers;

3. a certification that the district is operating under TWC,
Chapter 54, with proper statutory references;

4. evidence that the municipality in whose corporate lim-
its or extraterritorial jurisdiction that any part of the district is located
has consented to the creation of the district with road powers or has
consented to the district having road powers subsequent to creation, or
that the provisions of TWC, §54.016, have been followed;

5. a certified copy of the latest audit of the district per-
formed under TWC, §§49.191 - 49.194;

6. for districts that have not submitted an annual audit, a
financial statement of the district, including a detailed itemization of
all assets and liabilities showing all balances in effect not later than 30
days before the date that the district submits its request for approval
with the executive director;

7. a preliminary layout showing the proposed location for
all road facilities to be constructed, acquired, or improved by the dis-

8. a cost analysis and detailed cost estimate of the pro-
posed road facilities to be designed, acquired, constructed, operated,
maintained [acquired], or improved by the district with a statement of
the amount of bonds estimated to be necessary to finance the proposed
design, acquisition, construction, operation, maintenance [acquisition],
and improvement;

9. a narrative statement that will analyze the effect of
the proposed facilities upon the district's financial condition and will
demonstrate that the proposed construction, acquisition, and improve-
ment is financially and economically feasible for the district;

10. any other information that may be required by the ex-
ecutive director; and

11. a filing fee in the amount of $100.

(b) A petition for creation of a district submitted under
§293.11(a) and (d) of this title (relating to Information Required to
Accompany Applications for Creation of Districts) may also include
a request for road powers, with information required under subsection
(a)(4)[.] and (7) - (9) of this section, to also be provided.

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

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER C. APPLICATION FOR
PERMIT OR POST-CLOSURE ORDER

30 TAC §305.53

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §305.53.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill (HB) 1331, passed by the 86th Texas Legislature, 2019, creates new Texas Health and Safety Code (THSC), §361.0675, to require the commission to increase the application fee for a permit for a municipal solid waste facility from $100 to $2,000. The commission determined that the $2,000 application fee would only apply to applications for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill. All other application fees would remain unchanged. Under §305.53(b), the application fee must also include an additional fee of $50 to be applied toward the cost of providing required notice. This would result in a total application fee of $2,050.

In corresponding rulemaking published in this issue of the Texas Register, the commission also proposes to amend 30 TAC Chapter 330, Municipal Solid Waste.

Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as, grammatical corrections and updating cross-references. These changes are generally not specifically discussed in this preamble.

§305.53, Application Fee

The commission proposes to amend §305.53(a)(7) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill to $2,000. The subsequent paragraph will be renumbered.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule would be in effect, fiscal implications are anticipated for the state because of the fee increase for a permit or major permit amendment for a municipal solid waste landfill.

This rulemaking is necessary to implement HB 1331, which increased the permit and major permit amendment application fee for a municipal solid waste landfill.

The proposed rulemaking would increase the fee from $150 to $2,050 per application, or an increase of $1,900 each. Based on the data from the last five years, the agency anticipates receiving 11 applications per year for an annual increase to the state’s General Revenue Account of $20,900 per year for the next five years.

Units of local government may also see an impact if they seek to obtain a permit for a municipal solid waste landfill or a major permit amendment for an existing facility. The proposed rulemaking would increase the fee from $150 to $2,050 per application. Currently, 66% of municipal solid waste landfills are operated by units of local government. The agency estimates that seven applications would be received each year from units of local government.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule would be in effect, the public benefit anticipated would be compliance with state law.

The proposed rulemaking may result in a fiscal impact for businesses or individuals if they seek to obtain a permit or major permit amendment for a municipal solid waste landfill. The proposed rulemaking would increase the fee from $150 to $2,050 per application. The agency estimates that 33% of municipal solid waste landfills are operated by businesses or individuals. The agency anticipates approximately four applications per year from businesses or individuals.

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 would not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Small Business and Micro-Business Assessment

The agency estimates that 13 small and micro-businesses may be affected by the fee increase for a permit or major permit amendment for a municipal solid waste landfill; it is estimated that four small businesses and nine micro-businesses meet this criterion and are currently regulated by the agency.

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 rulemaking would not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

In determining the potential for an adverse effect, the agency considered that a municipal solid waste landfill permit lasts for the duration of the facility and multiple fees are not necessary unless the business owner elects to expand the landfill. The agency also considered other factors such as the relative costs associated with financial assurance and expertise required for the permit application and facility design.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions nor eliminate current employee positions. The proposed rulemaking would increase the fee for a permit or major permit amendment for a municipal solid waste landfill. This would result in an increase of fees paid to the agency. The proposed rulemak-
Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rule to determine whether a regulatory analysis is required by Texas Government Code, §2001.0225, and determined that the proposed rule is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined under Texas Government Code, §2001.0225(g)(3) as "a rule the specific intent of which is to protect the environment or reduce risks to human health from the environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The proposed rule does not meet the two prongs of the major environmental rule standard. First, the rule only changes the required fee for a solid waste permit, but does not change any technical or substantive regulatory requirements. Therefore, it does not satisfy the first prong related to intent.

Second, changing the amount of the fee already required by current rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, or jobs nor adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. Therefore, the rule also fails the second prong of the major environmental rule standard.

Additionally, the proposed rule does not meet any of the applicability criteria in Texas Government Code, §2001.0225(a)-(a-4). The proposed rule would not exceed a standard set by federal or state law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency. The proposed rule implements and is adopted under the authority of new state laws and would not exceed any requirements of our delegated authority.

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

The commission evaluated the proposed rule and performed an analysis of whether the proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this proposed rule is to implement HB 1331, requiring the commission to increase the application fee for a municipal solid waste landfill permit or major permit amendment to $2,000. The proposed rule would substantially advance this stated purpose by amending §305.53(7) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill to $2,000.

