

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** March 27, 2013

**DATE OF REQUEST:** March 8, 2013

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Michael Parrish, (512) 239 - 2548

**CAPTION: Docket No. 2011-1225-RUL.** Consideration of the adoption of amendments to Sections 291.22, 291.102, 291.105, and 291.113 of 30 TAC Chapter 291, Utility Regulations and Sections 293.11, 293.32, 293.41, 293.51, and 293.81 of 30 TAC Chapter 293, Water Districts.

The adopted rulemaking would implement House Bill (HB) 679, HB 1901, Senate Bill (SB) 18, SB 512, SB 573, SB 914, and SB 1234, 82nd Legislature, 2011, Regular Session. The adopted amendments would: impact a district's ability to increase the allowable change order amount; exempt bonds issued by a public utility agency from executive director approval; alter eminent domain powers of a municipal utility district outside its boundary; modify the election qualifications for a fresh water supply district director; exempt bonds issued by certain multi-county districts from executive director approval; limit the time for certain municipalities to consent to certificates of public convenience and necessity (CCN) within the corporate limits or extraterritorial jurisdiction (ETJ) of the municipality and set conditions for granting the CCN without the municipality's consent; alter a city's ability to extend a CCN beyond its ETJ if a landowner elects to exclude property; add a provision that a CCN applicant or CCN holder that has land removed by landowner election is not required to provide service to the removed land for any reason; change the requirements for a release from a CCN; specify that having federal loans is not a bar to release; and add requirements for notice of utility rate changes. The proposed rules were published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8731) for Chapter 291 and (37 TexReg 8741) for Chapter 293. (Kent Steelman, James Aldredge) (Rule Project No. 2011-055-290-OW)

L'Oreal Stepney, P.E.

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**Deputy Director**

Linda Brookins

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**Division Director**

Michael Parrish

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**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners

**Date:** March 8, 2013

**Thru:** Bridget C. Bohac, Chief Clerk  
Zak Covar, Executive Director

**From:** L'Oreal W. Stepney, P.E., Deputy Director  
Office of Water

**Docket No.:** 2011-1225-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 291, Utility Regulations  
Chapter 293, Water Districts  
HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914 and SB 1234: Utilities and Districts  
Rule Project No. 2011-055-293-OW

### **Background and reason(s) for the rulemaking:**

In 2011, the 82nd Legislature passed: House Bill (HB) 679, filed by Representative Button; HB 1901, filed by Representative Keffer; Senate Bill (SB) 18, co-authored by Senator Estes; SB 512, filed by Senator Hegar; SB 573, co-authored by Senator Nichols; SB 914, filed by Senator Wentworth; and SB 1234, filed by Senator West.

HB 679 amended Texas Water Code (TWC), §49.273 to allow a district's board to grant a contract manager authority to approve change orders that increase or decrease the contract amount by \$50,000 or less.

HB 1901 amended TWC, §49.181(a) and (h), §49.052(f), and §49.183(d) by providing an exemption from the executive director's approval for bonds issued by a public utility agency.

SB 18 amended TWC, §54.209 to further limit the eminent domain power of a municipal utility district (MUD) outside of its boundary.

SB 512 amended TWC, §53.063, redefining the qualifications of supervisors of a fresh water supply district (FWSD).

SB 573 amended existing law on granting certificates of public convenience and necessity (CCNs) for retail utility water or sewer service. SB 573 amended TWC, §13.245, to denote that the TCEQ may grant a CCN to a retail public utility within the corporate limits of the municipality or its extraterritorial jurisdiction (ETJ) without the municipality's consent under certain conditions if the municipality does not consent to the inclusion of the CCN before the 180th day after a landowner or retail public utility has formally requested service from the municipality. SB 573 also provided additional criteria which the TCEQ shall consider before granting the CCN to the retail public utility. If the CCN is granted, the TCEQ must include a condition that facilities will be designed and constructed

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according to the municipality's standards. SB 573 added provisions to the existing TWC, §13.2452(c-4) and (c-5) to specify the counties in which the provisions of the amended TWC, §13.254 do not apply. SB 573 also amended TWC, §13.2451 to specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out of a CCN and to specify the counties in which the opt-out provision does not apply. In addition to these amendments, SB 573 amended TWC, §13.246 to stipulate that a CCN applicant that has land removed from the requested area because a landowner elected to opt-out may not be required to provide service to the removed land for any reason. Lastly, TWC, §13.254 was amended by SB 573 to: change the requirements for when the TCEQ may revoke a CCN; shorten the review period for certain types of expedited revocation requests filed under TWC, §13.254(a-1) from 90 to 60 days; and create a process allowing a landowner owning at least a 25-acre tract to request an expedited release from a CCN in certain counties. Additional provisions were also added to TWC, §13.254, establishing the criteria for requesting an expedited release of a CCN under this provision, to specify the counties in which it applies, and to add requirements for notice of utility rate changes.

SB 914 amended TWC, §49.181 to allow an exemption from executive director approval for bonds issued by a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority.

SB 1234 amended Local Government Code, §375.022 to allow a municipal management district (MMD) to include within its creation petition a descriptive name followed by the phrase "improvement district" and verifiable landmarks in its boundary description.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

This adopted rulemaking implements HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914, and SB 1234. No additional actions are adopted beyond administrative changes.

**B.) Scope required by federal regulations or state statutes:**

There are no changes required by federal rule. State statutes: This rulemaking is required to implement HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914, and SB 1234.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

Nonsubstantive administrative changes have been made to the adopted rule to conform with *Texas Register* requirements.

**Statutory authority:**

TWC, §5.103

**Effect on the:**

**A.) Regulated community:**

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Utility districts are affected by the enacted legislation. Specifically, the enacted legislation affects certain districts' contracting and bonding procedures, use of eminent domain powers, requirements for board supervisors, and boundary data requirements for creation petitions.

Retail public utilities and municipalities are also affected by the enacted legislation in that certain utilities' procedures for obtaining CCN service area within municipal boundaries has changed, certain municipalities' procedures for obtaining CCN service area beyond its boundaries has been altered, procedures by which landowners may remove their land from CCN service areas has been streamlined, and utilities will have new requirements for completion of water and sewer rate applications.

**B.) Public:**

HB 679, HB 1901, SB 914, and SB 1234 do not affect the general public nor do they create a new group of affected persons. SB 18 affects the general public and affected persons owning property outside of a MUD's boundary because this bill sets further eminent domain power limitations outside of a MUD's boundaries; however, SB 18 does not create a new group of affected persons. SB 512 also affects the general public and affected persons desiring to be a supervisor of a FWSD; however it does not create a new group of affected persons.

SB 573 affects any affected person whose property is located in the corporate boundaries or ETJ of a municipality where a retail public utility is seeking to obtain a water and/or sewer CCN. Additionally, SB 573 affects any affected person owning 50 acres or more either wholly or partially within the boundaries of an existing CCN by reducing the review period from 90 to 60 days. SB 573 creates a group of affected persons that were not affected before, comprised of affected persons owning a 25-acre tract that is wholly or partially located within the boundaries of an existing CCN in certain counties. SB 573 created a process for this group of affected persons to allow them to request an expedited release from an existing CCN. If a landowner is successful in getting his land removed from a CCN, the landowner may be required to compensate the CCN holder for losses associated with the removed area.

**C.) Agency programs:**

For the first five-year period the adopted rules are in effect, the agency would use currently available resources when administering or enforcing the provisions.

**Stakeholder meetings:**

No stakeholder meetings were held. There was a public hearing held on December 4, 2012.

**Public comment:**

The comment period began on November 2, 2012. The commission held a public hearing on December 4, 2012, in Austin, Texas. The comment period closed on December 10, 2012.

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The commission received oral and written comments, including suggested changes to proposed §291.113, related to the implementation of SB 573 from: Aqua Water Supply Corporation, Markout Water Supply Corporation, SouthWest Water Company, and Texas Rural Water Association. All comments expressed concern with the procedure by which compensation will be paid to a utility following removal of service area from its CCN through the expedited release process under SB 573. The commission responded that this rulemaking merely adopts and implements new statutory requirements enacted by the 82nd Legislature. The commission has no authority to substantively alter the statutory requirements or omit any of them from the commission's rules.

No comments were submitted regarding the proposed changes to Chapter 293.

**Significant changes from proposal:**

In response to comments, §291.113(s) was amended to remove the phrase "required by a retail public utility seeking to serve the decertified area," to be consistent with SB 573, which allows for compensation by the petitioner.

**Potential controversial concerns and legislative interest:**

The executive director has processed several requests for decertification of a CCN under TWC, §13.254(a-5) for a landowner owning 25 acres or more either wholly or partially within a CCN in certain counties. The regulated community, especially non-profit water supply corporations, has expressed concerns regarding whether the land can be released from a CCN without taking federal debt into consideration before the decertification.

The executive director's decision to approve a decertification application was challenged in federal court; this matter remains pending.

**Does this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

Without approval, Chapters 291 and 293 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

**Key points in the adoption rulemaking schedule:**

<b>Texas Register proposal publication date:</b>	November 2, 2012
<b>Anticipated Texas Register publication date:</b>	April 12, 2013
<b>Anticipated effective date:</b>	April 18, 2013
<b>Six-month Texas Register filing deadline:</b>	May 2, 2013

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**Agency contacts:**

Kent Steelman, Rule Project Manager, 239-5143, Water Supply Division

James Aldredge, Staff Attorney, 239-2496

Michael Parrish, Texas Register Coordinator, 239-2548

**Attachments**

HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914, and SB 1234

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Susana M. Hildebrand, P.E.  
Anne Idsal  
Curtis Seaton  
Tucker Royall  
Office of General Counsel  
Kent Steelman  
Michael Parrish

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§291.22, 291.102, 291.105, and 291.113.

Section 291.113 is adopted *with change* to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8731). Sections 291.22, 291.102, and 291.105 are adopted *without changes* to the proposed text and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

In 2011, the 82nd Legislature passed Senate Bill (SB) 573, relating to the granting of certificates of public convenience and necessity (CCNs). SB 573 amended Texas Water Code (TWC), §§13.245, 13.2451, 13.246, and 13.254. TWC, §13.245(b) and (c-1) - (c-3) were amended to specify that if a municipality has not consented to the inclusion of a CCN within its boundaries or extraterritorial jurisdiction (ETJ) before the 180th day after a landowner or retail public utility has made a formal request for service then the TCEQ may grant the CCN to the retail public utility without the municipality's consent under certain conditions. SB 573 also provided additional criteria which the TCEQ shall consider before it grants the CCN to the retail public utility. If the CCN is granted, the TCEQ must include a condition that facilities will be designed and constructed according to the municipality's standards. TWC, §13.245(c-4) and (c-5) were added by SB 573 to specify the counties in which the provisions of the TWC, §13.254(c-1) - (c-3)

do not apply.

TWC, §13.2451(b) was amended by SB 573 to specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by TWC, §13.246(h). TWC, §13.2451(b-1) and (b-2) were added to specify the counties in which the provision does not apply.

TWC, §13.246(h) was amended by SB 573 to stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason.

TWC, §13.254 was amended by SB 573 to change the requirements for when the TCEQ may revoke a CCN, modify the requirements for petitioning for the release of land from a CCN, and also shorten the TCEQ's review period for reviewing a release petition from 90 to 60 calendar days. TWC, §13.254(a-5) and (a-6) created a process allowing a landowner of at least a 25-acre tract to request an expedited release from a CCN in counties meeting specific criteria. TWC, §13.254(a-7) added requirements for notice of utility rate changes. TWC, §13.254(a-8) modified the criteria for reviewing a release petition filed under TWC, §13.254(a-1). TWC, §13.254(a-9) - (a-11) were added to specify the counties in which the modifications to the CCN release process made by TWC, §13.254(a-8) do not apply.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to implementation of the state law discussed previously, the commission adopts administrative changes to conform with *Texas Register* requirements.

#### *§291.22, Notice of Intent to Change Rates*

The commission amends §291.22(a)(4) to remove the word "and"; add §291.22(a)(5) - (7); and renumber existing subsection (a)(5). The adopted amendment specifies that a utility shall include with the statement of intent provided to each landowner or ratepayer: a notice of a proceeding under §291.113, the reason or reasons for the proposed rate change, and any bill payment assistance program available to low-income ratepayers. The commission adopts this amendment to implement the changes made to TWC, §13.254, in SB 573 and for consistency with *Texas Register* requirements.

#### *§291.102, Criteria for Considering and Granting Certificates or Amendments*

The commission amends §291.102(h) to specify that an applicant for a CCN that has land removed from its proposed service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any

reason, including the violation of law or commission rules by the water and/or sewer system of another person. The commission adopts this amendment to implement the changes made to TWC, §13.246(h) in SB 573.

*§291.105, Contents of Certificate of Convenience and Necessity Applications*

The commission amends §291.105(b)(2) by removing the reference of "paragraph (3)" and replacing it with a reference to "paragraphs (3) - (7)." The adopted amendment specifies that, except as provided by paragraphs (3) - (7), the commission may not grant a CCN to a retail public utility for a service area within the boundaries or ETJ of a municipality without the consent of the municipality. The municipality may not unreasonably withhold its consent. As a condition of the consent, a municipality may require that all water and/or sewer facilities be designed and constructed in accordance with the municipality's standards for facilities. The commission adopts this amendment to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(4) and its subdivisions to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(4) to denote that the commission may grant a CCN to a retail public utility without a municipality's consent under certain circumstances as outlined in adopted §291.105(b)(4)(A) - (C) if the municipality has not consented under §291.105(b) before the 180th day after the date a landowner or a retail public utility submits a formal request for service to the municipality. Adopted §291.105(b)(4)(A) specifies that the commission may grant the CCN without the

municipality's consent if the commission makes findings required by §291.105(b)(3). Adopted §291.105(b)(4)(B) specifies that the commission may grant the CCN without the municipality's consent if the municipality has not entered into a binding commitment to serve the requested area on or before the 180th day after the date the formal request was made. In addition, the commission adds §291.105(b)(4)(C) and its subdivisions to specify that the commission may grant the CCN without the municipality's consent if the landowner or retail public utility that submitted the formal request has not unreasonably refused to comply with the municipality's service extension and development process; or if the landowner or retail public utility have not entered into a contract for water and/or sewer services with the municipality. The commission also adds §291.105(b)(5) to denote that if a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification. The commission adopts this addition to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(6) to implement changes made to TWC, §13.245(b) by SB 573 by stipulating that the commission must include as a condition of a CCN granted under TWC, §13.245(c-1) or (c-2) that all water and sewer facilities shall be designed and constructed in accordance with the municipality's standards for water and sewer facilities. The commission adds

§291.105(b)(7) to specify that paragraphs (4) - (6) do not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission adopts this addition to implement the changes made to TWC, §13.245(b) by SB 573. The commission further renumbers existing §291.105(b)(4) and (5) to §291.105(b)(8) and (9) for consistency purposes.