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 increasing application fees does not affect a landowner’s rights in private real property because this rulemaking does not burden constitutionally; nor 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 regulations. Therefore, the proposed rule would not affect real property in a manner that is different than real property would have been affected without the proposed rules.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) and (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

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.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-006-305-WS. The comment period closes on June 16, 2020. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Ruben Meza, Municipal Solid Waste Permits Section, (512) 239-2580.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.0675, which requires the commission to increase the application fee for a permit or major permit amendment for a municipal solid waste landfill to $2,000.

The proposed amendment implements THSC, §361.0675.

§305.53. Application Fee.

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of $100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is $100. The fee for each disposal well which will be authorized to receive hazardous waste is $2,000.
(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than $2,000 and not more than $50,000 as calculated in accordance with the following:

(A) site evaluation - $100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;
(B) process analysis - $1,000;
(C) facility unit(s) analysis - $500 per unit;
(D) management/facility analysis - $500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the $500 per unit fee; except that multiple storage tanks or container storage area identical in type and use will be subject to a single $500-unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with Subchapter B of this chapter (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) §§295.131 - 295.140 of this title (relating to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (relating to Procedures for Application [Applications]).

(6) The permit application fees for wastewater disposal permits shall not be less than $100 and not more than $2,000 as follows.

(A) Agricultural permit applications fees are as follows:

(i) minor amendments - $100; and
(ii) new, amendment, and renewal applications - $300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

(i) minor amendments - $100;
(ii) new, amendment, and renewal applications less than 50,000 gallons per day - $300;
(iii) new, amendment, and renewal applications 50,000 to less than 100,000 gallons per day - $500;
(iv) new, amendment, and renewal applications 100,000 to less than 250,000 gallons per day - $800;
(v) new, amendment, and renewal applications 250,000 to less than 500,000 gallons per day - $1,200;
(vi) new, amendment, and renewal applications 500,000 to less than 1 million gallons per day - $1,600; and
(vii) new, amendment, and renewal applications 1 million and greater gallons per day - $2,000.

(C) Municipal stormwater [storm water] permit application fees as follows:

(i) minor amendments - $100; and
(ii) new, major amendments, and renewal applications - $2,000.

(D) Industrial wastewater permit application fees are based upon the United States Environmental Protection Agency (EPA) [EPA] major/minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities - $100;
(ii) minor amendments for major facilities - $400;
(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 Code of Federal Regulations, Part 400) - $300;
(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 Code of Federal Regulations, Part 400) - $1,200; and
(v) new, amendment, and renewal applications for major facilities - $2,000.

(7) The permit application fee for a permit, or a major permit amendment as provided in §305.62(j)(1) of this title (relating to Amendments), for a municipal solid waste landfill is $2,000.

(8) [(7)] The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Commission on Environmental Quality for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees in accordance with paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of $50 to be applied toward the cost of providing required notice. A fee of $15 is required with each application for renewal. This subsection does not apply to radioactive material licenses.

(c) Each application for a radioactive material license shall be accompanied by the applicable fee. The fee for a license shall be calculated in accordance with Chapter 336, Subchapter B of this title (relating to Radioactive Substance Fees).

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 May 1, 2020.
TRD-202001746
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-1806

CHAPTER 330. MUNICIPAL SOLID WASTE

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 1331, passed by the 86th Texas Legislature, 2019, creates new Texas Health and Safety Code (THSC), §361.0675, to require the commission to increase the application fee for a permit for a municipal solid waste (MSW) facility from $100 to $2,000. The commission determined that the $2,000 application fee would only apply to applications for a permit, or major permit amendment as provided in 30 Texas Administrative Code (TAC) §305.62(j)(1), for an MSW landfill. All other application fees would remain unchanged. Under §305.53(b), the application fee must also include an additional fee of $50 to be applied toward the cost of providing required notice. This would result in a total application fee of $2,050.

HB 1435, passed by the 86th Texas Legislature, 2019, amends THSC, §361.088, to require the commission to confirm information included in an application for a permit for an MSW facility by performing a site assessment before the agency issues the authorization. HB 1435 also requires the commission to specify the information that would be confirmed during the site assessment. The commission determined that the site assessments would only apply to applications for a permit, or major permit amendment as provided in §305.62(j)(1), for an MSW landfill. In addition, the information that would be confirmed during site assessments would be prescribed by the executive director and would be made available to the public.

HB 1953, passed by the 86th Texas Legislature, 2019, creates new THSC, §361.041, and amends THSC, §§361.003, 361.119, and 361.421, to require the commission to exempt facilities that reuse or convert recyclable materials, including post-use polymers and recoverable feedstocks, in a pyrolysis or gasification process, from regulation as an MSW facility.

On October 9, 2019, as a result of the Quadrennial Rules Review, the commission determined that the rules in Chapter 330, Subchapter F, are obsolete because the requirements of Subchapter F expired on January 1, 2009 (2019-066-330-WS).

In corresponding rulemaking published in this issue of the Texas Register, the commission also proposes to amend 30 TAC Chapter 305, Consolidated Permits.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as, grammatical corrections and updating cross-references. These changes are generally not specifically discussed in this preamble.

SUBCHAPTER A: GENERAL INFORMATION

§330.3, Definitions

The commission proposes to add definitions and amend other definitions to exempt pyrolysis and gasification of post-use polymers from regulation under Chapter 330.

The commission proposes §330.3(58) to add the definition of "Gasification" to reflect its exclusion from the definition of "processing" by HB 1953.

The commission proposes §330.3(59) to add the definition of "Gasification facility" to reflect its exclusion from the definition of "solid waste facility" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes §330.3(117) to add the definition of "Post-use polymers" to reflect its exclusion from the definition of "solid waste" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes to amend §330.3(120) to specify that pyrolysis facilities and gasification facilities are excluded from the definition of "processing."

The commission proposes §330.3(123) to add the definition of "Pyrolysis" to reflect its exclusion from the definition of "processing" by HB 1953.