The commission amends §291.105(c)(1) to specify that, except as provided by paragraph (2), if a municipality extends its ETJ to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its CCN area under the rights granted by its certificate and Chapter 291. The adopted rule changes implement TWC, §13.2451(a) - (b-3) as amended by SB 573. The commission amends §291.105(c)(2), adds subsection (c)(3), and renumbers existing subsection (c)(3) to implement changes made to TWC, §13.2451(a) - (b-3) by SB 573. The adopted amendment specifies that the commission may not extend a municipality's CCN beyond its ETJ if an owner of land that is located wholly or partly outside the ETJ elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h), this subsection does not apply to a transfer of a certificate as approved by the commission. The adopted amendment also specifies that paragraph (2) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

*§291.113, Revocation or Amendment of Certificate*

The commission amends §291.113(a) - (d) and (h) and adds §291.113(r) - (v). Section 291.113(a) is amended to remove a reference to the source of a motion or petition to revoke or amend a CCN. Section 291.113(b) is amended to specify that the fact that the certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of a petitioner's land and the receipt of services from an alternative provider. The adopted amendment to this subsection also requires that on the day the petitioner submits the petition to the commission, the petitioner shall send a copy of a petition to the certificate holder. The commission adopts this amendment to implement changes made to TWC, §13.245 by SB 573. The commission amends §291.113(b)(1)(C) to remove the word "and" and adds §291.113(b)(1)(D) and (E) to provide additional criteria that a petitioner must demonstrate when requesting to have the petitioner's land removed from a CCN under §291.112(a). Section 291.113(b)(1)(D) is added to denote that a petitioner shall provide a written request for service to the certificate holder identifying the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder. Section 291.113(b)(1)(E) is added to specify that the petitioner shall also identify the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested. In addition, the commission renumbers existing §291.113(b)(1)(D) - (F) for consistency purposes. The adopted rule changes implement TWC, §13.245(a-1) as

amended by SB 573. Furthermore, the commission amends §291.113(b)(3)(B) to clarify that the commission shall consider whether the certificate holder is capable of providing the service at the approximate cost and that the alternative provider is capable of providing a comparable level of service. The adopted rule changes implement TWC, §13.245(a-1) as amended by SB 573. Moreover, the commission amends §291.113(b)(4) to remove the phrase "is capable of providing" and instead specifies that the alternate service provider must possess the financial, managerial, and technical capability to provide continuous and adequate service to the area being removed from the certificate. Also, the adopted amendment specifies that service must be provided at a reasonable cost to support the existing and projected service demands in the area. The commission adopts this amendment to implement changes made to TWC, §13.245(a-1) by SB 573. The commission amends §291.113(c) to update cross-references to other subsections. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission amends §291.113(d) by changing the time frame from 90 to 60 calendar days for which the commission or executive director shall grant or deny the petition to remove the property from the certificated area to implement changes made to TWC by SB 573. The commission also amends §291.113(h) to clarify that a retail public utility may not provide retail water and/or sewer service in an area that has been decertified under this section unless the retail public utility or petitioner provides compensation for any property rendered useless or valueless. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB

573. The commission adds §291.113(r) to denote that an owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for the expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Smith County, a county with a population of a least one million, or a county adjacent to a county with a population of at least one million (except for Medina County). The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. The commission adds §291.113(s) to require the petitioner to provide a copy of the petition to the CCN holder, specify that the CCN holder may file a response to the petition, and to indicate that the commission or the executive director shall grant a petition received under adopted subsection (r) no later than 60 calendar days after the date the landowner files the petition. The commission or the executive director may not deny a petition filed under adopted subsection (r) based on the fact that a certificate holder is a borrower of federal debt. The commission may require an award of compensation by the petitioner to a decertified retail public utility. In response to comments, §291.113(s) was amended to remove the phrase "required by a retail public utility seeking to serve the decertified area" to be consistent with SB 573, which allows for compensation by the petitioner. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission adds §291.113(t) to specify that the commission is not required to find that the proposed alternative provider is capable of providing better service than the CCN holder, but only that the alternative provider is capable of providing service to the

area that a petitioner seeks to have released from a CCN under subsection (b) if the CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. The commission adds §291.113(u) to specify that subsection (t) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Lastly, the commission adds §291.113(v) to indicate that a certificate holder that has land removed in accordance with this section may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573.

### **Final Regulatory Impact Analysis Determination**

The commission has reviewed these adopted amendments to Chapter 291 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of Texas Government Code, §2001.0225.

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (See Texas Government Code, §2001.0225(g)(3)). Here, the adopted amendments do not meet those qualifications where the primary purpose of this rulemaking initiative is to create and amend other rules in Chapter 291 to remain consistent with the statutory changes set forth in SB 573. This rulemaking initiative adopts modifications to the rules within Chapter 291 to accomplish the following: (1) altering the conditions under which the TCEQ may grant CCNs within a municipality's ETJ without consent from that municipality; (2) specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by the TWC; (3) stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason; (4) change the requirements for when the TCEQ may revoke a CCN and shorten the review period for an expedited release from 90 to 60 calendar days; (5) create a process allowing a landowner of at least a 25-acre tract to request expedited release in counties meeting specific criteria; and, (6) add additional requirements for a utility rate change notice. While the commission has jurisdiction over retail public utilities and authority to draft rules impacting those utilities, these adopted changes to the operating processes of water and/or sewer utilities are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the adopted rulemaking does not constitute a

major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The purpose of this adopted rulemaking action is to keep the commission's rules consistent with the changes in TWC, Chapter 13 made by the legislature in SB 573. The adopted rules would substantially advance this stated purpose because these changes impact the abilities of municipalities and retail public utilities to obtain a CCN or have a CCN revoked, and impact the requirements for notice of rate changes by investor-owned utilities.

Promulgation and enforcement of these adopted rules regarding the operation of water and/or sewer utilities would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does

not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The statutory changes set forth in SB 573 also do not impact private real property rights. Specifically, private real property rights do not pertain to certification of retail water and/or sewer service areas by the commission. Thus, these adopted rules do not impose a burden on private real property but instead benefit society by improving and streamlining the process by which certain areas are certified for water and/or sewer service, which should ultimately improve the quality of service that is provided to utility customers. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted 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 adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the Coastal

Management Program.

### **Public Comment**

The commission held a public hearing on December 4, 2012. The comment period closed on December 10, 2012. The commission received comments from Aqua Water Supply Corporation (Aqua WSC), Markout Water Supply Corporation (Markout WSC), SouthWest Water Company (SWWC), and Texas Rural Water Association (TRWA).

All commenters suggested changes to proposed §291.113, related to the implementation of SB 573, as described in the RESPONSE TO COMMENTS section of the preamble.

### **Response to Comments**

Markout WSC commented that §291.113(b) would be a burden to water supply corporations and districts that have federal indebtedness. In addition, Markout WSC expressed concern with §291.113(h) regarding the compensation to a retail public utility for removal of property from the retail public utility's certificated service area (also known as the CCN area).

**The commission responds that this rulemaking merely adopts and implements new statutory requirements enacted by the 82nd Legislature, 2011. The commission has no authority to substantively alter the statutory**

**requirements or omit any of them from the commission's rules. No changes have been made in response to this comment.**

Aqua WSC, SWWC, and TRWA expressed concern regarding the "timing" of compensation under TWC, §13.254(a-5). Each commenter recommended changes to §291.113(i) to address the timing of compensation; specifically, the commenters requested that the timing of the determination of compensation be based on the date of issuance of a decertification order under TWC, §13.254(a-5).

**The commission responds that it lacks the authority to make the requested changes under SB 573, as enacted by the legislature. The commenters assert that the legislature intended for a determination of compensation to take place when an expedited release is granted. Newly added TWC, §13.254(a-6) provides that compensation to a decertified utility be granted "as otherwise provided by this section." TWC, §13.254 provides that compensation take place when another utility seeks to provide service in the decertified area. Texas Government Code, §311.021 provides that in construing a statute, the legislative history of the bill may be considered. The Legislative Budget Board's bill analysis for SB 573 states that under the legislation, "compensation would likely be limited and uncertain, because the award of compensation would not occur until another retail public**

**utility would propose to serve the area." Based on the plain language of TWC, §13.254, and the Legislative Budget Board's analysis, the commission has construed SB 573 to expressly require that a determination of compensation be made as provided for in TWC, §13.254(d) - (g). Specifically, a determination of whether compensation should be given to the decertified utility will occur at the time another utility seeks to provide service in the decertified area. No changes have been made in response to these comments.**

Aqua WSC, SWWC, and TRWA expressed concern that the proposed rule does not provide that the petitioner agree to the independent appraiser for determination of compensation required under §291.113(r). SWWC and TRWA recommended changes to §291.113(j) to specify that the petitioner should participate in the determination of compensation required under §291.113(r).

**The commission responds that it lacks the authority to make the requested changes under SB 573, as enacted by the legislature. The commenters have asserted that the legislature intended for compensation to a decertified utility be made to the utility by the petitioner requesting the decertification. For the reasons mentioned elsewhere within this preamble, the commission has construed SB 573 to expressly require that a determination**

**of compensation be made as provided for in TWC, §13.254(d) - (g).**

**Specifically, the determination of any amount of compensation owed to a decertified utility will be made by an independent appraiser agreed to by that utility and the utility seeking to provide service. No change has been made in response to these comments.**

Aqua WSC, SWWC, and TRWA expressed concern that §291.113(s) does not allow that the petitioner provide compensation required under §291.113(r). All three commenters recommended changes to §291.113(s). Aqua WSC and TRWA recommended that a limiting reference to "retail public utility" be removed from §291.113(s). SWWC recommended that a reference to "petitioner in the case of releases granted under subsection (r) of this section" be added.

**The commission concurs that newly enacted TWC, §13.254(a-6) provides for "an award of compensation by the petitioner" and agrees with the commenters that a revision of the proposed language in §291.113(s) is appropriate. In response to these comments, the commission revised §291.113(s) to harmonize the commenters' requested edits to be consistent with SB 573.**

Aqua WSC and TRWA expressed concern that the proposed rule does not provide a

procedure for the timing of payment of compensation required under §291.113(r).

TRWA requests that the commission amend the proposed rule language to require that compensation be paid by the petitioner upon the issuance of the commission's order setting the compensation amount. TRWA further recommends that §291.113(h) be changed to require that compensation be paid upon the issuance of the commission's order setting compensation.

**The commission responds that because SB 573 does not provide for compensation at the time the decertification petition is granted, the proposed addition would be inappropriate and unnecessary. No change has been made in response to these comments.**

TRWA proposes that the rule language be modified to stipulate that the use of the term "service" in §291.113(r) has the meaning set forth in TWC, §13.002 and the commission's rules in §291.3.

**The commission responds that definitions set forth in TWC, §13.002, and the commission's rules in §291.3 apply to the entirety of those chapters.**

**There is no need to specify in any subchapter or section that the definitions specifically apply to those subchapters or sections. No change has been made in response to this comment.**

SWWC recommended that the language "or its successors" be added to §291.113(s).

**The commission responds that because SB 573 provides only for compensation to be paid by a petitioner for decertification, the proposed addition would be inappropriate and unnecessary. No change has been made in response to this comment.**

Aqua WSC recommended that the language "as otherwise provided by this section" be removed from §291.113(s).

**The commission responds that this language was adopted directly from SB 573 and serves to effectuate the intent of the statute. No change has been made in response to this comment.**

Aqua WSC supports the notification requirement in §291.113(s), which requires a petitioner on the same day that the petition is submitted to the commission, to also send via certified mail, a copy of the petition to the CCN holder.

**The commission acknowledges the commenter's support of the rule. No change has been made in response to this comment.**

## **SUBCHAPTER B: RATES, RATE-MAKING, AND RATES/TARIFF CHANGES**

### **§291.22**

#### **Statutory Authority**

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §13.254(a-7).

#### **§291.22. Notice of Intent to Change Rates.**

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail, e-mail, or hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test

year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests;

(3) a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water;

(4) a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; [and]

(5) disclosure of an ongoing proceeding under §291.113 of this title (relating to Revocation or Amendment of Certificate), if any;

(6) the reason or reasons for the proposed rate change;

(7) any bill payment assistance program available to low-income ratepayers; and

(8) [(5)] any other information that is required by the executive director in the rate change application form.

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail, e-mail, or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 60 days after the date of the final decision on a rate change. The governing body of a municipally owned utility or political subdivision may provide the notice electronically if the municipality or political subdivision has access to a ratepayer's e-mail address. The commissioners court of an affected county that provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notice delivery requirements. Notices may be mailed separately, e-mailed, or may accompany customer billings. Notice of a proposed rate change by a utility must be

mailed, e-mailed, or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) Notice and statement of intent. The applicant utility shall mail, e-mail, or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed, e-mailed, or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

(f) Standby fees. A utility may request in a rate change application that standby fees be approved for property or lots for which the utility has previously entered into an agreement to serve or construction of water or sewer utility facilities has already begun or been completed if the developer owning the property at the time the rate change

application is filed is given individual written notice by certified mail of the request and an opportunity to protest.

(g) Emergency rate increase in certain circumstances. After receiving a request, the commission or executive director may authorize an emergency rate increase under Texas Water Code (TWC), §5.508 and §13.4133 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for a utility:

(1) for which a person has been appointed under TWC [Texas Water Code], §13.4132; or

(2) for which a receiver has been appointed under TWC [Texas Water Code], §13.412; and

(3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application must include the proposed tariff and other information requested by the executive director. The request may be made with a request to change one or more of the utility's other rates.

**SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY**

**§§291.102, 291.105, 291.113**

**Statutory Authority**

The amendments are adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §§13.245(b) - (c-5), 13.2451(a) - (b-3), 13.246(h), and 13.254(a-1) - (a-3), (a-5), (a-6), (a-8) - (a-11), and (h).

**§291.102. Criteria for Considering and Granting Certificates or Amendments.**

(a) In determining whether to grant or amend a certificate of public convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Texas Health and

Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code (TWC).

(b) Where a new CCN [certificate of convenience and necessity] is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the

partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC [Texas Water Code], §15.001.

(g) For two or more retail public utilities that apply for a CCN [certificate of convenience and necessity] to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC [Texas Water Code],

§15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

- (1) all criteria from subsections (a) - (f) of this section;
- (2) source water adequacy;
- (3) infrastructure adequacy;
- (4) technical knowledge of the applicant;
- (5) ownership accountability;
- (6) staffing and organization;
- (7) revenue sufficiency;

(8) credit worthiness;

(9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area.

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a CCN [certificate of public convenience and necessity] or for an amendment to an existing CCN [certificate of public convenience and necessity]. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a CCN that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the

removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

**§291.105. Contents of Certificate of Convenience and Necessity Applications.**

(a) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment as provided by this section. Applications for CCNs or for an amendment to a certificate must contain an original and three copies of the following materials, unless otherwise specified in the application:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a map and description of only the proposed service area by:

(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) a copy of the recorded plat of the area, if it exists, with lot and block number; and

(E) maps as described in §291.119 of this title (relating to Filing of Maps);

(F) a general location map; and

(G) other maps as requested by the executive director or required by §281.16 of this title (relating to Applications for Certificates of Convenience and Necessity);

(3) a description of any requests for service in the proposed service area;

(4) any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service;

(7) a description of the sources of funding for all facilities;

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definitions of Terms);

(10) to the extent known, a description of current and projected land uses, including densities;

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 25 acres; and

(B) wholly or partially located within the proposed service area;

(13) if dual certification is being requested, and an agreement between the affected utilities exists, a copy of the agreement;

(14) for a water CCN for a new or existing system, a copy of:

(A) the approval letter for the commission-approved plans and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless §290.39(j)(1)(D) of this title (relating to General Provisions) applies;

(B) other information that indicates the applicant is in compliance with §291.93 of this title (relating to Adequacy of Water Utility Service) for the system;  
or

(C) a contract with a wholesale provider that meets the requirements in §291.93 of this title;

(15) for a sewer CCN for a new or existing facility, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the commission;

(B) other information that indicates that the applicant is in compliance with §291.94 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §291.94 of this title; and

(16) any other item required by the commission or executive director.

(b) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraphs (3) - (7) [paragraph (3)] of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the

consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements

plan required by Texas Water Code (TWC), §13.244(d)(3) or a subdivision plat, the commission may grant the CCN without the consent of the municipality if:

(A) the commission makes the findings required by paragraph (3) of this subsection:

(B) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(i) comply with the municipality's service extension and development process; or

(ii) enter into a contract for water or sewer services with the municipality.

(5) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official

notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(7) Paragraphs (4) - (6) of this subsection do not apply in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.

(8) [(4)] A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(9) [(5)] If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(c) Extension beyond extraterritorial jurisdiction.

(1) Except as provided by paragraph (2) of this subsection, if [If] a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission. [A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Texas Water Code (TWC), §13.241, in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.]

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(4) [(3)] To the extent of a conflict between this subsection and TWC, §13.245, TWC, §13.245 prevails.

(d) Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area under the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC [Texas Water Code], §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.

(B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the

CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.

**§291.113. Revocation or Amendment of Certificate.**

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may [on its own motion or on receipt of a petition] revoke or amend any certificate of public convenience and necessity (CCN) with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;

(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate;

(4) the certificate holder has failed to file a cease and desist action under Texas Water Code (TWC), §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or

(5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN [certificate of public convenience and necessity] was granted for the area, except that an area that was transferred to a municipality on approval of the commission or the executive director and in which the municipality has spent public funds may not be revoked or amended under this paragraph.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this

subsection for expedited release of the area from a CCN [certificate of public convenience and necessity] so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to [Prior to the petition being filed with] the commission, the petitioner shall send [deliver], via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; [and]

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) [(D)] any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide [is capable of providing] continuous and adequate service within the time frame, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:

(A) an existing retail public utility; or

(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the

commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.

(c) A landowner is not entitled to make the election described in subsections (b) or (r) [subsection (b)] of this section but is entitled to contest under subsection (a) of this section the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 60 [90] calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate

findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive director on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.

(f) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a CCN [certificate of public convenience and necessity] under TWC [Texas Water Code], §13.242(c).

(g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area

in question. The order of the commission shall not be effective to transfer property.

(h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless the retail public utility, or a petitioner under subsection (r) of this section, provides [without providing] compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public

utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.

(l) As a condition to decertification or single certification under TWC [Texas Water Code], §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire CCN [certificate of public convenience and necessity] of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.

(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and

(2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(r) As an alternative to decertification under subsection (a) of this section and expedited release under subsection (b) of this section, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.

(s) On the same day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the CCN holder. The CCN holder may submit a response to the commission. The commission or the executive director shall grant a petition received under subsection (r) of this section not later than the 60th calendar day after the date the landowner files the petition. The commission or the executive director may not deny a petition received under subsection (r) of this section based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under subsection (r) of this section as otherwise provided by this section. An award of compensation required by a retail public utility seeking to serve the decertified area is governed by subsections (h) - (k) of this section.

(t) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under subsection (b) of this section, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(u) Subsection (t) of this section does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(v) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§293.11, 293.32, 293.41, 293.51, and 293.81 *without changes* to the proposed text as published in the November 2, 2012 issue of the *Texas Register* (37 TexReg 8741) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The 82nd Legislature, 2011, passed House Bill (HB) 679 and HB 1901 and Senate Bill (SB) 18, SB 512, SB 914, and SB 1234. HB 679 increased the allowable district change order amount and amended Texas Water Code (TWC), §49.273(i). HB 1901 applies to the executive director's bond approval provisions. HB 1901 amended TWC, §§49.181(a) and (h), 49.052(f), and 49.183(d) to allow an exemption from executive director approval for bonds issued by a public utility agency. SB 18 amended TWC, §54.209 to place additional limits on eminent domain power of a municipal utility district (MUD) outside of its corporate boundary. SB 512 amended TWC, §53.063, to redefine the qualifications of supervisors of a fresh water supply district (FWSD). SB 914 amended TWC, §49.181, to allow an exemption from executive director approval for bonds issued by a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority. SB 1234 amended Local Government Code, §375.022, to allow a municipal management district (MMD) to include, within its creation petition, a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district."

The commission has the statutory responsibility and authority to create, supervise, and dissolve certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with TWC, Chapters 12, 36, and 49 - 67. The commission oversees approximately 1,500 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of most general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to engineering standards and economic feasibility of district construction, project design, and completion.

The adopted rulemaking would add or amend requirements relating to the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 375. The adopted revisions amend and clarify commission rule language to conform with the statutory changes made to TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 375 from HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. Specifically, the adopted rules would increase the amount of construction project change orders exempt from commission review from \$25,000 - \$50,000 (HB 679); provide special provisions which exempt bonds issued by a public utility agency from executive director approval (HB 1901); place additional limits on the eminent domain power of a MUD

outside of its corporate boundary (SB 18); provide an alternative election qualification for an FWSD director (SB 512); provide for the exemption of a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority from the requirement of obtaining prior bond approval from the commission (SB 914); and allow an MMD to include within its creation petition a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district" (SB 1234).

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 291, Utility Regulations.

### **Section by Section Discussion**

In addition to implementation of the state laws discussed previously, the commission adopts administrative changes to conform with *Texas Register* requirements.

#### *§293.11, Information Required to Accompany Applications for Creation of Districts*

The commission adopts amendments to §293.11(j)(1)(A) and (D) to stipulate that a MMD may include, within its creation petition, a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district." This adopted rule change is consistent with Local Government Code, Chapter 375, as amended by SB 1234 and with TWC, Chapters 49 and 54.

*§293.32, Qualifications of Directors*

The commission adopts an amendment to §293.32(a)(1)(B) to reflect a modification for election qualifications of an FWSD director. This adopted rule change is consistent with TWC, §53.063, as amended by SB 512.

*§293.41, Approval of Projects and Issuance of Bonds*

The commission adopts amendments to §293.41(a) and (d) to reflect that a district is not required to obtain commission approval of its bonds if the district is a river authority as defined by TWC, Chapter 30, located entirely in at least three counties; or a public utility agency having at least one of the participating public entities being a MUD located entirely in only two counties, outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections. The adopted amendment is consistent with Local Government Code, Chapter 572; TWC, Chapter 30; and, TWC, §49.181, as amended by HB 1901 and SB 914.

*§293.51, Land and Easement Acquisition*

The commission adopts amendments to §293.51(e)(2) - (4) to reduce potential confusion by reflecting a MUD's restriction in the use of eminent domain powers outside of its boundaries. The adopted amendment is consistent with TWC, §54.209, as

amended by SB 18. The commission also adopts an amendment to §293.51(g) to correct a misspelling.

*§293.81, Change Orders*

The commission adopts amendments to §293.81(2) and (3) to reflect an increase to \$50,000 to an allowable change order consistent with TWC, §49.273(i), as amended by HB 679.

**Final Regulatory Impact Analysis Determination**

The commission has reviewed these adopted amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of Texas Government Code, §2001.0225.

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (See Texas Government Code, §2001.0225(g)(3)). The adopted amendments do not meet those qualifications where the primary purpose of this rulemaking initiative is to create

and amend rules in Chapter 293 to remain consistent with the statutory changes set forth in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. As to these six enacted bills, this rulemaking initiative modifies rules within Chapter 293 to accomplish the following: (1) providing authority to approve a change order that involves an increase or decrease of \$50,000 or less; (2) providing exemption from the executive director's approval of bonds issued by a public utility agency having at least one of the participating public entities being a MUD located entirely in only two counties, outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections; (3) limiting the circumstances under which a district may exercise its authority to exercise the power of eminent domain outside the district's boundaries; (4) modifying the qualifications to be a supervisor of an FWSD; (5) providing exemption from the executive director's approval of bonds issued by a district that is a river authority as defined by TWC, Chapter 30, located entirely in at least three counties; and (6) allowing in the creation petition of an MMD a description of its boundaries by verifiable landmarks and including its name that is generally descriptive of its location followed by "Management District" or "Improvement District." While the commission has general jurisdiction over districts and authority to adopt rules impacting districts, these adopted changes to the operating processes of districts are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the adopted rulemaking does not constitute a

major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this adopted rulemaking action is to keep the commission's rules consistent with the changes in TWC, Chapters 12, 36, and 49 - 67 made in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. The adopted rules would substantially advance this stated purpose because these adopted changes impact a district's ability to increase the allowable change order amount, exempt bonds issued by a public utility agency from executive director approval, further limit eminent domain powers of a MUD outside its boundary, modify the election qualifications for an FWSD director, and exempt bonds issued by certain multi-county districts from the executive director's approval.

Promulgation and enforcement of these adopted rules regarding the operations of

districts would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The statutory changes set forth in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234 also do not impact private real property rights. Specifically, private real property rights do not pertain to a district's ability to increase the allowable change order amount, exempt bonds issued by a public utility agency from the executive director's approval, further limit eminent domain powers of a MUD outside its boundary, modify the election qualifications for an FWSD director, or exempt bonds issued by certain multi-county districts from commission approval. In addition, while the issue of eminent domain may pertain to private real property rights, the adopted rule changes implementing SB 18 do not impact these property rights where the rules reduce the circumstances when a district can exercise this power. Thus, these adopted rules do not impose a burden on private real property but instead benefit society by improving the process for districts to operate and for the commission to supervise, which should ultimately improve the quality of service that is provided to their customers. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted 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 will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the CMP.

### **Public Comment**

The commission held a public hearing on December 4, 2012. The comment period closed on December 10, 2012. The commission received no comments on the proposed changes to Chapter 293.



## **SUBCHAPTER B: CREATION OF WATER DISTRICTS**

### **§293.11**

#### **Statutory Authority**

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §49.052(f) and §49.181(a) and (h).

#### **§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 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 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 herein shall prevent the commission from creating a district with less land than included in the city consent;

(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(e) 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 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 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

(9) 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;

(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 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 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 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 dually 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 flood plain 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;

(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

(vi) water quality; 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;

(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) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and

customers in accordance with §291.109 of this title (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);

(12) 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

(13) 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 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, or 50 persons who own property in the proposed district, if more than 50 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 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 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.

**SUBCHAPTER D: APPOINTMENT OF DIRECTORS**

**§293.32**

**Statutory Authority**

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §53.063.

**§293.32. Qualifications of Directors.**

(a) Unless otherwise provided, an applicant for appointment as a director must be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(1) A director of a fresh water supply district created under Texas Water Code (TWC), Chapter 53:

(A) must be:

(i) a resident of this state;

(ii) an owner of taxable property in the district; and

(iii) at least 18 years of age; or

(B) [if the district is located wholly or partly within Denton County] must be a registered voter of the district [but need not own land subject to taxation in the district].

(2) A director of a regional district created for the purposes defined under TWC [Texas Water Code], §59.004 must be at least 18 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(3) A director of a special utility district created for the purposes defined under TWC [Texas Water Code], §65.012, must be a resident citizen of this state and either own land subject to taxation in the district, or be a user of the facilities of the district or be a qualified voter in the district.

(4) A director of a stormwater control district created for the purposes defined under TWC [Texas Water Code], §66.012, must reside within the boundaries of the proposed district but need not be a landowner or qualified voter within the district.

(5) A director of a groundwater conservation district must be a registered voter in the precinct that the person represents pursuant to TWC [Texas Water Code], §36.059(b).

(6) A person cannot be appointed to fill a vacancy on the board of a municipal utility district, under TWC [Texas Water Code], Chapter 54, if the person:

(A) resigned from that board:

(i) within two years preceding the vacancy date; or

(ii) on or after the vacancy date but before the vacancy is filled; or

(B) was defeated in a directors election held by that district in the two years preceding the vacancy date.

(7) A director shall not be a developer of property in the district, or be related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager,

engineer, or attorney for the district, or other person providing professional services to the district.

(8) A director shall not be an employee of any developer of property in the district, or any director, manager, engineer, attorney, or other person providing professional services to the district, or a developer of property in the district in connection with the district or property located in the district.

(b) As used in this section, a developer of property in the district means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (See TWC [Texas Water Code], §49.052(d).)

## **SUBCHAPTER E: ISSUANCE OF BONDS**

### **§293.41 and §293.51**

#### **Statutory Authority**

The amendments are adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §49.181(h) and §54.209.

#### **§293.41. Approval of Projects and Issuance of Bonds.**

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies; [or]

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection; or [.]

(5) bonds issued by a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by subsection (d)(1)(E) of this section.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to:

(1) a district if:

(A) [(1)] the boundaries include one entire county;

(B) [(2)] the district was created by a special act of the legislature;

and

(i) [(A)] the district is located entirely within one county and entirely within one or more home-rule municipalities;

(ii) [(B)] the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(iii) [(C)] the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(C) [(3)] the district is a special water authority as defined by TWC, §49.001(8);

(D) [(4)] the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(E) [(5)] the district:

(i) [(A)] is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(ii) [(B)] has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(iii) [(C)] has at least 5,000 active water connections; or [.]

(F) the district:

(i) is a conservation and reclamation district created under the Texas Constitution, Article 16, §59, that includes territory in at least three counties;  
and

(ii) has the rights, privileges, and functions applicable to a river authority under TWC, Chapter 30; or

(2) a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by paragraph (1)(E) of this subsection.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery (except for a district all or part of which is located in Montgomery County and includes land within a planned community of at least 15,000 acres, of which a majority of the developed acreage is subject to restrictive covenants containing ad valorem assessments), Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other

application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), payable from any source, for recreational facilities must not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

**§293.51. Land and Easement Acquisition.**

(a) Water, sanitary sewer, storm sewer, drainage, and recreational facilities easements. All easements required within a district's boundaries for water lines; sanitary sewer lines; storm sewer lines; sanitary control at water plants; noise and odor

control at wastewater treatment plants; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for streets that are used for recreational facilities, shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs to be [To Be] Paid by Developer) shall not apply to such acquisition.

(b) Land acquisition. A district may acquire the following in fee simple from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition:

(1) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;

(2) lift or pump station sites;

(3) drainage channels other than those described in subsection (a) of this section and other than those which are natural waterways with defined bed and banks;

(4) detention/retention pond sites;

(5) levees;

(6) mitigation sites for compliance with flood plain regulation and wetlands regulation or payments in lieu of mitigation;

(7) mitigation sites for compliance with endangered species permits or payments in lieu of mitigation, the cost of which shall be shared between the district and the developer as provided in §293.44(a)(22) of this title (relating to Special Considerations); or

(8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual taxes and interest paid to the date of acquisition by the district. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied. Provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, the executive director may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the taxes and interest costs are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being

acquired based on the appraised value, the application to the commission for approval to purchase such a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by subsection (c)(1) of this section or fair market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land or easement.

(d) Joint storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be

limited to that cost that is associated only with the drainage or recreational function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (c) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title. Districts operating under Texas Water Code (TWC), Chapter 54, except one affected by House Bill 2965, 76th Legislature, 1999, are prohibited from exercising the power of eminent domain outside the district's boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility, as defined by TWC, §49.462 [except a trail];

(3) an exclusive easement through a county regional park; or [a site for a trail on real property designated as a homestead as defined by Texas Property Code, §41.002; or]

(4) a site or easement for a road project [an exclusive easement through a county regional park].

(f) Shared land or easements outside the district's boundaries. If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the

commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station [sation], detention pond, drainage channel, levee, or recreational facility if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(h) Certification by registered professional engineer. Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants, or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

(i) Joint recreational and drainage/detention sites without a constant level lake.

If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50% to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

**SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION  
CONSIDERATION FOR APPROVAL**

**§293.81**

**Statutory Authority**

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §49.273(i).

**§293.81. Change Orders.**

A change order is a change in plans and specifications 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 subject to the following conditions.

(A) Except as provided in this subparagraph, change orders, in aggregate, shall not be issued to increase the original contract price more than 10%.

Additional change orders may be issued only in response to:

(i) unanticipated conditions encountered during construction;

(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.

(2) No commission approval is required if the change order is \$50,000 [\$25,000] or less. If the change order is more than \$50,000 [\$25,000], 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 [\$25,000], even though the net change in the contract price will be \$50,000 [\$25,000] or less, approval by the executive director is required.

(3) If the change order is \$50,000 [\$25,000] 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 in 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.

**ORDER ADOPTING AMENDED RULES  
IN 30 TAC CHAPTERS 291 AND 293**

**Docket No. 2011-1225-RUL**

On March 27, 2013, the Texas Commission on Environmental Quality (Commission) amended §§291.22, 291.102, 291.105, and 291.113 of 30 TAC Chapter 291, Utility Regulations; and amended §§293.11, 293.32, 293.41, 293.51, and 293.81 of 30 TAC Chapter 293, Water Districts. The proposed amended rules were published for comment in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8731) for Chapter 291 and (37 TexReg 8741) for Chapter 293.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman

dust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2012.

TRD-201205434

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 2, 2012

For further information, please call: (512) 239-2141



## CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§291.22, 291.102, 291.105, and 291.113.

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

In 2011, the 82nd Legislature passed Senate Bill (SB) 573, relating to the granting of certificates of public convenience and necessity (CCNs). SB 573 amended Texas Water Code (TWC), §§13.245, 13.2451, 13.246, and 13.254. TWC, §13.245(b) and (c-1) - (c-3) were amended to specify that if a municipality has not consented to the inclusion of a CCN within its boundaries or extraterritorial jurisdiction (ETJ) before the 180th day after a landowner or retail public utility has made a formal request for service then the TCEQ may grant the CCN to the retail public utility without the municipality's consent under certain conditions. SB 573 also provided additional criteria which the TCEQ shall consider before it grants the CCN to the retail public utility. If the CCN is granted, the TCEQ must include a condition that facilities will be designed and constructed according to the municipality's standards. TWC, §13.245(c-4) and (c-5) were added by SB 573 to specify the counties in which the provisions of the TWC, §13.254(c-1) - (c-3) do not apply.

TWC, §13.2451(b) was amended by SB 573 to specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by TWC, §13.246(h). TWC, §13.2451(b-1) and (b-2) were added to specify the counties in which the provision does not apply.

TWC, §13.246(h) was amended by SB 573 to stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason.

TWC, §13.254 was amended by SB 573 to change the requirements for when the TCEQ may revoke a CCN, modify the requirements for petitioning for the release of land from a CCN, and also shorten the TCEQ's review period for reviewing a release petition from 90 to 60 calendar days. TWC, §13.254(a-5) and (a-6) created a process allowing a landowner of at least a 25-acre tract to request an expedited release from a CCN in counties meeting specific criteria. TWC, §13.254(a-7) added requirements for notice of utility rate changes. TWC, §13.254(a-8) modified the criteria for reviewing a release petition filed under TWC, §13.254(a-1). TWC, §13.254(a-9) - (a-11) were added to

specify the counties in which the modifications to the CCN release process made by TWC, §13.254(a-8) do not apply.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapter 293, Water Districts.