The commission proposes §330.3(124) to add the definition of "Pyrolysis facility" to reflect its exclusion from the definition of "solid waste facility" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes §330.3(127) to add the definition of "Recoverable feedstock" to reflect its exclusion from the definition of "solid waste" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes to amend §330.3(128) to include post-use polymers and recoverable feedstocks that are converted through pyrolysis or gasification into valuable raw, intermediate, and final products as a "Recyclable material".

The commission proposes to amend §330.3(151)(D) to exclude pyrolysis facilities and gasification facilities.

§330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification

The commission proposes §330.13(g) to add an exempt activity for beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes.

SUBCHAPTER B: PERMIT AND REGISTRATION APPLICATION PROCEDURES

§330.59, Contents of Part I of the Application

The commission proposes §330.59(h)(1) to increase the application fee for a permit, or major permit amendment as provided in §306.62(j)(1), for an MSW landfill to $2,050. The subsequent paragraphs would be renumbered.

The commission proposes to amend §330.59(h)(2) to indicate that the application fee for a permit, registration, amendment, modification, or temporary authorization not subject to §330.59(h)(1) would be $150.

§330.73, Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities

The commission proposes §330.73(c), to require that before an application for a permit, or major permit amendment as provided in §306.62(j)(1) for an MSW landfill, would be issued, the executive director shall perform a site assessment of the facility, as prescribed by the executive director, to confirm information included in the application. The subsequent subsections would be re-lettered.

SUBCHAPTER F: ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and the state because of probable increased travel expenses and a fee increase for a permit or major permit amendment for an MSW landfill.

This rulemaking addresses changes required to implement several pieces of legislation, HB 1331, HB 1435, and HB 1953. HB 1435 requires the agency to perform onsite assessments as described in the proposed §330.73. The agency estimates that these additional assessments will increase travel expenses $3,461 per year for the next five years.

The proposed rulemaking references a proposed fee increase in Chapter 305; the fee for permits or major permit amendments for an MSW landfills will increase from $150 to $2,050 per application, or an increase of $1,900 each. Based on the data from the last five years, the agency anticipates receiving 11 applications per year for an annual increase to the state's General Revenue Account of $20,900 per year for the next five years.

The agency does not anticipate a fiscal impact from the proposed repeal of obsolete sections in Chapter 330, Subchapter F, nor does it anticipate a fiscal impact from the implementation of HB 1953 relating to the conversion of plastics and other recoverable materials through pyrolysis or gasification.

Units of local government may also see an impact if they seek to obtain a permit or a major permit amendment for an MSW landfill. The proposed rulemaking increases the fee from $150 to $2,050 per application. Currently 66% of MSW landfills are operated by units of local government. The agency estimates that seven applications would be received each year from units of local government.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be compliance with state law.

The proposed rulemaking may result in a fiscal impact for businesses or individuals if they seek to obtain a permit or major permit amendment for an MSW landfill. The proposed rulemaking increases the fee from $150 to $2,050 per application. The agency estimates that 33% of MSW landfills are operated by businesses or individuals. The agency anticipates approximately four applications per year from businesses or individuals.

The agency does not anticipate a fiscal impact from the repeal of obsolete sections in Chapter 330, Subchapter F, nor does it anticipate a fiscal impact from the implementation of HB 1953 relating to the conversion of plastics and other recoverable materials through pyrolysis or gasification.

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 would not adversely affect a local economy in a material way for the first five years that the proposed rules would be in effect.

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

The agency estimates that 13 small and micro-businesses may be affected by the fee increase for a permit or major permit amendment for an MSW landfill; it is estimated that four small businesses and nine micro-businesses meet this criterion and are currently regulated by the agency.

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 rulemaking would not adversely affect a small or micro-business in a material way for the first five years the proposed rules would be in effect.

In determining the potential for an adverse effect, the commission considered that an MSW landfill permit lasts for the duration of the facility and multiple fees are not necessary unless the business owner elects to expand the landfill. The commission also considered other factors such as the relative costs associated with financial assurance and expertise required for the permit application and facility design.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions nor eliminate current employee positions. The proposed rulemaking would increase the fee for a permit or major permit amendment for an MSW landfill. This would result in an increase of fees paid to the agency. The proposed rulemaking expands an existing regulation by requiring a site assessment of pending permit and major permit amendment applications for MSW landfills, as required by state law. The proposed rulemaking would repeal obsolete regulations in Chapter 330, Subchapter F. Additionally, the proposed rulemaking would decrease the number of individuals subject to its applicability by exempting pyrolysis and gasification facilities from the authorization requirements of Chapter 330, as required by state law. During the first five years, the proposed rulemaking should not impact positively or negatively the state economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rules to determine whether a regulatory analysis is required by Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined under Texas Government Code, §2001.0225(g)(3) as "a rule the specific intent of which is to protect the environment or reduce risks to human health from the environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."
The specific intent of the proposed rules satisfies the first prong of the definition. The rules implement the agency’s requirement to confirm application information by performing a site assessment and exempt the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes, both of which further the intent to protect the environment or reduce risks to human health from environmental exposure.

However, the proposed rules do not meet the second prong of the definition of “Major environmental rule” by adversely affecting, in a material way, the economy, a sector of the economy, productivity, competition, or jobs because the proposed rules do not require more from an applicant than is required by current rules. Additionally, the proposed rules are not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the proposed rules specify new administrative requirements and an exemption from the regulatory process for a recycling activity.

In addition, the proposed rules do not meet any of the applicability criteria in Texas Government Code, §2001.0225(a)(1–4). The proposed rules do not exceed a standard set by federal or state law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency. The proposed rules implement and would be adopted under the authority of new state laws and do not exceed any requirements of our delegated authority.