### Section by Section Discussion

In addition to implementation of the state law discussed previously, the commission proposes administrative changes to conform with *Texas Register* requirements.

#### §291.22, *Notice of Intent to Change Rates*

The commission proposes to amend §291.22(a)(4) to remove the word "and"; adding §291.22(a)(5) - (7); and renumbering existing subsection (a)(5). The proposed amendment specifies that a utility shall include with the statement of intent provided to each landowner or ratepayer: a notice of a proceeding under §291.113, the reason or reasons for the proposed rate change, and any bill payment assistance program available to low-income ratepayers. The commission proposes this amendment to implement the changes made to TWC, §13.254, in SB 573 and for consistency with *Texas Register* requirements.

#### §291.102, *Criteria for Considering and Granting Certificates or Amendments*

The commission proposes to amend §291.102(h) to specify that an applicant for a CCN that has land removed from its proposed service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water and/or sewer system of another person. The commission proposes this amendment to implement the changes made to TWC, §13.246(h) in SB 573.

#### §291.105, *Contents of Certificate of Convenience and Necessity Applications*

The commission proposes to amend §291.105(b)(2) by removing the reference of "paragraph (3)" and replacing it with a reference to "paragraphs (3) - (7)." The proposed amendment specifies that, except as provided by paragraphs (3) - (7), the commission may not grant a CCN to a retail public utility for a service area within the boundaries or ETJ of a municipality without the consent of the municipality. The municipality may not unreasonably withhold its consent. As a condition of the consent, a municipality may require that all water and/or sewer facilities be designed and constructed in accordance with the municipality's standards for facilities. The commission proposes this amendment to implement changes made to TWC, §13.245(b) by SB 573. The commission proposes to add §291.105(b)(4) and its subdivisions to implement changes made to TWC, §13.245(b) by SB 573. The commission proposes adding §291.105(b)(4) to denote that the commission may grant a CCN to a retail public utility without a municipality's consent under certain circumstances as outlined in proposed §291.105(b)(4)(A) - (C) if the municipality has not consented under §291.105(b) before the 180th day after the date a landowner or a retail public utility submits a formal request for service to the municipality. Proposed §291.105(b)(4)(A) specifies that the commission may grant the CCN without the municipality's consent if the commission makes findings required by §291.105(b)(3). Proposed §291.105(b)(4)(B) specifies that the commission may grant the CCN without the municipality's consent if the municipality has not entered into a binding commitment to serve the requested area on or before the 180th day after the date the formal

request was made. In addition, the commission proposes to add §291.105(b)(4)(C) and its subdivisions to specify that the commission may grant the CCN without the municipality's consent if the landowner or retail public utility that submitted the formal request has not unreasonably refused to comply with the municipality's service extension and development process; or if the landowner or retail public utility have not entered into a contract for water and/or sewer services with the municipality. The commission also proposes to add §291.105(b)(5) to denote that if a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification. The commission proposes this addition to implement changes made to TWC, §13.245(b) by SB 573. The commission proposes to add §291.105(b)(6) to implement changes made to TWC, §13.245(b) by SB 573 by stipulating that the commission must include as a condition of a CCN granted under TWC, §13.245(c-1) or (c-2) that all water and sewer facilities shall be designed and constructed in accordance with the municipality's standards for water and sewer facilities. The commission proposes to add §291.105(b)(7) to specify that paragraphs (4) - (6) do not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission proposes this addition to implement changes made to TWC, §13.245(b) by SB 573. The commission proposes to renumber existing §291.105(b)(4) and (5) to §291.105(b)(8) and (9) for consistency purposes.

The commission proposes to amend §291.105(c)(1) to specify that, except as provided by paragraph (2), if a municipality extends its ETJ to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its CCN area under the rights granted by its certificate and Chapter 291. The proposed rule changes implement TWC, §13.2451(a) - (b-3) as amended by SB 573. The commission proposes to amend §291.105(c)(2), add subsection (c)(3), and renumber existing subsection (c)(3) to implement changes made to TWC, §13.2451(a) - (b-3) by SB 573. The proposed amendment specifies that the commission may not extend a municipality's CCN beyond its ETJ if an owner of land that is located wholly or partly outside the ETJ elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h), this subsection does not apply to a transfer of a certificate as approved by the commission. The amendment also specifies that paragraph (2) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

#### *§291.113, Revocation or Amendment of Certificate*

The commission proposes to amend §291.113. The commission proposes to amend §291.113(a) - (d) and (h) and add §291.113(r) - (v). Section 291.113(a) is amended to remove a reference to the source of a motion or petition to revoke or amend a CCN. Section 291.113(b) is amended to specify that the fact that the certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of a petitioner's land and the receipt of services from an alternative provider. The amendment to this subsection also requires that on the day the petitioner submits the petition to the commission, the petitioner shall send a copy of a petition to the certificate holder. The commission proposes these amendments to implement changes made to TWC, §13.245 by

SB 573. The commission proposes to amend §291.113(b)(1)(C) to remove the word "and" and to add §291.113(b)(1)(D) and (E) to provide additional criteria that a petitioner must demonstrate when requesting to have the petitioner's land removed from a CCN under §291.112(a). Section 291.113(b)(1)(D) is added to denote that a petitioner shall provide a written request for service to the certificate holder identifying the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder. Section 291.113(b)(1)(E) is added to specify that the petitioner shall also identify the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested. In addition, the commission proposes to renumber existing §291.113(b)(1)(D) to §291.113(b)(1)(F) for consistency purposes. The proposed rule changes implement TWC, §13.245(a-1) as amended by SB 573. Furthermore, the commission proposes to amend §291.113(b)(3)(B) to clarify that the commission shall consider whether the certificate holder is capable of providing the service at the approximate cost and that the alternative provider is capable of providing a comparable level of service. The proposed rule changes implement TWC, §13.245(a-1) as amended by SB 573. Moreover, the commission proposes to amend §291.113(b)(4) to remove the phrase "is capable of providing" and instead specify that the alternate service provider must possess the financial, managerial, and technical capability to provide continuous and adequate service to the area being removed from the certificate. Also, the proposed amendment specifies that service must be provided at a reasonable cost to support the existing and projected service demands in the area. The commission proposes this amendment to implement changes made to TWC, §13.245(a-1) by SB 573. The commission proposes to amend §291.113(c) to update cross-references to other subsections. The commission proposes this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission proposes to amend §291.113(d) by changing the time frame from 90 to 60 calendar days for which the commission or executive director shall grant or deny the petition to remove the property from the certificated area to implement changes made to TWC by SB 573. The commission also proposes to amend §291.113(h) to clarify that a retail public utility may not provide retail water and/or sewer service in an area that has been decertified under this section unless the retail public utility or petitioner provides compensation for any property rendered useless or valueless. The commission proposes this amendment to implement changes made to TWC, §13.254 by SB 573. The commission proposes to add §291.113(r) to denote that an owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for the expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in a county with a population of a least one million, a county adjacent to a county with a population of at least one million (except for Medina or Smith Counties), and is not in a county that has a population of more than 45,500 and less than 47,500. The commission proposes this amendment to implement changes made to TWC, §13.254 by SB 573. The commission proposes to add §291.113(s) to require the petitioner to provide a copy of the petition to the CCN holder, specify that the CCN holder may file a response to the petition, and to indicate that the commission or the executive director shall grant a petition received under proposed subsection (r) no later than 60 calendar days after the date the landowner files the petition. The commission or the executive director may not deny a petition filed under proposed

subsection (r) based on the fact that a certificate holder is a borrower of federal debt. The commission may require an award of compensation by the petitioner to a decertified retail public utility. The commission proposes this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission proposes to add §291.113(t) to specify that the commission is not required to find that the proposed alternative provider is capable of providing better service than the CCN holder, but only that the alternative provider is capable of providing service to the area that a petitioner seeks to have released from a CCN under subsection (b) if the CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations. The commission proposes this amendment to implement changes made to TWC, §13.254 by SB 573. The commission proposes to add §291.113(u) to specify that subsection (t) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission proposes this amendment to implement changes made to TWC, §13.254 by SB 573. Lastly, the commission proposes to add §291.113(v) to indicate that a certificate holder that has land removed in accordance with this section may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person. The commission proposes this amendment to implement changes made to TWC, §13.254 by SB 573.

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

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules since the agency would use currently available resources when administering or enforcing the provisions. Other state agencies would not experience fiscal implications as a result of the proposed rules. In counties where the proposed expedited release from a CCN applies, municipalities and other retail public utilities with CCNs are not expected to experience significant fiscal impacts unless they have already incurred costs to provide future service to a landowner and multiple areas apply for release.

The proposed rules amend Chapter 291 to implement the provisions of SB 573 relating to the administration and criteria for CCNs. The proposed rules would create an expedited CCN release process for landowners in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, and Wise Counties. All retail public utilities (cities, counties, investor-owned utilities (IOUs), water supply corporations, and water districts) in these counties would be impacted by the proposed rules if a CCN exemption is requested where there is no current water and/or sewer service. The proposed rules would also shorten the agency's review period from 90 to 60 days and require the agency to approve all petitions for release. The proposed rules also would include a limitation that the agency may not deny a petition based on the fact that a CCN holder is a borrower under a federal loan program. The agency could grant a release from a municipality's CCN without the municipality's consent under certain conditions in specific counties. The proposed rules would also stipulate that once land is removed from a CCN under these procedures, the holder of that CCN would not be required to provide service to the removed land for any reason

including violations of law or agency rules. The proposed rules also include changes that are administrative in nature and do not have a fiscal impact on regulated entities.

The proposed rules would affect certain municipalities and retail public utilities and grant more flexibility to obtain water and sewer service to certain landowners. The proposed rules would also require IOUs to provide additional notice when applying for a rate change and communicate availability of programs for bill payment assistance to low-income ratepayers.

The agency would be required to grant expedited release from a CCN to landowners that petition for release and that own a land tract of at least 25 acres that is not receiving water or sewer service in the following counties: Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, and Wise.

Except for municipalities in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties, municipalities with CCNs would be required to comply with certain deadlines and conditions to respond for a formal request for service by a landowner or retail public utility. If there is no compliance with the deadlines, the agency could grant a new CCN without the consent of the municipality under the proposed rules. The agency could not extend a municipality's CCN beyond its ETJ when a landowner elects to exclude land either wholly or partly outside the ETJ from a proposed service area under the proposed rules. However, the agency could extend a municipality's CCN beyond its ETJ in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

In counties where the proposed expedited release from a CCN applies, municipalities and other retail public utilities with CCNs are not expected to experience significant fiscal impacts unless they have already incurred costs to provide future service to a landowner and multiple areas apply for release from a municipality's CCN. The fiscal impact of a release from a CCN would depend on multiple factors in a particular area and whether a petitioner for land removal provides compensation to a municipality. Staff estimates that there are 1,215 incorporated municipalities that could be impacted by the proposed rules.

#### Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and more flexibility for certain landowners in certain counties to obtain water and/or sewer service.

The proposed rules would not have a significant fiscal impact on individual ratepayers in a CCN. Individuals that are customers of IOUs would receive additional information in the notice of a rate change, including information about bill payment assistance programs for low-income ratepayers.

The proposed rules are not expected to adversely affect landowners with 25 acres or more because they would provide additional flexibility and options to these individuals and businesses, in certain areas of the state, to develop their land. These landowners are not expected to petition for expedited release from a CCN unless it would be economically advantageous for them to do so. The fiscal impact of the proposed rules

would be highly variable and depend on the circumstances of each petition.

Large businesses that supply water or sewer service would not experience any fiscal impacts under the proposed rules where they currently provide service. A landowner could only request a CCN exemption on land that does not receive service.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses that currently provide water and/or sewer service as a result of the proposed rules. There may be as many as 579 water and 140 sewer IOUs affected by the proposed rules, and most of these are typically small businesses. The proposed rules would not have a fiscal impact on IOUs that currently provide service to land. A landowner could only request a CCN exemption on land that does not receive water and/or sewer service.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission has reviewed these proposed amendments to Chapter 291 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of Texas Government Code, §2001.0225.

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (See Texas Government Code, §2001.0225(g)(3)). Here, the proposed amendments do not meet those qualifications where the primary purpose of this rulemaking initiative is to create and amend other rules in Chapter 291 to remain consistent with the statutory changes set forth in SB 573. This rulemaking initiative proposes to modify rules within Chapter 291 to accomplish the following: (1) altering the conditions under which the TCEQ may grant CCNs within a municipality's ETJ without consent from that municipality; (2) specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by the TWC; (3) stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason; (4) change the requirements for when the TCEQ may revoke a CCN and shorten the review period for an expedited release from 90 to 60 calendar days; (5) create a process allowing a landowner of at least a 25-acre tract to request expedited release in counties meeting specific criteria; and (6) add additional requirements for a utility rate change notice. While the commis-

sion has jurisdiction over retail public utilities and authority to draft rules impacting those utilities, these changes to the operating processes of water and/or sewer utilities are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the proposed rulemaking project does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

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

#### Takings Impact Assessment

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this proposed rulemaking action is to keep the commission's rules consistent with the changes in TWC, Chapter 13 made by the legislature in SB 573. The proposed rules would substantially advance this stated purpose because these changes impact the abilities of municipalities and retail public utilities to obtain a CCN or have a CCN revoked, and impact the requirements for notice of rate changes by IOUs.

Promulgation and enforcement of these proposed rules regarding the operation of water and/or sewer utilities would be neither a statutory nor a constitutional taking of private real property. The proposed regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The statutory changes set forth in SB 573 also do not impact private real property rights. Specifically, private real property rights do not pertain to certification of retail water and/or sewer service areas by the commission. Thus, these proposed rules do not impose a burden on private real property but instead benefit society by improving and streamlining the process by which certain areas are certified for water and/or sewer service, which should ultimately improve the quality of service that is provided to utility customers. Therefore, the proposed 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 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.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 4, 2012, at 2:00 p.m. in Room 201S, Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral

statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Michael Parrish, 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: <http://www5.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 2011-055-293-OW. The comment period closes December 10, 2012. Copies of the proposed rule-making can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Kent Steelman, Utilities and Districts Section, (512) 239-5143.

## SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

### 30 TAC §291.22

#### Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements TWC, §13.254(a-7).

#### §291.22. *Notice of Intent to Change Rates.*

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail, e-mail, or hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests;

(3) a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water;

(4) a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; ~~and~~

(5) disclosure of an ongoing proceeding under §291.113 of this title (relating to Revocation or Amendment of Certificate), if any;

(6) the reason or reasons for the proposed rate change;

(7) any bill payment assistance program available to low-income ratepayers; and

(8) ~~(5)~~ any other information that is required by the executive director in the rate change application form.

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail, e-mail, or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 60 days after the date of the final decision on a rate change. The governing body of a municipally owned utility or political subdivision may provide the notice electronically if the municipality or political subdivision has access to a ratepayer's e-mail address. The commissioners court of an affected county that provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notice delivery requirements. Notices may be mailed separately, e-mailed, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed, e-mailed, or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) Notice and statement of intent. The applicant utility shall mail, e-mail, or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed, e-mailed, or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

(f) Standby fees. A utility may request in a rate change application that standby fees be approved for property or lots for which the utility has previously entered into an agreement to serve or construction of water or sewer utility facilities has already begun or been completed if the developer owning the property at the time the rate change application is filed is given individual written notice by certified mail of the request and an opportunity to protest.

(g) Emergency rate increase in certain circumstances. After receiving a request, the commission or executive director may authorize an emergency rate increase under Texas Water Code (TWC), §5.508 and §13.4133 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for a utility:

(1) for which a person has been appointed under TWC [Texas Water Code], §13.4132; or

(2) for which a receiver has been appointed under TWC [Texas Water Code], §13.412; and

(3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application must include the proposed tariff and other information requested by the executive director. The request may be made with a request to change one or more of the utility's other rates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2012.

TRD-201205436

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 2, 2012

For further information, please call: (512) 239-2548



## SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

### 30 TAC §§291.102, 291.105, 291.113

#### Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement TWC, §§13.245(b) - (c-5), 13.2451(a) - (b-3), 13.246(h), and 13.254(a-1) - (a-3), (a-5), (a-6), (a-8) - (a-11), and (h).

§291.102. *Criteria for Considering and Granting Certificates of Amendments.*

(a) In determining whether to grant or amend a certificate of public convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code (TWC).

(b) Where a new CCN [certificate of convenience and necessity] is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

- (7) environmental integrity;
- (8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC [Texas Water Code], §15.001.

(g) For two or more retail public utilities that apply for a CCN [certificate of convenience and necessity] to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC [Texas Water Code], §15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

- (1) all criteria from subsections (a) - (f) of this section;
- (2) source water adequacy;
- (3) infrastructure adequacy;
- (4) technical knowledge of the applicant;
- (5) ownership accountability;
- (6) staffing and organization;
- (7) revenue sufficiency;
- (8) credit worthiness;
- (9) fiscal management and controls;
- (10) compliance history; and
- (11) planning reports or studies by the applicant to serve the proposed area.

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a CCN [certificate of public convenience and necessity] or for an amendment to an existing CCN [certificate of public convenience and necessity]. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a CCN that has land removed from its proposed certificated service area because of a landowner's election

under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

*§291.105. Contents of Certificate of Convenience and Necessity Applications.*

(a) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment as provided by this section. Applications for CCNs or for an amendment to a certificate must contain an original and three copies of the following materials, unless otherwise specified in the application:

- (1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;
- (2) a map and description of only the proposed service area by:
  - (A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;
  - (B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;
  - (C) verifiable landmarks, including a road, creek, or railroad line; or
  - (D) a copy of the recorded plat of the area, if it exists, with lot and block number; and
  - (E) maps as described in §291.119 of this title (relating to Filing of Maps);
  - (F) a general location map; and
  - (G) other maps as requested by the executive director or required by §281.16 of this title (relating to Applications for Certificates of Convenience and Necessity);
- (3) a description of any requests for service in the proposed service area;
- (4) any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;
- (5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;
- (6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service;
- (7) a description of the sources of funding for all facilities;
- (8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not be-

ing served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definitions of Terms);

(10) to the extent known, a description of current and projected land uses, including densities;

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 25 acres; and

(B) wholly or partially located within the proposed service area;

(13) if dual certification is being requested, and an agreement between the affected utilities exists, a copy of the agreement;

(14) for a water CCN for a new or existing system, a copy of:

(A) the approval letter for the commission-approved plans and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless §290.39(j)(1)(D) of this title (relating to General Provisions) applies;

(B) other information that indicates the applicant is in compliance with §291.93 of this title (relating to Adequacy of Water Utility Service) for the system; or

(C) a contract with a wholesale provider that meets the requirements in §291.93 of this title;

(15) for a sewer CCN for a new or existing facility, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the commission;

(B) other information that indicates that the applicant is in compliance with §291.94 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §291.94 of this title; and

(16) any other item required by the commission or executive director.

(b) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraphs (3) - (7) [paragraph (3)] of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall

grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Texas Water Code (TWC), §13.244(d)(3) or a subdivision plat, the commission may grant the CCN without the consent of the municipality if:

(A) the commission makes the findings required by paragraph (3) of this subsection;

(B) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(i) comply with the municipality's service extension and development process; or

(ii) enter into a contract for water or sewer services with the municipality.

(5) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(7) Paragraphs (4) - (6) of this subsection do not apply in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.

(8) [(4)] A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(9) [(5)] If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(c) Extension beyond extraterritorial jurisdiction.

(1) Except as provided by paragraph (2) of this subsection, if [H] a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission. [A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Texas Water Code (TWC), §13.241, in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.]

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(4) ~~[(3)]~~ To the extent of a conflict between this subsection and TWC, §13.245, TWC, §13.245 prevails.

(d) Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area under the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC [Texas Water Code], §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.

(B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.

*§291.113. Revocation or Amendment of Certificate.*

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may [on its own motion or on receipt of a petition] revoke or amend any certificate of public convenience and necessity (CCN) under the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;

(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate;

(4) the certificate holder has failed to file a cease and desist action under Texas Water Code (TWC), §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or

(5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN [certificate of public convenience and necessity] was granted for the area, except that an area that was transferred to a municipality on approval of the commission or the executive director and in which the municipality has spent public funds may not be revoked or amended under this paragraph.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a CCN [certificate of public convenience and necessity] so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to [Prior to the petition being filed with] the commission, the petitioner shall send [deliver], via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; [and]

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) [(D)] any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide [is capable of providing] continuous and adequate service within the time frame, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:

(A) an existing retail public utility; or

(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertified under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.

(c) A landowner is not entitled to make the election described in subsections (b) or (r) [~~subsection (b)~~] of this section but is entitled to contest under subsection (a) of this section the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 60 [90] calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner

and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive director on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.

(f) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a CCN [certificate of public convenience and necessity] under TWC [Texas Water Code], §13.242(c).

(g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless the retail public utility, or a petitioner under subsection (r) of this section, provides [without providing] compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for plan-

ning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.

(l) As a condition to decertification or single certification under TWC [Texas Water Code], §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire CCN [certificate of public convenience and necessity] of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

- (1) transferring debt and other contract obligations;
- (2) transferring real and personal property;
- (3) establishing interim service rates for affected customers during specified times; and
- (4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertified retail public utility if service to the entire service area is ordered under this section.

(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

- (1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and
- (2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(r) As an alternative to decertification under subsection (a) of this section and expedited release under subsection (b) of this section, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kauf-

man, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.

(s) On the same day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the CCN holder. The CCN holder may submit a response to the commission. The commission or the executive director shall grant a petition received under subsection (r) of this section not later than the 60th calendar day after the date the landowner files the petition. The commission or the executive director may not deny a petition received under subsection (r) of this section based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under subsection (r) of this section as otherwise provided by this section. An award of compensation required by a retail public utility seeking to serve the decertified area is governed by subsections (h) - (k) of this section.

(t) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under subsection (b) of this section, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(u) Subsection (t) of this section does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(v) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2012.

TRD-201205437

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 2, 2012

For further information, please call: (512) 239-2548



## CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§293.11, 293.32, 293.41, 293.51, and 293.81.

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

The 82nd Legislature, 2011, passed House Bill (HB) 679 and HB 1901 and Senate Bill (SB) 18, SB 512, SB 914, and SB 1234. HB 679 increased the allowable district change order amount and amended Texas Water Code (TWC), §49.273(i). HB 1901 applies to the executive director's bond approval provisions. HB 1901 amended TWC, §§49.181(a) and (h), 49.052(f), and 49.183(d) to allow an exemption from executive director approval for bonds issued by a public utility agency. SB 18

amended TWC, §54.209 to place additional limits on eminent domain power of a municipal utility district (MUD) outside of its corporate boundary. SB 512 amended TWC, §53.063, to re-define the qualifications of supervisors of a fresh water supply district (FWSD). SB 914 amended TWC, §49.181, to allow an exemption from executive director approval for bonds issued by a conservation and reclamation district located in at least three counties that has the rights, powers, privileges and functions applicable to a river authority. SB 1234 amended Local Government Code, §375.022, to allow a municipal management district (MMD) to include, within its creation petition, a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district."

The commission has the statutory responsibility and authority to create, supervise, and dissolve certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with TWC, Chapters 12, 36, and 49 - 67. The commission oversees approximately 1,500 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of most general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to engineering standards and economic feasibility of district construction, project design, and completion.

The proposed rulemaking would add or amend requirements relating to the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 375. The proposed revisions amend and clarify commission rule language to conform with the statutory changes made to TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 375 from HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. Specifically, the proposed rules would increase the amount of construction project change orders exempt from commission review from \$25,000 to \$50,000 (HB 679); provide special provisions which exempt bonds issued by a public utility agency from executive director approval (HB 1901); place additional limits on the eminent domain power of a MUD outside of its corporate boundary (SB 18); provide an alternative election qualification for an FWSD director (SB 512); provide for the exemption of a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority from the requirement of obtaining prior bond approval from the commission (SB 914); and allow an MMD to include within its creation petition a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district" (SB 1234).

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapter 291, Utility Regulations.

#### Section by Section Discussion

In addition to implementation of the state laws discussed previously, the commission proposes administrative changes to conform with *Texas Register* requirements.

#### §293.11, Information Required to Accompany Applications for Creation of Districts

The commission proposes to amend §293.11(j)(1)(A) and (D) to stipulate that a MMD may include, within its creation petition, a boundary description using verifiable landmarks and a

descriptive name followed by the phrase "improvement district." This proposed rule change is consistent with Local Government Code, Chapter 375, as amended by SB 1234 and with TWC, Chapters 49 and 54.

#### §293.32, Qualifications of Directors

The commission proposes to amend §293.32(a)(1)(B) to reflect a modification for election qualifications of an FWSD director. This proposed rule change is consistent with TWC, §53.063, as amended by SB 512.

#### §293.41, Approval of Projects and Issuance of Bonds

The commission proposes to amend §293.41(a) and (d) to reflect that a district is not required to obtain commission approval of its bonds if the district is a river authority as defined by TWC, Chapter 30, located entirely in at least three counties; or a public utility agency having at least one of the participating public entities being a MUD located entirely in only two counties, outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections. The proposed amendment is consistent with Local Government Code, Chapter 572; TWC, Chapter 30; and TWC, §49.181, as amended by HB 1901 and SB 914.

#### §293.51, Land and Easement Acquisition

The commission proposes to amend §293.51(e)(2) - (4) to reduce potential confusion by reflecting a MUD's restriction in the use of eminent domain powers outside of its boundaries. The proposed amendment is consistent with TWC, §54.209, as amended by SB 18. The commission also proposes an amendment to §293.51(g) to correct a misspelling.

#### §293.81, Change Orders

The commission proposes to amend §293.81(2) and (3) to reflect an increase to \$50,000 to an allowable change order consistent with TWC, §49.273(i), as amended by HB 679.

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

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules. The agency would use existing resources to implement the proposed rules.

The proposed rules would amend Chapter 293 to incorporate provisions of HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. Specifically, the proposed rules would increase the amount of construction project change orders exempt from commission review from \$25,000 to \$50,000 (HB 679); provide special provisions which would exempt public utility bond issuances from executive director approval (HB 1901); place additional limits on the eminent domain power of a MUD outside of its corporate boundary (SB 18); provide an alternative election qualification for an FWSD director (SB 512); provide for the exemption of a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority from the requirement of obtaining prior bond approval from the commission (SB 914); and allow an MMD to include, within its creation petition, a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district" (SB 1234).

The agency oversees approximately 1,500 active water districts in Texas. The proposed rules are administrative in nature and afford additional flexibility and efficiency to water districts regarding their administration and operation. The proposed rules could reduce water district costs, but any cost reductions are not expected to be significant. The significance of any fiscal impact of the proposed rules would vary among water districts and would depend on the unique operating environment of each district.

#### Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and greater operating flexibility for water districts while protecting the environment and public health and safety.

The proposed rules would not have a significant fiscal impact on individuals or large businesses. The proposed rules are administrative in nature and afford additional flexibility and efficiency to water districts regarding their administration and operation. Developers could experience benefits from the efficiency gains under the proposed rules. However, the significance of any fiscal impact of the proposed rules would vary among water districts and would depend on the unique operating environment of each district and each developer.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses under the proposed rules.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission has reviewed these proposed amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of Texas Government Code, §2001.0225.

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (See Texas Government Code, §2001.0225(g)(3)). The proposed amendments do not meet those qualifications where the primary purpose of this rulemaking initiative is to create and amend rules in Chapter 293 to remain consistent with the statutory changes set forth in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. As to these six enacted bills, this rulemaking

initiative proposes to modify rules within Chapter 293 to accomplish the following: (1) providing authority to approve a change order that involves an increase or decrease of \$50,000 or less; (2) providing exemption from the executive director's approval of bonds issued by a public utility agency having at least one of the participating public entities being a MUD located entirely in only two counties, outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections; (3) limiting the circumstances under which a district may exercise its authority to exercise the power of eminent domain outside the district's boundaries; (4) modifying the qualifications to be a supervisor of an FWSD; (5) providing exemption from the executive director's approval of bonds issued by a district that is a river authority as defined by TWC, Chapter 30, located entirely in at least three counties; and (6) allowing in the creation petition of an MMD a description of its boundaries by verifiable landmarks and including its name that is generally descriptive of its location followed by "Management District" or "Improvement District." While the commission has general jurisdiction over districts and authority to propose rules impacting districts, these proposed changes to the operating processes of districts are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the proposed rulemaking does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

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

#### Takings Impact Assessment

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this proposed rulemaking action is to keep the commission's rules consistent with the changes in TWC, Chapters 12, 36, and 49 - 67 made in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. The proposed rules would substantially advance this stated purpose because these proposed changes impact a district's ability to increase the allowable change order amount, exempt bonds issued by a public utility agency from executive director approval, further limit eminent domain powers of a MUD outside its boundary, modify the election qualifications for an FWSD director, and exempt bonds issued by certain multi-county districts from the executive director's approval.

Promulgation and enforcement of these proposed rules regarding the operations of districts would be neither a statutory nor a constitutional taking of private real property. The proposed regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The statutory changes set forth in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234 also do not impact private real property rights. Specifically, private real property rights do not pertain to a district's ability to increase the allowable change order amount, exempt bonds issued by a public utility agency from the executive director's approval, further limit eminent domain powers of a MUD outside its boundary, modify the election

qualifications for an FWSD director, or exempt bonds issued by certain multi-county districts from commission approval. In addition, while the issue of eminent domain may pertain to private real property rights, the proposed rule changes implementing SB 18 do not impact these property rights where the rules reduce the circumstances when a district can exercise this power. Thus, these proposed rules do not impose a burden on private real property but instead benefit society by improving the process for districts to operate and for the commission to supervise, which should ultimately improve the quality of service that is provided to their customers. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### 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 will 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.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 4, 2012, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Michael Parrish, 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: <http://www5.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 2011-055-293-OW. The comment period closes December 10, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Kent Steelman, Utilities and Districts Section, (512) 239-5143.

## SUBCHAPTER B. CREATION OF WATER DISTRICTS

### 30 TAC §293.11

#### Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements TWC, §49.052(f) and §49.181(a) and (h).

*§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 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 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 herein shall prevent the commission from creating a district with less land than included in the city consent;

(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(e) 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 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 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

(9) 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;

(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;

(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 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 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 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 dually 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 flood plain 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;

(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

(vi) water quality; 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;

(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) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.109 of this title (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);

(12) 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

(13) 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 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, or 50 persons who own property in the proposed district, if more than 50 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 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 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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2012.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 2, 2012

For further information, please call: (512) 239-2548



## SUBCHAPTER D. APPOINTMENT OF DIRECTORS

### 30 TAC §293.32

#### Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements TWC, §53.063.

§293.32. *Qualifications of Directors.*

(a) Unless otherwise provided, an applicant for appointment as a director must be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(1) A director of a fresh water supply district created under Texas Water Code (TWC), Chapter 53:

(A) must be:

- (i) a resident of this state;
- (ii) an owner of taxable property in the district; and
- (iii) at least 18 years of age; or

(B) [if the district is located wholly or partly within ~~Denton County~~] must be a registered voter of the district [but need not own land subject to taxation in the district].

(2) A director of a regional district created for the purposes defined under TWC [Texas Water Code], §59.004 must be at least 18 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(3) A director of a special utility district created for the purposes defined under TWC [Texas Water Code], §65.012, must be a resident citizen of this state and either own land subject to taxation in the district, or be a user of the facilities of the district or be a qualified voter in the district.

(4) A director of a stormwater control district created for the purposes defined under TWC [Texas Water Code], §66.012, must reside within the boundaries of the proposed district but need not be a landowner or qualified voter within the district.

(5) A director of a groundwater conservation district must be a registered voter in the precinct that the person represents pursuant to TWC [Texas Water Code], §36.059(b).

(6) A person cannot be appointed to fill a vacancy on the board of a municipal utility district, under TWC [Texas Water Code], Chapter 54, if the person:

(A) resigned from that board:

(i) within two years preceding the vacancy date; or  
(ii) on or after the vacancy date but before the vacancy is filled; or

(B) was defeated in a directors election held by that district in the two years preceding the vacancy date.

(7) A director shall not be a developer of property in the district, or be related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or other person providing professional services to the district.

(8) A director shall not be an employee of any developer of property in the district, or any director, manager, engineer, attorney, or other person providing professional services to the district, or a developer of property in the district in connection with the district or property located in the district.

(b) As used in this section, a developer of property in the district means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (See TWC [Texas Water Code], §49.052(d).)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2012.

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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) 239-2548

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## SUBCHAPTER E. ISSUANCE OF BONDS

### 30 TAC §293.41, §293.51

#### Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement TWC, §49.181(h) and §54.209.