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

The commission evaluated these proposed rules and performed analysis of whether these proposed rules would constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to implement HB 1331, which creates new THSC, §361.0675 to require the commission to increase the application fee for a permit or major permit amendment for an MSW landfill to $2,000; HB 1435 amends THSC, §361.088 to require the commission to confirm information included in an application for a permit or major permit amendment for an MSW landfill by performing a site assessment of the facility before the agency issues the authorization; and HB 1953 creates new THSC, §361.041, and amends THSC, §§361.003, 361.119, and 361.421 to exempt from regulations the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes. The proposed rules would also repeal Chapter 330, Subchapter F which expired on January 1, 2009, and is, therefore, obsolete and no longer needed. The proposed rules would substantially advance this stated purpose by increasing the application fee for a permit or major permit amendment for an MSW landfill to $2,000; requiring the executive director to confirm information included in an MSW facility application by requiring a site assessment of the proposed facility before a permit or major amendment may be issued; exempting the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes from regulation under Chapter 330; and repealing Chapter 330, Subchapter F.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations would not affect a landowner’s rights in private real property because this rulemaking does not burden (constitutionally); nor 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 regulations. Therefore, the proposed rules would not affect real property in a manner that is different than real property would have been affected without the proposed rules.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to the proposed rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities. These rules ensure that new and existing solid waste facilities continue to be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and ensure compliance with federal Solid Waste Disposal Act standards, 42 United States Code, §§6901, et seq.

Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, do not create or have a direct or significant adverse effect on any CNRAs, and would update and enhance the commission’s rules concerning MSW facilities.

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.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-006-305-WS. The comment period closes on June 16, 2020. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/proposed_adopt.html. For further information, please contact Ruben Meza, P.E., Municipal Solid Waste Permits Section, (512) 239-2580.

SUBCHAPTER A. GENERAL INFORMATION
30 TAC §330.3, §330.13

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102 which provides the commission with the general powers to carry out its duties under the TWC; TWC, §§5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, which authorizes the commission by rule to establish and approve general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.041, which allows the commission to exempt from regulations the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes.

The proposed amendments implement THSC, §§361.003, 361.041, 361.119, and 361.421.

§330.3. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

1. 100-year flood—A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

2. Active disposal area—All landfill working faces and areas covered with daily and alternative daily cover.

3. Active life—The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.451, 330.453, 330.455, 330.457, and 330.459 [§§330.451 - 330.459] of this title (relating to Applicability; Closure Requirements for Municipal Solid Waste Landfills that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1993; and Closure Requirements for Municipal Solid Waste Storage and Processing Units [Closure and Post-Closure]).

4. Active portion—That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.451, 330.453, 330.455, 330.457, and 330.459 [§§330.451 - 330.459] of this title (relating to Applicability; Closure Requirements for Municipal Solid Waste Landfills that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993; Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993; and Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993; and Closure Requirements for Municipal Solid Waste Storage and Processing Units [Closure and Post-Closure]).

5. Airport—A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

6. Ancillary equipment—Any device that is used to distribute, measure, or control the flow of solid waste from its point of generation to a storage or processing tank(s), between solid waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

7. Animal crematory—A facility for the incineration of animal remains that meets the following criteria:

   A. control of combustion air to maintain adequate temperature for efficient combustion;
   B. containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
   C. control of the emission of the combustion products.

8. Aquifer—A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

9. Areas susceptible to mass movements—Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

10. Asbestos-containing materials—Include the following.

   A. Category I nonfibrous asbestos-containing material means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 Code of Federal Regulations (CFR) Part 763, §1, Polarized Light Microscopy.

   B. Category II nonfibrous asbestos-containing material means any material, excluding Category I nonfibrous asbestos-containing material, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

   C. Friable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

   D. Nonfibrous asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.


12. Battery—An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:
(A) primary batteries (dry cells);
(B) storage or secondary batteries;
(C) nuclear and solar cells or energy converters; and
(D) fuel cells.

(13) Battery acid (also known as electrolyte acid)--A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(14) Battery retailer--A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(15) Battery wholesaler--A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(16) Bird hazard--An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(17) Boiler--An enclosed device using controlled flame combustion and having the following characteristics.

(A) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.

(B) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units.

(C) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel.

(D) The unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.

(18) Brush--Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(19) Buffer zone--A zone free of municipal solid waste processing and disposal activities within and adjacent to the facility boundary on property owned or controlled by the owner or operator.

(20) Citizens’ collection station--A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles), except that in small communities where regular collections are not available, small quantities of commercial waste may be deposited by the generator of the waste. The facility may consist of one or more storage containers, bins, or trailers.

(21) Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes that because of its concentration, or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(22) Class 2 wastes--Any individual solid waste or combination of industrial solid waste that are not described as Hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(23) Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(24) Collection--The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(25) Collection system--The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment, and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(26) Commence physical construction--The initiation of physical on-site construction on a site for which an application to authorize a municipal solid waste management unit is pending, the construction of which requires approval of the commission. Construction of actual waste management units and necessary appurtenances requires approval of the commission, but other features not specific to waste management are allowed without commission approval.

(27) Commercial solid waste--All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(28) Compacted waste--Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(29) Composite liner--A liner system consisting of two components: the upper component must consist of a minimum 30-mil geomembrane liner or minimum 60-mil high-density polyethylene, and the lower component must consist of at least a two-foot layer of re-compact soil deposited in lifts with a hydraulic conductivity of no more than 1 x 10² centimeters/second. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(30) Compost--The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(31) Composting--The controlled biological decomposition of organic materials through microbial activity.
(32) Conditionally exempt small-quantity generator--A person that generates no more than 220 pounds of hazardous waste in a calendar month.

(33) Construction or demolition waste--Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(34) Container--Any portable device in which a material is stored, transported, or processed.

(35) Contaminate--To alter the chemical, physical, biological, or radiological integrity of ground or surface water by man-made or man-induced means.

(36) Contaminated water--Leachate, gas condensate, or water that has come into contact with waste.

(37) Controlled burning--The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(38) Discard--To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(39) Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(40) Discharge of dredged material--Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(41) Discharge of fill material--The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(42) Discharge of pollutant--Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(43) Displacement--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

(44) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(45) Dredged material--Material that is excavated or dredged from waters of the United States.

(46) Drinking-water intake--The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(47) Elements of nature--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(48) Endangered or threatened species--Any species listed as such under the Federal Endangered Species Act, §4, 16 United States Code, §1536, as amended or under the Texas Endangered Species Act.

(49) Essentially insoluble--Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 Code of Federal Regulations (CFR) Part 141, Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

(50) Existing municipal solid waste landfill unit--Any municipal solid waste landfill unit that received solid waste as of October 9, 1993.

(51) Experimental project--Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commision approval.

(52) Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(53) Fault--A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(54) Fill material--Any material used for the primary purpose of filling an excavation.

(55) Floodplain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(56) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(57) Gas condensate--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(58) Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel. The term does not include incineration.

(59) Gasification facility--A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification. The commission may not consider a gasification facility to be a hazardous waste management facility, a solid waste management facility, or an incinerator.

(60) [§58] Generator--Any person, by site or location, that produces solid waste to be shipped to any other person, or whose act or process produces a solid waste or first causes it to become regulated.

(61) [§59] Grease trap waste--Material collected in and from a grease interceptor in the sanitary sewer service line of a
commercial, institutional, or industrial food service or processing establishment, including the solids resulting from dewatering processes.

62) [660] Grit trap waste—Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

63) [661] Groundwater–Water below the land surface in a zone of saturation.

64) [662] Hazardous waste–Any solid waste identified or listed as a hazardous waste by the Administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 et seq., as amended.

65) [663] Holocene–The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

66) [664] Household waste–Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include brush.

67) [665] Incinerator–Any enclosed device that:

A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace, as defined in §335.1 of this title (relating to Definitions); or

B) meets the definition of infrared incinerator or plasma arc incinerator.

68) [666] Industrial solid waste–Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

69) [667] Inert material–A natural or man-made nonputrescible, nonhazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

70) [668] Infrared incinerator–Any enclosed device that uses electric-powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and is not listed as an industrial furnace as defined in §335.1 of this title (relating to Definitions).

71) [669] Injection well–A well into which fluids are injected.

72) [670] In situ–In natural or original position.

73) [671] Karst terrain–An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

74) [672] Lateral expansion–A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

75) [673] Land application of solid waste–The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

76) [674] Land treatment unit–A solid waste management unit at which solid waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such units are disposal units if the waste will remain after closure.

77) [675] Landfill–A solid waste management unit where solid waste is placed in or on land and which is not a pile, a land treatment unit, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

78) [676] Landfill cell–A discrete area of a landfill.

79) [677] Landfill mining–The physical procedures associated with the excavation of buried municipal solid waste and processing of the material to recover material for beneficial use.

80) [678] Leachate–A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

81) [679] Lead acid battery–A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

82) [680] License–

A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the jurisdictional limits of an extraterritorial jurisdiction of a municipality.

B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

83) [681] Liquid waste–Any waste material that is determined to contain "free liquids" as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

84) [682] Litter–Rubbish and putrescible waste.

85) [683] Low volume transfer station–A transfer station used for the storage of collected household waste limited to a total storage capacity of 40 cubic yards located in an unincorporated area that is not within the extraterritorial jurisdiction of a city.

86) [684] Lower explosive limit–The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

87) [685] Medical waste–Treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

A) single or multi-family dwellings; and

B) hotels, motels, or other establishments that provide lodging and related services for the public.
(88) [969] Monofill--A landfill or landfill cell into which only one type of waste is placed.

(89) [970] Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

(90) [971] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(91) [972] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(92) [973] Municipal solid waste landfill unit--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste (MSW) landfill unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSW landfill unit may be a new MSW landfill unit, an existing MSW landfill unit, a vertical expansion, or a lateral expansion.

(93) [974] New facility--A municipal solid waste facility that has not begun construction.

(94) [975] Nonpoint source--Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(95) [976] Non-regulated asbestos-containing material--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(96) [977] Notification--The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(97) [978] Nuisance--Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 26; and any other applicable regulation or statute.

(98) [979] Open burning--The combustion of solid waste without:
   (A) control of combustion air to maintain adequate temperature for efficient combustion;
   (B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
   (C) control of the emission of the combustion products.

(99) [980] Operate--To conduct, work, run, manage, or control.

(100) [981] Operating hours--The hours when the facility is open to receive waste, operate heavy equipment, and transport materials on- or off-site.

(101) [982] Operating record--All plans, submittals, and correspondence for a municipal solid waste facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(102) [1000] Operation--A municipal solid waste (MSW) site or facility is considered to be in operation from the date that solid waste is first received or deposited at the MSW site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(103) [1001] Operator--The person(s) responsible for operating the facility or part of a facility.

(104) [1002] Owner--The person that owns a facility or part of a facility.

(105) [1003] Permitted landfill--Any type of municipal solid waste landfill that received a permit from the State of Texas to operate and has not completed post-closure operations.

(106) [1004] Physical construction--The first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, the laying of underground pipework, or any work beyond the stage of excavation. Physical construction does not include land preparation, such as clearing, grading, excavating, and filling; nor does it include the installation of roads and/or walkways. Physical construction includes issuance of a building or other construction permit, provided that permanent construction commences within 180 days of the date that the building permit was issued.

(107) [1005] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and not listed as an industrial furnace as defined by §335.1 of this title (relating to Definitions).

(108) [1006] Point of compliance--A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the facility.

(109) [1007] Point source--Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(110) [1008] Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(111) [1009] Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(112) [1010] Polychlorinated biphenyl (PCB)--Any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contains such substance.

(113) [1011] Polychlorinated biphenyl (PCB) waste(s)--Those PCBs and PCB items that are subject to the disposal require-
ments of 40 Code of Federal Regulations (CFR) Part 761. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(114) [[1422]] Poor foundation conditions--Areas where features exist, indicating that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill unit.

(115) [[1444]] Population equivalent--The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards.