#### §293.41. *Approval of Projects and Issuance of Bonds.*

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies; [ø]

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection; or[-]

(5) bonds issued by a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by subsection (d)(1)(E) of this section.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to:

(1) a district if:

(A) [(+) ] the boundaries include one entire county;

(B) [(2) ] the district was created by a special act of the legislature; and

(i) [(A) ] the district is located entirely within one county and entirely within one or more home-rule municipalities;

(ii) [(B) ] the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(iii) [(C)] the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(C) [(3)] the district is a special water authority as defined by TWC, §49.001(8);

(D) [(4)] the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(E) [(5)] the district:

(i) [(A)] is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(ii) [(B)] has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(iii) [(C)] has at least 5,000 active water connections; or [-]

(F) the district:

(i) is a conservation and reclamation district created under the Texas Constitution, Article 16, §59, that includes territory in at least three counties; and

(ii) has the rights, privileges, and functions applicable to a river authority under TWC, Chapter 30; or

(2) a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by paragraph (1)(E) of this subsection.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery (except for a district all or part of which is located in Montgomery County and includes land within a planned community of at least 15,000 acres, of which a majority of the developed acreage is subject to restrictive covenants containing ad valorem assessments), Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), payable from any source, for recreational facilities must not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the

time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

§293.51. *Land and Easement Acquisition.*

(a) Water, sanitary sewer, storm sewer, drainage, and recreational facilities easements. All easements required within a district's boundaries for water lines; sanitary sewer lines; storm sewer lines; sanitary control at water plants; noise and odor control at wastewater treatment plants; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for streets that are used for recreational facilities, shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs to be [To Be] Paid by Developer) shall not apply to such acquisition.

(b) Land acquisition. A district may acquire the following in fee simple from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition:

- (1) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;
- (2) lift or pump station sites;
- (3) drainage channels other than those described in subsection (a) of this section and other than those which are natural waterways with defined bed and banks;
- (4) detention/retention pond sites;
- (5) levees;
- (6) mitigation sites for compliance with flood plain regulation and wetlands regulation or payments in lieu of mitigation;
- (7) mitigation sites for compliance with endangered species permits or payments in lieu of mitigation, the cost of which shall be shared between the district and the developer as provided in §293.44(a)(22) of this title (relating to Special Considerations); or
- (8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction

between unrelated parties the developer's actual taxes and interest paid to the date of acquisition by the district. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied. Provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, the executive director may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the taxes and interest costs are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by subsection (c)(1) of this section or fair market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land or easement.

(d) Joint storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be limited to that cost that is associated only with the drainage or recreational function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (c) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title. Districts operating under Texas Water Code (TWC), Chapter 54, except one affected by House

Bill 2965, 76th Legislature, 1999, are prohibited from exercising the power of eminent domain outside the district's boundaries to acquire:

- (1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;
- (2) a site for a park, swimming pool, or other recreational facility, as defined by TWC, §49.462 [except a trail];
- (3) an exclusive easement through a county regional park; or [a site for a trail on real property designated as a homestead as defined by Texas Property Code, §41.002; or]
- (4) a site or easement for a road project [an exclusive easement through a county regional park].

(f) Shared land or easements outside the district's boundaries. If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station [station], detention pond, drainage channel, levee, or recreational facility if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(h) Certification by registered professional engineer. Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants, or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

(i) Joint recreational and drainage/detention sites without a constant level lake. If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50% to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2012.

TRD-201205440

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 2, 2012

For further information, please call: (512) 239-2548



## SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

### 30 TAC §293.81

#### Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements TWC, §49.273(i).

#### §293.81. Change Orders.

A change order is a change in plans and specifications 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 subject to the following conditions.

(A) Except as provided in this subparagraph, change orders, in aggregate, shall not be issued to increase the original contract price more than 10%. Additional change orders may be issued only in response to:

- (i) unanticipated conditions encountered during construction;
- (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.

(2) No commission approval is required if the change order is \$50,000 [\$25,000] or less. If the change order is more than \$50,000 [\$25,000], 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 [\$25,000], even though the net change in the contract price will be \$50,000 [\$25,000] or less, approval by the executive director is required.

(3) If the change order is \$50,000 [\$25,000] 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 in 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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2012.

TRD-201205441

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 2, 2012

For further information, please call: (512) 239-2548



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 1. GENERAL LAND OFFICE**

#### **CHAPTER 15. COASTAL AREA PLANNING**

##### **SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM**

###### **31 TAC §15.29**

The General Land Office (GLO) proposes amendments to 31 TAC §15.29, relating to Certification Status of City of the Village of Jamaica Beach Dune Protection and Beach Access Plan.

The intent of this rulemaking is to certify the inclusion of the Erosion Response Plan (ERP) as an appendix to the City of Jamaica Beach's Dune Protection and Beach Access Plan (Plan).

Copies of the City's Plan and the ERP can be obtained by contacting the City of Jamaica Beach at 16628 San Luis Pass Road, City of Jamaica Beach, Texas 77554, calling (409) 737-1142, or emailing cityadmin@ci.jamaicabeach.tx.us and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, phone number (512) 463-5277.

#### **BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENTS**

Section 15.29 (relating to Certification Status of City of the Village of Jamaica Beach Dune Protection and Beach Access Plan) adopts the ERP as an appendix to the City's Plan. The ERP establishes a Dune Conservation Area Line from the line of vegetation and establishes construction requirements for properties and structures located seaward of the Dune Conservation Area Line.

#### **FISCAL AND EMPLOYMENT IMPACTS**

Ms. Helen Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state government as a result of enforcing or administering the amended section.

Ms. Young has determined that there may be fiscal implications to local governments or additional costs of compliance for large and small businesses or individuals resulting from implementation of the amendment to the Plan to include the City of Jamaica Beach's ERP. However, these fiscal impacts cannot be estimated with certainty at this time, since impacts of the plan are determined on a case-by-case basis depending on the characteristics of the permittee, property, and type of construction. In addition, it is the opinion of the GLO that the costs to local governments of implementation of the provisions for construction in the ERP will be offset by a reduction in public expenditures for erosion and storm damage losses to private and public property.

Likewise, the costs of compliance for businesses or individuals will be offset by the reduction in losses to businesses and individuals due to storm damage. Implementation of the ERP will preserve beach dunes and delay erosion by reducing the intensity of storm surge. Additionally, the enhanced dune restoration and construction standards will result in increased protection for structures which are located landward of the dune conservation area. Structures will also be protected by improvements in storm protection through upgrades to access points and the dune system. In addition, the presumption of compliance with the dune mitigation sequence requirements for avoidance and minimization of impacts to dunes and dune vegetation will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the dune protection line.

GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

#### **PUBLIC BENEFIT**

Ms. Young has determined that the public will benefit from the proposed amendment because the GLO will be able to admin-

AN ACT

relating to change order approval requirements for certain political subdivisions of the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 252.048(c), Local Government Code, is amended to read as follows:

(c) If a change order involves a decrease or an increase of \$50,000 [~~\$25,000~~] or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders.

SECTION 2. Section 271.060, Local Government Code, is amended by adding Subsection (c) to read as follows:

(c) A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.

SECTION 3. Section 281.046, Local Government Code, is amended by adding Subsection (f) to read as follows:

(f) The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.

SECTION 4. Section 325.040, Local Government Code, is amended to read as follows:

1           Sec. 325.040. CHANGE ORDERS. After a construction contract  
2 is awarded, if the district determines that additional work is  
3 needed or if the character or type of work, facilities, or  
4 improvements should be changed, the board may authorize change  
5 orders to the contract on terms the board approves. A change made  
6 under this section may not increase or decrease the total cost of  
7 the contract by more than 25 percent. The board may grant authority  
8 to an official or employee responsible for purchasing or for  
9 administering a contract to approve a change order that involves an  
10 increase or decrease of \$50,000 or less.

11           SECTION 5. Section 351.137(c), Local Government Code, is  
12 amended to read as follows:

13           (c) After a construction contract is awarded, if the  
14 district determines that additional work is needed or if the  
15 character or type of work, facilities, or improvements should be  
16 changed, the board may authorize change orders to the contract on  
17 terms the board approves. The board may grant authority to an  
18 official or employee responsible for purchasing or for  
19 administering a contract to approve a change order that involves an  
20 increase or decrease of \$50,000 or less. A change made under this  
21 subsection may not increase or decrease the total cost of the  
22 contract by more than 25 percent.

23           SECTION 6. Section 49.273(i), Water Code, is amended to  
24 read as follows:

25           (i) If changes in plans or specifications are necessary  
26 after the performance of the contract is begun, or if it is  
27 necessary to decrease or increase the quantity of the work to be

1 performed or of the materials, equipment, or supplies to be  
2 furnished, the board may approve change orders making the changes.  
3 The board may grant authority to an official or employee  
4 responsible for purchasing or for administering a contract to  
5 approve a change order that involves an increase or decrease of  
6 \$50,000 or less. The aggregate of the change orders may not  
7 increase the original contract price by more than 10 percent.  
8 Additional change orders may be issued only as a result of  
9 unanticipated conditions encountered during construction, repair,  
10 or renovation or changes in regulatory criteria or to facilitate  
11 project coordination with other political entities.

12 SECTION 7. This Act takes effect immediately if it receives  
13 a vote of two-thirds of all the members elected to each house, as  
14 provided by Section 39, Article III, Texas Constitution. If this  
15 Act does not receive the vote necessary for immediate effect, this  
16 Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 679 was passed by the House on April 7, 2011, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 679 was passed by the Senate on May 17, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

AN ACT

relating to the applicability of provisions concerning bond approval by the Texas Commission on Environmental Quality to certain water entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 49.181(a) and (h), Water Code, are amended to read as follows:

(a) A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to:

(1) refunding bonds if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board; ~~[or]~~

(4) refunding bonds issued to refund bonds described by Subdivision (3); or

1           (5) bonds issued by a public utility agency created  
2 under Chapter 572, Local Government Code, any of the public  
3 entities participating in which are districts if at least one of  
4 those districts is a district described by Subsection (h)(1)(E).

5           (h) This section does not apply to:

6           (1) a district if:

7           (A) [~~(1)~~] the district's boundaries include one  
8 entire county;

9           (B) [~~(2)~~] the district was created by a special  
10 Act of the legislature and:

11           (i) [~~(A)~~] the district is located entirely  
12 within one county;

13           (ii) [~~(B)~~] the district is located entirely  
14 within one or more home-rule municipalities;

15           (iii) [~~(C)~~] the total taxable value of the  
16 real property and improvements to the real property zoned by one or  
17 more home-rule municipalities for residential purposes and located  
18 within the district does not exceed 25 percent of the total taxable  
19 value of all taxable property in the district, as shown by the most  
20 recent certified appraisal tax roll prepared by the appraisal  
21 district for the county; and

22           (iv) [~~(D)~~] the district was not required by  
23 law to obtain commission approval of its bonds before the effective  
24 date of this section;

25           (C) [~~(3)~~] the district is a special water  
26 authority;

27           (D) [~~(4)~~] the district is governed by a board of

1 directors appointed in whole or in part by the governor, a state  
2 agency, or the governing body or chief elected official of a  
3 municipality or county and does not provide, or propose to provide,  
4 water, sewer, drainage, reclamation, or flood control services to  
5 residential retail or commercial customers as its principal  
6 function; or

7 (E) [~~(5)~~] the district on September 1, 2003:

8 (i) [~~(A)~~] is a municipal utility district  
9 that includes territory in only two counties;

10 (ii) [~~(B)~~] has outstanding long-term  
11 indebtedness that is rated BBB or better by a nationally recognized  
12 rating agency for municipal securities; and

13 (iii) [~~(C)~~] has at least 5,000 active water  
14 connections; or

15 (2) a public utility agency created under Chapter 572,  
16 Local Government Code, any of the public entities participating in  
17 which are districts if at least one of those districts is a district  
18 described by Subdivision (1)(E).

19 SECTION 2. Section 49.052(f), Water Code, is amended to  
20 read as follows:

21 (f) This section shall not apply to special water  
22 authorities, districts described in Section 49.181(h)(1)(D)  
23 [~~49.181(h)(4)~~], or a district where the principal function of the  
24 district is to provide irrigation water to agricultural lands or to  
25 provide nonpotable water for any purpose.

26 SECTION 3. Section 49.183(d), Water Code, is amended to  
27 read as follows:

1           (d) A district's bonds are negotiable instruments within  
2 the meaning and purposes of the Business & Commerce Code. A  
3 district's bonds may be issued and bear interest in accordance with  
4 Chapters 1201, 1204, and 1371, Government Code, and Subchapters  
5 A-C, Chapter 1207, Government Code. Except for this subsection,  
6 this section does not apply to special water authorities or  
7 districts described in Section 49.181(h)(1)(D) [~~49.181(h)(4)~~].

8           SECTION 4. The change in law made by this Act does not apply  
9 to bonds for which an application and report were submitted to the  
10 Texas Commission on Environmental Quality under Section 49.181(b),  
11 Water Code, before the effective date of this Act. Those bonds are  
12 governed by the law as it existed immediately before the effective  
13 date of this Act, and that law is continued in effect for that  
14 purpose.

15           SECTION 5. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1901 was passed by the House on April 14, 2011, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1901 was passed by the Senate on May 12, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

AN ACT

relating to the use of eminent domain authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 11.155, Education Code, is amended to read as follows:

(a) An independent school district may, by the exercise of the right of eminent domain, acquire the fee simple title to real property [~~for the purpose of securing sites~~] on which to construct school buildings or for any other public use [~~purpose~~] necessary for the district.

SECTION 2. Chapter 2206, Government Code, is amended to read as follows:

CHAPTER 2206. [~~LIMITATIONS ON USE OF~~] EMINENT DOMAIN

SUBCHAPTER A. LIMITATIONS ON PURPOSE AND USE OF PROPERTY ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

(1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;

(2) a political subdivision of this state; or

(3) a corporation created by a governmental entity to act on behalf of the entity.

1 (b) A governmental or private entity may not take private  
2 property through the use of eminent domain if the taking:

3 (1) confers a private benefit on a particular private  
4 party through the use of the property;

5 (2) is for a public use that is merely a pretext to  
6 confer a private benefit on a particular private party; ~~[or]~~

7 (3) is for economic development purposes, unless the  
8 economic development is a secondary purpose resulting from  
9 municipal community development or municipal urban renewal  
10 activities to eliminate an existing affirmative harm on society  
11 from slum or blighted areas under:

12 (A) Chapter 373 or 374, Local Government Code,  
13 other than an activity described by Section 373.002(b)(5), Local  
14 Government Code; or

15 (B) Section 311.005(a)(1)(I), Tax Code; or

16 (4) is not for a public use.

17 (c) This section does not affect the authority of an entity  
18 authorized by law to take private property through the use of  
19 eminent domain for:

20 (1) transportation projects, including, but not  
21 limited to, railroads, airports, or public roads or highways;

22 (2) entities authorized under Section 59, Article XVI,  
23 Texas Constitution, including:

24 (A) port authorities;

25 (B) navigation districts; and

26 (C) any other conservation or reclamation  
27 districts that act as ports;

1           (3) water supply, wastewater, flood control, and  
2 drainage projects;

3           (4) public buildings, hospitals, and parks;

4           (5) the provision of utility services;

5           (6) a sports and community venue project approved by  
6 voters at an election held on or before December 1, 2005, under  
7 Chapter 334 or 335, Local Government Code;

8           (7) the operations of:

9                   (A) a common carrier pipeline [~~subject to Chapter~~  
10 ~~111, Natural Resources Code, and Section B(3)(b), Article 2.01,~~  
11 ~~Texas Business Corporation Act~~]; or

12                   (B) an energy transporter, as that term is  
13 defined by Section 186.051, Utilities Code;

14           (8) a purpose authorized by Chapter 181, Utilities  
15 Code;

16           (9) underground storage operations subject to Chapter  
17 91, Natural Resources Code;

18           (10) a waste disposal project; or

19           (11) a library, museum, or related facility and any  
20 infrastructure related to the facility.

21           (d) This section does not affect the authority of a  
22 governmental entity to condemn a leasehold estate on property owned  
23 by the governmental entity.

24           (e) The determination by the governmental or private entity  
25 proposing to take the property that the taking does not involve an  
26 act or circumstance prohibited by Subsection (b) does not create a  
27 presumption with respect to whether the taking involves that act or

1 circumstance.

2 Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) This section  
3 applies only to an easement acquired by an entity for the purpose of  
4 a pipeline to be used for oil or gas exploration or production  
5 activities.

6 (b) A property owner whose property is acquired through the  
7 use of eminent domain under Chapter 21, Property Code, for the  
8 purpose of creating an easement through that owner's property may  
9 construct streets or roads, including gravel, asphalt, or concrete  
10 streets or roads, at any locations above the easement that the  
11 property owner chooses.

12 (c) The portion of a street or road constructed under this  
13 section that is within the area covered by the easement:

14 (1) must cross the easement at or near 90 degrees; and

15 (2) may not:

16 (A) exceed 40 feet in width;

17 (B) cause a violation of any applicable pipeline  
18 regulation; or

19 (C) interfere with the operation and maintenance  
20 of any pipeline.

21 (d) At least 30 days before the date on which construction  
22 of an asphalt or concrete street or road that will be located wholly  
23 or partly in an area covered by an easement used for a pipeline is  
24 scheduled to begin, the property owner must submit plans for the  
25 proposed construction to the owner of the easement.

26 (e) Notwithstanding the provisions of this section, a  
27 property owner and the owner of the easement may agree to terms

1 other than those stated in Subsection (c).

2 SUBCHAPTER B. PROCEDURES REQUIRED TO INITIATE

3 EMINENT DOMAIN PROCEEDINGS

4 Sec. 2206.051. SHORT TITLE. This subchapter may be cited as  
5 the Truth in Condemnation Procedures Act.

6 Sec. 2206.052. APPLICABILITY. The procedures in this  
7 subchapter apply only to the use of eminent domain under the laws of  
8 this state by a governmental entity.

9 Sec. 2206.053. VOTE ON USE OF EMINENT DOMAIN. (a) Before a  
10 governmental entity initiates a condemnation proceeding by filing a  
11 petition under Section 21.012, Property Code, the governmental  
12 entity must:

13 (1) authorize the initiation of the condemnation  
14 proceeding at a public meeting by a record vote; and

15 (2) include in the notice for the public meeting as  
16 required by Subchapter C, Chapter 551, in addition to other  
17 information as required by that subchapter, the consideration of  
18 the use of eminent domain to condemn property as an agenda item.

19 (b) A single ordinance, resolution, or order may be adopted  
20 for all units of property to be condemned if:

21 (1) the motion required by Subsection (e) indicates  
22 that the first record vote applies to all units of property to be  
23 condemned; and

24 (2) the minutes of the governmental entity reflect  
25 that the first vote applies to all of those units.

26 (c) If more than one member of the governing body objects to  
27 adopting a single ordinance, resolution, or order by a record vote

1 for all units of property for which condemnation proceedings are to  
2 be initiated, a separate record vote must be taken for each unit of  
3 property.

4 (d) For the purposes of Subsections (a) and (c), if two or  
5 more units of real property are owned by the same person, the  
6 governmental entity may treat those units of property as one unit of  
7 property.

8 (e) The motion to adopt an ordinance, resolution, or order  
9 authorizing the initiation of condemnation proceedings under  
10 Chapter 21, Property Code, must be made in a form substantially  
11 similar to the following: "I move that the (name of governmental  
12 entity) authorize the use of the power of eminent domain to acquire  
13 (describe the property) for (describe the public use)." The  
14 description of the property required by this subsection is  
15 sufficient if the description of the location of and interest in the  
16 property that the governmental entity seeks to acquire is  
17 substantially similar to the description that is or could properly  
18 be used in a petition to condemn the property under Section 21.012,  
19 Property Code.

20 (f) If a project for a public use described by Section  
21 2206.001(c)(3) will require a governmental entity to acquire  
22 multiple tracts or units of property to construct facilities  
23 connecting one location to another location, the governing body of  
24 the governmental entity may adopt a single ordinance, resolution,  
25 or order by a record vote that delegates the authority to initiate  
26 condemnation proceedings to the chief administrative official of  
27 the governmental entity.

1       (g) An ordinance, resolution, or order adopted under  
2 Subsection (f) is not required to identify specific properties that  
3 the governmental entity will acquire. The ordinance, resolution,  
4 or order must identify the general area to be covered by the project  
5 or the general route that will be used by the governmental entity  
6 for the project in a way that provides property owners in and around  
7 the area or along the route reasonable notice that the owners'  
8 properties may be subject to condemnation proceedings during the  
9 planning or construction of the project.

10       SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

11       Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY;  
12 EXPIRATION OF AUTHORITY. (a) This section does not apply to an  
13 entity that was created or that acquired the power of eminent domain  
14 on or after December 31, 2012.

15       (b) Not later than December 31, 2012, an entity, including a  
16 private entity, authorized by the state by a general or special law  
17 to exercise the power of eminent domain shall submit to the  
18 comptroller a letter stating that the entity is authorized by the  
19 state to exercise the power of eminent domain and identifying each  
20 provision of law that grants the entity that authority. The entity  
21 must send the letter by certified mail, return receipt requested.

22       (c) The authority of an entity to exercise the power of  
23 eminent domain expires on September 1, 2013, unless the entity  
24 submits a letter in accordance with Subsection (b).

25       (d) Not later than March 1, 2013, the comptroller shall  
26 submit to the governor, the lieutenant governor, the speaker of the  
27 house of representatives, the presiding officers of the appropriate

1 standing committees of the senate and the house of representatives,  
2 and the Texas Legislative Council a report that contains:

3 (1) the name of each entity that submitted a letter in  
4 accordance with this section; and

5 (2) a corresponding list of the provisions granting  
6 eminent domain authority as identified by each entity that  
7 submitted a letter.

8 (e) The Texas Legislative Council shall prepare for  
9 consideration by the 84th Legislature, Regular Session, a  
10 nonsubstantive revision of the statutes of this state as necessary  
11 to reflect the state of the law after the expiration of an entity's  
12 eminent domain authority effective under Subsection (c).

13 SECTION 3. Subsection (a), Section 251.001, Local  
14 Government Code, is amended to read as follows:

15 (a) When the governing body of a municipality considers it  
16 necessary, the municipality may exercise the right of eminent  
17 domain for a public use [~~purpose~~] to acquire public or private  
18 property, whether located inside or outside the municipality, for  
19 any of the following uses [~~purposes~~]:

20 (1) the providing, enlarging, or improving of a  
21 municipally owned city hall; police station; jail or other law  
22 enforcement detention facility; fire station; library; school or  
23 other educational facility; academy; auditorium; hospital;  
24 sanatorium; market house; slaughterhouse; warehouse; elevator;  
25 railroad terminal; airport; ferry; ferry landing; pier; wharf; dock  
26 or other shipping facility; loading or unloading facility; alley,  
27 street, or other roadway; park, playground, or other recreational

1 facility; square; water works system, including reservoirs, other  
2 water supply sources, watersheds, and water storage, drainage,  
3 treatment, distribution, transmission, and emptying facilities;  
4 sewage system including sewage collection, drainage, treatment,  
5 disposal, and emptying facilities; electric or gas power system;  
6 cemetery; and crematory;

7 (2) the determining of riparian rights relative to the  
8 municipal water works;

9 (3) the straightening or improving of the channel of  
10 any stream, branch, or drain;

11 (4) the straightening, widening, or extending of any  
12 alley, street, or other roadway; and

13 (5) ~~for~~ any other municipal public use ~~[purpose]~~ the  
14 governing body considers advisable.

15 SECTION 4. Subsection (a), Section 261.001, Local  
16 Government Code, is amended to read as follows:

17 (a) A county may exercise the right of eminent domain to  
18 condemn and acquire land, an easement in land, or a right-of-way if  
19 the acquisition is necessary for the construction of a jail,  
20 courthouse, hospital, or library, or for another public use  
21 ~~[purpose]~~ authorized by law.

22 SECTION 5. Subsection (c), Section 263.201, Local  
23 Government Code, is amended to read as follows:

24 (c) The declaration of taking must contain:

25 (1) a declaration that the land or interest in land  
26 described in the original petition is taken for a public use  
27 ~~[purpose]~~ and for ultimate conveyance to the United States;

1           (2) a description of the land sufficient for the  
2 identification of the land;

3           (3) a statement of the estate or interest in the land  
4 being taken;

5           (4) a statement of the public use to be made of the  
6 land;

7           (5) a plan showing the land being taken; and

8           (6) a statement of the amount of damages awarded by the  
9 special commissioners, or by the jury on appeal, for the taking of  
10 the land.

11           SECTION 6. Section 273.002, Local Government Code, is  
12 amended to read as follows:

13           Sec. 273.002. CONDEMNATION. Condemnation of property under  
14 this chapter shall be in accordance with state law relating to  
15 eminent domain, which may be Chapter 21, Property Code, or any other  
16 state law governing and relating to the condemnation of land for  
17 public use [purposes] by a municipality.

18           SECTION 7. Section 21.0111, Property Code, is amended to  
19 read as follows:

20           Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED;  
21 INITIAL OFFER. (a) An [~~A governmental~~] entity with eminent domain  
22 authority that wants to acquire real property for a public use  
23 shall, by certified mail, return receipt requested, disclose to the  
24 property owner at the time an offer to purchase or lease the  
25 property is made any and all [~~existing~~] appraisal reports produced  
26 or acquired by the [~~governmental~~] entity relating specifically to  
27 the owner's property and prepared in the 10 years preceding the date

1 of the [~~used in determining the final valuation~~] offer.

2 (b) A property owner shall disclose to the [~~acquiring~~  
3 ~~governmental~~] entity seeking to acquire the property any and all  
4 current and existing appraisal reports produced or acquired by the  
5 property owner relating specifically to the owner's property and  
6 used in determining the owner's opinion of value. Such disclosure  
7 shall take place not later than the earlier of:

8 (1) the 10th day after the date [~~within 10 days~~] of  
9 receipt of an appraisal report; or

10 (2) the third business day before the date of a special  
11 commissioner's hearing if an appraisal report is to be used at the  
12 [~~reports but no later than 10 days prior to the special~~  
13 ~~commissioner's~~] hearing.

14 (c) An entity seeking to acquire property that the entity is  
15 authorized to obtain through the use of eminent domain may not  
16 include a confidentiality provision in an offer or agreement to  
17 acquire the property. The entity shall inform the owner of the  
18 property that the owner has the right to:

19 (1) discuss any offer or agreement regarding the  
20 entity's acquisition of the property with others; or

21 (2) keep the offer or agreement confidential, unless  
22 the offer or agreement is subject to Chapter 552, Government Code.

23 (d) A subsequent bona fide purchaser for value from the  
24 acquiring [~~governmental~~] entity may conclusively presume that the  
25 requirement of this section has been met. This section does not  
26 apply to acquisitions of real property for which an [~~a~~  
27 ~~governmental~~] entity does not have eminent domain authority.

1 SECTION 8. Subchapter B, Chapter 21, Property Code, is  
2 amended by adding Section 21.0113 to read as follows:

3 Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity  
4 with eminent domain authority that wants to acquire real property  
5 for a public use must make a bona fide offer to acquire the property  
6 from the property owner voluntarily.

7 (b) An entity with eminent domain authority has made a bona  
8 fide offer if:

9 (1) an initial offer is made in writing to a property  
10 owner;

11 (2) a final offer is made in writing to the property  
12 owner;

13 (3) the final offer is made on or after the 30th day  
14 after the date on which the entity makes a written initial offer to  
15 the property owner;

16 (4) before making a final offer, the entity obtains a  
17 written appraisal from a certified appraiser of the value of the  
18 property being acquired and the damages, if any, to any of the  
19 property owner's remaining property;

20 (5) the final offer is equal to or greater than the  
21 amount of the written appraisal obtained by the entity;

22 (6) the following items are included with the final  
23 offer or have been previously provided to the owner by the entity:

24 (A) a copy of the written appraisal;

25 (B) a copy of the deed, easement, or other  
26 instrument conveying the property sought to be acquired; and

27 (C) the landowner's bill of rights statement

1 prescribed by Section 21.0112; and

2 (7) the entity provides the property owner with at  
3 least 14 days to respond to the final offer and the property owner  
4 does not agree to the terms of the final offer within that period.

5 SECTION 9. Section 21.012, Property Code, is amended to  
6 read as follows:

7 Sec. 21.012. CONDEMNATION PETITION. (a) If an entity [~~the~~  
8 ~~United States, this state, a political subdivision of this state, a~~  
9 ~~corporation~~] with eminent domain authority[~~, or an irrigation,~~  
10 ~~water improvement, or water power control district created by law~~]  
11 wants to acquire real property for public use but is unable to agree  
12 with the owner of the property on the amount of damages, the  
13 [~~condemning~~] entity may begin a condemnation proceeding by filing a  
14 petition in the proper court.

15 (b) The petition must:

16 (1) describe the property to be condemned;

17 (2) state with specificity the public use [~~purpose~~]  
18 for which the entity intends to acquire [~~use~~] the property;

19 (3) state the name of the owner of the property if the  
20 owner is known;

21 (4) state that the entity and the property owner are  
22 unable to agree on the damages; [~~and~~]

23 (5) if applicable, state that the entity provided the  
24 property owner with the landowner's bill of rights statement in  
25 accordance with Section 21.0112; and

26 (6) state that the entity made a bona fide offer to  
27 acquire the property from the property owner voluntarily as

1 provided by Section 21.0113.

2 (c) An entity that files a petition under this section must  
3 provide a copy of the petition to the property owner by certified  
4 mail, return receipt requested.

5 SECTION 10. Subsection (a), Section 21.014, Property Code,  
6 is amended to read as follows:

7 (a) The judge of a court in which a condemnation petition is  
8 filed or to which an eminent domain case is assigned shall appoint  
9 three disinterested real property owners [~~freeholders~~] who reside  
10 in the county as special commissioners to assess the damages of the  
11 owner of the property being condemned. The judge appointing the  
12 special commissioners shall give preference to persons agreed on by  
13 the parties. The judge shall provide each party a reasonable period  
14 to strike one of the three commissioners appointed by the judge. If  
15 a person fails to serve as a commissioner or is struck by a party to  
16 the suit, the judge shall [~~may~~] appoint a replacement.

17 SECTION 11. Subsection (a), Section 21.015, Property Code,  
18 is amended to read as follows:

19 (a) The special commissioners in an eminent domain  
20 proceeding shall promptly schedule a hearing for the parties at the  
21 earliest practical time but may not schedule a hearing to assess  
22 damages before the 20th day after the date the special  
23 commissioners were appointed. The special commissioners shall  
24 schedule a hearing for the parties [~~and~~] at a place that is as near  
25 as practical to the property being condemned or at the county seat  
26 of the county in which the proceeding is being held.

27 SECTION 12. Subsection (b), Section 21.016, Property Code,

1 is amended to read as follows:

2 (b) Notice of the hearing must be served on a party not later  
3 than the 20th [~~11th~~] day before the day set for the hearing. A  
4 person competent to testify may serve the notice.

5 SECTION 13. Section 21.023, Property Code, is amended to  
6 read as follows:

7 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF  
8 ACQUISITION. An [A governmental] entity with eminent domain  
9 authority shall disclose in writing to the property owner, at the  
10 time of acquisition of the property through eminent domain, that:

11 (1) the owner or the owner's heirs, successors, or  
12 assigns may be [~~are~~] entitled to:

13 (A) repurchase the property under Subchapter E  
14 [~~if the public use for which the property was acquired through~~  
15 ~~eminent domain is canceled before the 10th anniversary of the date~~  
16 ~~of acquisition~~]; or

17 (B) request from the entity certain information  
18 relating to the use of the property and any actual progress made  
19 toward that use; and

20 (2) the repurchase price is the price paid to the owner  
21 by the entity at the time the entity acquired the property through  
22 eminent domain [~~fair market value of the property at the time the~~  
23 ~~public use was canceled~~].

24 SECTION 14. Subchapter B, Chapter 21, Property Code, is  
25 amended by adding Section 21.025 to read as follows:

26 Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.

27 (a) Notwithstanding any other law, an entity that is not subject

1 to Chapter 552, Government Code, and is authorized by law to acquire  
2 private property through the use of eminent domain is required to  
3 produce information as provided by this section if the information  
4 is:

5 (1) requested by a person who owns property that is the  
6 subject of a proposed or existing eminent domain proceeding; and

7 (2) related to the taking of the person's private  
8 property by the entity through the use of eminent domain.

9 (b) An entity described by Subsection (a) is required under  
10 this section only to produce information relating to the  
11 condemnation of the specific property owned by the requestor as  
12 described in the request. A request under this section must contain  
13 sufficient details to allow the entity to identify the specific  
14 tract of land in relation to which the information is sought.

15 (c) The entity shall respond to a request in accordance with  
16 the Texas Rules of Civil Procedure as if the request was made in a  
17 matter pending before a state district court.

18 (d) Exceptions to disclosure provided by this chapter and  
19 the Texas Rules of Civil Procedure apply to the disclosure of  
20 information under this section.

21 (e) Jurisdiction to enforce the provisions of this section  
22 resides in:

23 (1) the court in which the condemnation was initiated;

24 or

25 (2) if the condemnation proceeding has not been  
26 initiated:

27 (A) a court that would have jurisdiction over a

1 proceeding to condemn the requestor's property; or

2 (B) a court with eminent domain jurisdiction in  
3 the county in which the entity has its principal place of business.