(116) [[1444]] Post-consumer waste--A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(117) Post-use polymers--Plastic polymers that derive from any household, industrial, commercial, or other sources of operations or activities that might otherwise become waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.

(118) [[1455]] Premises--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(119) [[1466]] Process to further reduce pathogens--The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(120) Processing--Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of waste, designed to change the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. The term does not include pyrolysis or gasification.

(121) [[1488]] Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(122) [[1499]] Putrescible waste--Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that are capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(123) Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere until melted and thermally decomposed and then cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel. The term does not include incineration.

(124) Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis. The commission may not consider a pyrolysis facility to be a hazardous waste management facility, a solid waste management facility, or an incinerator.

(125) Qualified groundwater scientist--A licensed geoscientist or licensed engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(126) Radioactive waste--Waste that requires specific licensing under 25 TAC Chapter 289 (relating to Radiation Control), and the rules adopted by the commission under the Texas Health and Safety Code.

(127) Recoverable feedstock--One or more of the following materials, derived from recoverable waste other than coal refuse, that has been processed so that it may be used as feedstock in a gasification facility:

(A) post-use polymers; and

(B) material, including municipal solid waste containing post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c).

(128) Recyclable material--A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. The term includes post-use polymers and recoverable feedstocks that are converted through pyrolysis or gasification into valuable raw, intermediate, and final products. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(129) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(130) Refuse--Same as rubbish.

(131) Registration--The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.
(132) [[126]] Regulated asbestos-containing material--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material; Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable-asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable-asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(133) [[127]] Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(134) [[128]] Resource recovery--The recovery of material or energy from solid waste.

(135) [[129]] Resource recovery facility--A solid waste processing facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise preparing and preparing solid waste for reuse.

(136) [[140]] Rubbish--Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brick, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(137) [[131]] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(138) [[132]] Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(139) [[133]] Salvaging--The controlled removal of waste materials for utilization, recycling, or sale.

(140) [[134]] Saturated zone--That part of the earth's crust in which all voids are filled with water.

(141) [[135]] Scavenging--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(142) [[136]] Scrap tire--Any tire that can no longer be used for its original intended purpose.

(143) [[137]] Seasonal high-water [high water] level--The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a facility.

(144) [[138]] Septage--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(145) [[139]] Site--Same as facility.

(146) [[140]] Site development plan--A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(147) [[141]] Site operating plan--A document, prepared by the design engineer in collaboration with the facility operator, that provides general instruction to facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer's design and the commission's regulations to protect human health and the environment and prevent nuisances.

(148) [[142]] Site operator--The holder of, or the applicant for, an authorization (or license) for a municipal solid waste facility.

(149) [[143]] Sludge--Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(150) [[144]] Small municipal solid waste landfill--A municipal solid waste landfill unit (Type IAE) at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average and/or a Type IV AE landfill unit at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average. A Type IAE landfill permit may include additional authorization for a separate Type IV AE landfill unit. If a permit contains dual authorization for Type IAE and Type IV AE landfill units, the permit must designate separate areas for the units and where all disposal cells will be located within each unit.

(151) [[145]] Solid waste--Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repurposing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code (USC), §§6901 et seq.); or[

(D) post-use polymers or recoverable feedstocks processed through pyrolysis or gasification that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 USC, §§6901 et seq.).

(152) [[146]] Solid waste management unit--A landfill, surface impoundment, waste pile, furnace, incinerator, kiln, injection well, container, drum, salt dome waste containment cavern, land treatment unit, tank, container storage area, or any other structure, vessel, appurtenance, or other improvement on land used to manage solid waste.

(153) [[147]] Source-separated recyclable material--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste (MSW), or transported in the same vehi-
cle as MSW, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(154) [1489] Special waste--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household [Materials Which Could Be Classified as] Hazardous Wastes);

(B) Class 1 industrial nonhazardous waste;

(C) untreated medical waste;

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);

(O) used oil;

(P) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;

(Q) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(R) lead acid storage batteries; and

(S) used-oil filters from internal combustion engines.

(155) [1490] Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations Part 257, Appendix II.

(156) [1491] Storage--The keeping, holding, accumulating, or aggregating of solid waste for a temporary period, at the end of which the solid waste is processed, disposed, or stored elsewhere.

(A) Examples of storage facilities are collection points for:

(i) only nonputrescible source-separated recyclable material;

(ii) consolidation of parking lot or street cleanings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; and

(iii) accumulation of used or scrap tires prior to transportation to a processing or disposal facility.

(B) Storage includes operations of pre-collection or post-collection as follows:

(i) pre-collection--that storage by the generator, normally on his premises, prior to initial collection; or

(ii) post-collection--that storage by a transporter or processor, at a processing facility, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(157) [1451] Storage battery--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(158) [1452] Structural components--Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill that is necessary for protection of human health and the environment.

(159) [1453] Surface impoundment--A natural topographic depression, man-made excavation, or diked area formed
primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, and lagoons.

(160) [1454] Surface water--Surface water as included in water in the state.

(161) [1455] Tank--A stationary device, designed to contain an accumulation of solid waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

(162) [1456] Tank system--A solid waste storage or processing tank and its associated ancillary equipment and containment system.

(163) [1457] Transfer station--A facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(164) [1458] Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(165) [1459] Transporter--A person that collects, conveys, or transports solid waste; does not include a person transporting his or her household waste.

(166) [1460] Trash--Same as Rubbish.

(167) [1461] Treatment--Same as Processing.

(168) [1462] Triple rinse--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(169) [1463] Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(170) [1464] Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(171) [1465] Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule):

(A) batteries, as described in 40 Code of Federal Regulations (CFR) §273.2;

(B) pesticides, as described in 40 CFR §273.3;

(C) thermostats, as described in 40 CFR §273.4;

(D) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(E) lamps, as described in 40 CFR §273.5.

(172) [1466] Unloading areas--Areas designated for unloading, including all working faces, active disposal areas, storage areas, and other processing areas.
(185) [129] White goods—Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(186) [1889] Working face--Areas in a landfill where waste has been deposited for disposal but has not been covered.

(187) [1281] Yard waste--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

§330.13. Waste Management Activities Exempt from Permitting, Registration, or Notification.

(a) A permit, registration, notification, or other authorization is not required for the disposal of up to 2,000 pounds per year of litter or other solid waste generated by an individual on that individual’s own land and is not required to comply with §330.19 of this title (relating to Deed Recordation) provided that:

(1) the litter or waste is generated on land that the individual owns;
(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;
(3) the disposal occurs on land that the individual owns;
(4) the disposal is not for a commercial purpose;
(5) the waste disposed of is not hazardous waste or industrial waste;
(6) the waste disposal method complies with Chapter 111, Subchapter B of this title (relating to Outdoor Burning); and
(7) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual’s residence per year is considered to be a nuisance.

(b) A permit, registration, notification, or other authorization is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:
   (A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or
   (B) the animals were killed on state highway rights-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway rights-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and
(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.171(c)(2) of this title (relating to Disposal of Special Wastes).

(c) A permit, registration, notification, or other authorization is not required for veterinarians performing activities as authorized by Texas Occupations Code, §801.361, Disposal of Animal Remains. Disposal by burning under this section must comply only with §111.209(3) of this title (relating to Exception for Disposal Fires).

(d) Except as required by §330.7(c)(2) and §330.9(a) of this title (relating to Permit Required; and Registration Required), a per-

mit, registration, notification, or other authorization is not required for transporters of municipal solid waste.

(e) A permit, registration, notification, or other authorization is not required for a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks.

(f) A permit, registration, notification, or other authorization is not required from a car wash facility for drying grit trap waste as long as these wastes are dried and disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to other property if the car wash facility and the property with the drying bed have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(g) A permit, registration, notification, or other authorization is not required for a gasification or pyrolysis facility. The owner or operator shall keep records onsite to demonstrate:

(1) that the primary function of the facility is to convert materials that have a resale value greater than the cost of converting the materials for subsequent beneficial use. The demonstration may consist of the following information:
   (A) documentation to support all costs associated with processing materials versus the resale value for the intended beneficial use; or
   (B) published indices or buyer contracts, proposed turnover rates, and calculations to show a resale value greater than the costs associated with processing materials.

(2) identification of the disposal site(s) authorized by the commission where all solid waste generated from converting the materials will be disposed of.

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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Texas Commission on Environmental Quality

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SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §330.59, §330.73

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105 (concern-
§361.017.

The commission's jurisdiction over all aspects of the management of MSW; THSC, §361.061, which authorizes the commission to request and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.0675, which requires the commission to increase the application fee for a permit or major permit amendment for an MSW landfill to $2,000; and THSC, §361.088, which requires the commission to confirm information included in an application for a permit or major permit amendment for an MSW landfill by performing a site assessment of the facility before the agency issues the authorization.

The proposed amendments implement THSC, §361.0675 and §361.088.


(a) General.

(1) Part I of the application consists of information that is required regardless of the type of facility involved. All items required by this section, §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits) and §305.45 of this title (relating to Contents of Application for Permit) must be submitted.

(2) Submittal of Part I by itself will not necessarily require publication of a notice of intent to obtain a municipal solid waste (MSW) permit under the provisions of Texas Health and Safety Code (THSC), §361.0665, or a notice concerning receipt of a permit application under the provisions of THSC, §361.079.

(3) For a permit application, submittal of Part I only will not allow a permit application to be declared administratively complete under the provisions of THSC, §361.068; §281.3 of this title (relating to Initial Review); and §281.18 of this title (relating to Applications Returned).

(b) Facility location. The owner or operator shall:

(1) provide a description of the location of the facility with respect to known or easily identifiable landmarks;

(2) detail the access routes from the nearest United States or state highway to the facility; and

(3) provide the longitudinal and latitudinal geographic coordinates of the facility.

(c) Maps.

(1) General. The maps submitted as a group shall show the elements contained in §305.45 of this title and the following:

(A) latitudes and longitudes; and

(B) the property boundary of the facility.

(2) General location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of one-half inch equals one mile. If TxDOT publishes more detailed maps of the proposed facility area, the more detailed maps shall also be included in Part I. The latest revision of all maps shall be used.

(3) Land ownership map with accompanying landowners list.

(A) These maps shall comply with the requirements in §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 1/4 mile of the facility, and all mineral interest ownership under the facility.

(B) The adjacent and potentially affected landowners' list shall be keyed to the land ownership maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title, and shall include all property owners within 1/4 mile of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners' names and mailing addresses derived from the real property appraisal records as listed on the date that the application is filed will comply with this paragraph. Notice of an application is not defective if property owners or mineral interest owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(d) Property owner information. Property owner information shall include the following:

(1) the legal description of the facility;

(A) the legal description of the property and the county, book, and page number or other generally accepted identifying reference of the current ownership record;

(B) for property that is platted, the county, book, and page number or other generally accepted identifying reference of the final plat record that includes the acreage encompassed in the application and a copy of the final plat, in addition to a written legal description;

(C) a boundary metes and bounds description of the facility signed and sealed by a registered professional land surveyor; and

(D) drawings of the boundary metes and bounds description; and

(2) a property owner affidavit signed by the owner that includes the following:

(A) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the facility;

(B) for facilities where waste will remain after closure, acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that the land will be used for a solid waste facility prior to the time that the facility actually begins operating as a municipal solid waste landfill facility, and to file a final recording upon completion of disposal operations and closure of the landfill units in accordance with §330.19 of this title (relating to Deed Recordation); and

(C) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period, if required, after closure for the purpose of inspection and maintenance.

(e) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title. Normally, this shall be a one-page certificate of incorporation issued by the secretary of state. The owner or operator shall list all persons having over a 20% ownership in the proposed facility.
Evidence of competency. Requirements for demonstrating evidence of competency are as follows.

(1) The owner or operator shall submit a list of all Texas solid waste sites that the owner or operator has owned or operated within the last ten years. The site name, site type, permit or registration number, county, and dates of operation shall also be submitted.

(2) The owner or operator shall submit a list of all solid waste sites in all states, territories, or countries in which the owner or operator has a direct financial interest. The type of site shall be identified by location, operating dates, name, and address of the regulatory agency, and the name under which the site was operated.

(3) The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(4) The names of the principals and supervisors of the owner's or operator's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities.

(5) For landfill permit applications only, evidence of competency to operate the facility shall also include landfiling and earth-moving experience if applicable, and other pertinent experience, or licenses as described in Chapter 30 of this title possessed by key personnel, and the number and size of each type of equipment to be dedicated to facility operation.

(6) For mobile liquid waste processing units, the owner or operator shall submit a list of all solid waste, liquid waste, or mobile waste units that the owner or operator has owned or operated within the past five years. The owner or operator shall submit a list of any final enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government within the last five years relating to compliance with applicable legal requirements relating to the handling of solid or liquid waste under the jurisdiction of the commission or the United States Environmental Protection Agency. Applicable legal requirement means an environmental law, regulation, permit, order, consent decree, or other requirement.

(g) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(h) Application fees.

(1) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a permit, or a major permit amendment as provided in §305.62(j)(1) of this title (relating to Amendments), for a municipal solid waste landfill is $2,050.

(2) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a permit, registration, amendment, modification, or temporary authorization not specified in paragraph (1) of this subsection is $150.

(3) For a development permit or registration over a closed municipal solid waste landfill, THSC, §361.532, requires the Texas Commission on Environmental Quality (TCEQ) to charge an application fee equal to the actual cost of reviewing the application prior to the issuance of a development permit. The owner or operator shall submit an initial application fee of $2,500 to be submitted in the form of a check or money order made payable to the TCEQ. Upon completion of the review process, including the public meeting, the executive director shall present the owner or operator with a refund for an overcharge, or an invoice for an undercharge.

§330.73. Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities.

(a) If at any time during the life of the facility the owner or operator becomes aware of any condition in the permit or registration that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the facility in compliance, the owner or operator shall submit to the executive director requested changes to the permit or registration in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) and must be approved prior to their implementation.

(b) All drawings or other sheets prepared for requested revisions must be submitted following the format in §330.57(g) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). All revised engineering and geoscientific plans, drawings, and reports shall be signed and sealed by a licensed professional engineer or geoscientist as specified in §330.57(f) of this title.

(c) Before a permit, or a major permit amendment as provided in §305.62(j)(1) of this title, for a municipal solid waste (MSW) landfill is issued, the executive director shall perform a site assessment of the facility, as prescribed by the executive director, to confirm information included in the application.

(d) A preconstruction conference shall be held prior to commencement of physical construction for an MSW (a municipal solid waste (MSW)) landfill facility, a vertical landfill expansion, or a lateral landfill expansion. The preconstruction conference shall not be held more than 90 days prior to the date that construction is scheduled to begin. All aspects of the permit, construction activities, and inspections shall be discussed. Additional preconstruction conferences may be held prior to the opening of a new MSW landfill unit. The executive director and owner's representatives, including the engineer, the geotechnical consultant, the contractor, and the facility manager, shall attend the preconstruction conference.

(e) The owner or operator shall obtain and submit certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration or permit and in general compliance with the regulations prior to initial operation. The owner or operator shall maintain that certification on site for inspection.

(f) After all initial construction activity has been completed and prior to accepting any solid waste, the owner or operator shall contact the executive director and region office in writing and request a pre-opening inspection. A pre-opening inspection shall be conducted by the executive director within 14 days of notification by the owner or operator that all construction activities have been completed, accompanied by representatives of the owner or operator and the engineer.

(g) The MSW facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the permit or registration and this chapter have been received and found to be acceptable, and that construction is in compliance with the permit or registration and the approved site development plan. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection, the facility shall be considered approved for acceptance of waste.
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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Texas Commission on Environmental Quality  
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SUBCHAPTER F. ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL  

Statutory Authority  
The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105 which authorize the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA) §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste. 
The proposed repeals implement THSC, §§361.002, 361.011, and 361.024.  

§330.261. Applicability and Purpose.  
§330.263. Laboratory Analyses.  
§330.265. Reporting Requirements.  
§330.267. Records Control.  
§330.273. Laboratory Control Samples and Laboratory Control Sample Duplicates.  
§330.275. Surrogates.  
§330.277. Data Reduction, Evaluation, and Review.  
§330.279. Matrix Interferences and Sample Dilutions.  
§330.281. Chain of Custody.  
§330.283. Sample Collection and Preparation.  
§330.289. Laboratory Case Narrative.  
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TITLE 34. PUBLIC FINANCE  
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS  
CHAPTER 3. TAX ADMINISTRATION  
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES  
34 TAC §3.366  
The Comptroller of Public Accounts proposes the repeal of §3.366, concerning internet access services. The comptroller proposes §3.366 to reflect federal adoption of the Internet Tax Freedom Act (ITFA) of 2016 which prohibits taxing of internet access.  
ITFA included a grandfather clause for those state and local governments, including Texas, who imposed a tax on internet services prior to October 1, 1998. This clause allows Texas to collect tax on internet services until the clause expires on June 30, 2020.  
The repeal of this section is effective July 1, 2020.  
Tom Currah, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government. During the first five years that the proposed repeal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules’ applicability; and will not positively or adversely affect this state’s economy.  
Mr. Currah also has determined the repeal would benefit the public by conforming with federal law. There would be no significant anticipated economic cost to the public. This repeal is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.  
Comments on the repeal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.  
The repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.  
The repeal has no effect on any other statute.
§3.366. Internet Access Services.

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 28, 2020.

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William Hamner
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Comptroller of Public Accounts
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 475-0387