4 (f) If the entity refuses to produce information requested  
5 in accordance with this section and the court determines that the  
6 refusal violates this section, the court may award the requestor's  
7 reasonable attorney's fees incurred to compel the production of the  
8 information.

9 SECTION 15. Subsection (d), Section 21.042, Property Code,  
10 is amended to read as follows:

11 (d) In estimating injury or benefit under Subsection (c),  
12 the special commissioners shall consider an injury or benefit that  
13 is peculiar to the property owner and that relates to the property  
14 owner's ownership, use, or enjoyment of the particular parcel of  
15 real property, including a material impairment of direct access on  
16 or off the remaining property that affects the market value of the  
17 remaining property, but they may not consider an injury or benefit  
18 that the property owner experiences in common with the general  
19 community, including circuitry of travel and diversion of traffic.  
20 In this subsection, "direct access" means ingress and egress on or  
21 off a public road, street, or highway at a location where the  
22 remaining property adjoins that road, street, or highway.

23 SECTION 16. Subsections (a) and (b), Section 21.046,  
24 Property Code, are amended to read as follows:

25 (a) A department, agency, instrumentality, or political  
26 subdivision of this state shall [~~may~~] provide a relocation advisory  
27 service for an individual, a family, a business concern, a farming

1 or ranching operation, or a nonprofit organization that [~~if the~~  
2 ~~service~~] is compatible with the Federal Uniform Relocation  
3 Assistance and Real Property Acquisition Policies Act of 1970  
4 [~~Advisory Program~~], 42 U.S.C.A. 4601 [~~23 U.S.C.A. 501~~], et seq.

5 (b) This state or a political subdivision of this state  
6 shall [~~may~~], as a cost of acquiring real property, pay moving  
7 expenses and rental supplements, make relocation payments, provide  
8 financial assistance to acquire replacement housing, and  
9 compensate for expenses incidental to the transfer of the property  
10 if an individual, a family, the personal property of a business, a  
11 farming or ranching operation, or a nonprofit organization is  
12 displaced in connection with the acquisition.

13 SECTION 17. The heading to Section 21.047, Property Code,  
14 is amended to read as follows:

15 Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

16 SECTION 18. Section 21.047, Property Code, is amended by  
17 adding Subsection (d) to read as follows:

18 (d) If a court hearing a suit under this chapter determines  
19 that a condemnor did not make a bona fide offer to acquire the  
20 property from the property owner voluntarily as required by Section  
21 21.0113, the court shall abate the suit, order the condemnor to make  
22 a bona fide offer, and order the condemnor to pay:

23 (1) all costs as provided by Subsection (a); and

24 (2) any reasonable attorney's fees and other  
25 professional fees incurred by the property owner that are directly  
26 related to the violation.

27 SECTION 19. Subchapter E, Chapter 21, Property Code, is

1 amended to read as follows:

2 SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING  
3 [GOVERNMENTAL] ENTITY

4 Sec. 21.101. RIGHT OF REPURCHASE [APPLICABILITY]. (a) A  
5 person from whom [~~Except as provided in Subsection (b), this~~  
6 ~~subchapter applies only to~~] a real property interest is acquired by  
7 an [a governmental] entity through eminent domain for a public use,  
8 or that person's heirs, successors, or assigns, is entitled to  
9 repurchase the property as provided by this subchapter if:

10 (1) the public use for which the property was acquired  
11 through eminent domain is [that was] canceled before the property  
12 is used for that public use;

13 (2) no actual progress is made toward the public use  
14 for which the property was acquired between the date of acquisition  
15 and the 10th anniversary of that date; or

16 (3) the property becomes unnecessary for the public  
17 use for which the property was acquired, or a substantially similar  
18 public use, before the 10th anniversary of the date of acquisition.

19 (b) In this section, "actual progress" means the completion  
20 of two or more of the following actions:

21 (1) the performance of a significant amount of labor  
22 to develop the property or other property acquired for the same  
23 public use project for which the property owner's property was  
24 acquired;

25 (2) the provision of a significant amount of materials  
26 to develop the property or other property acquired for the same  
27 public use project for which the property owner's property was

1 acquired;

2 (3) the hiring of and performance of a significant  
3 amount of work by an architect, engineer, or surveyor to prepare a  
4 plan or plat that includes the property or other property acquired  
5 for the same public use project for which the property owner's  
6 property was acquired;

7 (4) application for state or federal funds to develop  
8 the property or other property acquired for the same public use  
9 project for which the property owner's property was acquired;

10 (5) application for a state or federal permit to  
11 develop the property or other property acquired for the same public  
12 use project for which the property owner's property was acquired;

13 (6) the acquisition of a tract or parcel of real  
14 property adjacent to the property for the same public use project  
15 for which the owner's property was acquired; or

16 (7) for a governmental entity, the adoption by a  
17 majority of the entity's governing body at a public hearing of a  
18 development plan for a public use project that indicates that the  
19 entity will not complete more than one action described by  
20 Subdivisions (1)-(6) before the 10th anniversary of the date of  
21 acquisition of the property [~~This subchapter does not apply to a~~  
22 ~~right-of-way under the jurisdiction of:~~

23 ~~[(1) a county,~~

24 ~~[(2) a municipality, or~~

25 ~~[(3) the Texas Department of Transportation].~~

26 (c) A district court may determine all issues in any suit  
27 regarding the repurchase of a real property interest acquired

1 through eminent domain by the former property owner or the owner's  
2 heirs, successors, or assigns.

3       Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED [~~AT~~  
4 ~~TIME OF CANCELLATION OF PUBLIC USE~~]. Not later than the 180th day  
5 after the date an entity that acquired a real property interest  
6 through eminent domain determines that the former property owner is  
7 entitled to repurchase the property under Section 21.101 [~~of the~~  
8 ~~cancellation of the public use for which real property was acquired~~  
9 ~~through eminent domain from a property owner under Subchapter B~~],  
10 the [~~governmental~~] entity shall send by certified mail, return  
11 receipt requested, to the property owner or the owner's heirs,  
12 successors, or assigns a notice containing:

13           (1) an identification, which is not required to be a  
14 legal description, of the property that was acquired;

15           (2) an identification of the public use for which the  
16 property had been acquired and a statement that:

17                   (A) the public use was [~~has been~~] canceled before  
18 the property was used for the public use;

19                   (B) no actual progress was made toward the public  
20 use; or

21                   (C) the property became unnecessary for the  
22 public use, or a substantially similar public use, before the 10th  
23 anniversary of the date of acquisition; and

24           (3) a description of the person's right under this  
25 subchapter to repurchase the property.

26       Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED  
27 PROPERTY. (a) On or after the 10th anniversary of the date on

1 which real property was acquired by an entity through eminent  
2 domain, a property owner or the owner's heirs, successors, or  
3 assigns may request that the condemning entity make a determination  
4 and provide a statement and other relevant information regarding:

5 (1) whether the public use for which the property was  
6 acquired was canceled before the property was used for the public  
7 use;

8 (2) whether any actual progress was made toward the  
9 public use between the date of acquisition and the 10th anniversary  
10 of that date, including an itemized description of the progress  
11 made, if applicable; and

12 (3) whether the property became unnecessary for the  
13 public use, or a substantially similar public use, before the 10th  
14 anniversary of the date of acquisition.

15 (b) A request under this section must contain sufficient  
16 detail to allow the entity to identify the specific tract of land in  
17 relation to which the information is sought.

18 (c) Not later than the 90th day following the date of  
19 receipt of the request for information, the entity shall send a  
20 written response by certified mail, return receipt requested, to  
21 the requestor.

22 Sec. 21.1022. LIMITATIONS PERIOD FOR REPURCHASE RIGHT.  
23 Notwithstanding Section 21.103, the right to repurchase provided by  
24 this subchapter is extinguished on the first anniversary of the  
25 expiration of the period for an entity to provide notice under  
26 Section 21.102 if the entity:

27 (1) is required to provide notice under Section

1 21.102;

2 (2) makes a good faith effort to locate and provide  
3 notice to each person entitled to notice before the expiration of  
4 the deadline for providing notice under that section; and

5 (3) does not receive a response to any notice provided  
6 under that section in the period for response prescribed by Section  
7 21.103.

8 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later  
9 than the 180th day after the date of the postmark on a [the] notice  
10 sent under Section 21.102 or a response to a request made under  
11 Section 21.1021 that indicates that the property owner, or the  
12 owner's heirs, successors, or assigns, is entitled to repurchase  
13 the property interest in accordance with Section 21.101, the  
14 property owner or the owner's heirs, successors, or assigns must  
15 notify the ~~[governmental]~~ entity of the person's intent to  
16 repurchase the property interest under this subchapter.

17 (b) As soon as practicable after receipt of a notice of  
18 intent to repurchase [the notification] under Subsection (a), the  
19 ~~[governmental]~~ entity shall offer to sell the property interest to  
20 the person for the price paid to the owner by the entity at the time  
21 the entity acquired the property through eminent domain [fair  
22 ~~market value of the property at the time the public use was~~  
23 ~~cancelled]~~. The person's right to repurchase the property expires  
24 on the 90th day after the date on which the ~~[governmental]~~ entity  
25 makes the offer.

26 SECTION 20. Section 202.021, Transportation Code, is  
27 amended by adding Subsection (j) to read as follows:

1        (j) The standard for determination of the fair value of the  
2 state's interest in access rights to a highway right-of-way is the  
3 same legal standard that is applied by the commission in the:

4            (1) acquisition of access rights under Subchapter D,  
5 Chapter 203; and

6            (2) payment of damages in the exercise of the  
7 authority, under Subchapter C, Chapter 203, for impairment of  
8 highway access to or from real property where the real property  
9 adjoins the highway.

10        SECTION 21. Section 54.209, Water Code, is amended to read  
11 as follows:

12        Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. A  
13 district may not exercise the power of eminent domain outside the  
14 district boundaries to acquire:

15            (1) a site for a water treatment plant, water storage  
16 facility, wastewater treatment plant, or wastewater disposal  
17 plant;

18            (2) a site for a park, swimming pool, or other  
19 recreational facility, as defined by Section 49.462 [~~except a~~  
20 ~~trail~~];

21            (3) [~~a site for a trail on real property designated as~~  
22 ~~a homestead as defined by Section 41.002, Property Code, or~~

23            [~~(4)~~] an exclusive easement through a county regional  
24 park; or

25            (4) a site or easement for a road project.

26        SECTION 22. Section 1, Chapter 178 (S.B. 289), Acts of the  
27 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's

1 Texas Civil Statutes), is amended to read as follows:

2       Sec. 1. Except as provided by this section, and  
3 notwithstanding any other law, any [~~Any~~] nonprofit corporation  
4 incorporated under the laws of this state for purely charitable  
5 purposes and which is directly affiliated or associated with a  
6 medical center having a medical school recognized by the Council on  
7 Medical Education and Hospitals of the American Medical Association  
8 as an integral part of its establishment, and which has for a  
9 purpose of its incorporation the provision or support of medical  
10 facilities or services for the use and benefit of the public, and  
11 which is situated in any county of this state having a population in  
12 excess of six hundred thousand (600,000) inhabitants according to  
13 the most recent Federal Census shall have the power of eminent  
14 domain and condemnation for the purposes set forth in Section 2 and  
15 Section 3 of this Act. A charitable corporation described by this  
16 section may not exercise the power of eminent domain and  
17 condemnation to acquire a detached, single-family residential  
18 property or a multifamily residential property that contains eight  
19 or fewer dwelling units.

20       SECTION 23. (a) Section 552.0037, Government Code, is  
21 repealed.

22       (b) Section 21.024, Property Code, is repealed.

23       SECTION 24. Section 11.155, Education Code, Chapter 2206,  
24 Government Code, Sections 251.001, 261.001, 263.201, and 273.002,  
25 Local Government Code, Chapter 21, Property Code, and Section 1,  
26 Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular  
27 Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), as

1 amended by this Act, apply only to a condemnation proceeding in  
2 which the petition is filed on or after the effective date of this  
3 Act and to any property condemned through the proceeding. A  
4 condemnation proceeding in which the petition is filed before the  
5 effective date of this Act and any property condemned through the  
6 proceeding are governed by the law in effect immediately before  
7 that date, and that law is continued in effect for that purpose.

8 SECTION 25. The change in law made by this Act to Section  
9 202.021, Transportation Code, applies only to a sale or transfer  
10 under that section that occurs on or after the effective date of  
11 this Act. A sale or transfer that occurs before the effective date  
12 of this Act is governed by the law applicable to the sale or  
13 transfer immediately before the effective date of this Act, and  
14 that law is continued in effect for that purpose.

15 SECTION 26. The changes in law made by this Act to Section  
16 54.209, Water Code, apply only to a condemnation proceeding in  
17 which the petition is filed on or after the effective date of this  
18 Act. A condemnation proceeding in which the petition is filed  
19 before the effective date of this Act is governed by the law in  
20 effect on the date the petition was filed, and that law is continued  
21 in effect for that purpose.

22 SECTION 27. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 18 passed the Senate on February 9, 2011, by the following vote: Yeas 31, Nays 0; April 19, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 28, 2011, House granted request of the Senate; May 6, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 18 passed the House, with amendments, on April 14, 2011, by the following vote: Yeas 144, Nays 0, one present not voting; April 28, 2011, House granted request of the Senate for appointment of Conference Committee; May 5, 2011, House adopted Conference Committee Report by the following vote: Yeas 145, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to the qualification of supervisors of a fresh water supply district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 53.063, Water Code, is amended to read as follows:

(a) Except as provided by Subsection (b), to be qualified for election as a supervisor:

(1) [~~1~~] a person must be:

(A) [~~(1)~~] a resident of this state;

(B) [~~(2)~~] the owner of taxable property in the district; and

(C) [~~(3)~~] at least 18 years of age; or

(2) a person must be a registered voter of the district.

SECTION 2. This Act takes effect September 1, 2011.

S.B. No. 512

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 512 passed the Senate on March 31, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 512 passed the House on May 20, 2011, by the following vote: Yeas 149, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to certificates of public convenience and necessity for water or sewer services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.245, Water Code, is amended by amending Subsection (b) and adding Subsections (c-1) through (c-5) to read as follows:

(b) Except as provided by Subsections [~~Subsection~~] (c), (c-1), and (c-2), the commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the commission may

1 grant the certificate of public convenience and necessity without  
2 the consent of the municipality if:

3 (1) the commission makes the findings required by  
4 Subsection (c);

5 (2) the municipality has not entered into a binding  
6 commitment to serve the area that is the subject of the retail  
7 public utility's application to the commission before the 180th day  
8 after the date the formal request was made; and

9 (3) the landowner or retail public utility that  
10 submitted the formal request has not unreasonably refused to:

11 (A) comply with the municipality's service  
12 extension and development process; or

13 (B) enter into a contract for water or sewer  
14 services with the municipality.

15 (c-2) If a municipality refuses to provide service in the  
16 proposed service area, as evidenced by a formal vote of the  
17 municipality's governing body or an official notification from the  
18 municipality, the commission is not required to make the findings  
19 otherwise required by this section and may grant the certificate of  
20 public convenience and necessity to the retail public utility at  
21 any time after the date of the formal vote or receipt of the  
22 official notification.

23 (c-3) The commission must include as a condition of a  
24 certificate of public convenience and necessity granted under  
25 Subsection (c-1) or (c-2) that all water and sewer facilities be  
26 designed and constructed in accordance with the municipality's  
27 standards for water and sewer facilities.

1        (c-4) Subsections (c-1), (c-2), and (c-3) do not apply to:

2                (1) a county that borders the United Mexican States  
3 and the Gulf of Mexico or a county adjacent to such a county;

4                (2) a county with a population of more than 30,000 and  
5 less than 35,000 that borders the Red River; or

6                (3) a county with a population of more than 100,000 and  
7 less than 200,000 that borders a county described by Subdivision  
8 (2).

9        (c-5) Subsections (c-1), (c-2), and (c-3) do not apply to:

10                (1) a county with a population of 130,000 or more that  
11 is adjacent to a county with a population of 1.5 million or more  
12 that is within 200 miles of an international border; or

13                (2) a county with a population of more than 40,000 and  
14 less than 50,000 that contains a portion of the San Antonio River.

15        SECTION 2. Section 13.2451, Water Code, is amended by  
16 amending Subsections (a) and (b) and adding Subsections (b-1),  
17 (b-2), and (b-3) to read as follows:

18        (a) Except as provided by Subsection (b), if [~~if~~] a  
19 municipality extends its extraterritorial jurisdiction to include  
20 an area certificated to a retail public utility, the retail public  
21 utility may continue and extend service in its area of public  
22 convenience and necessity under the rights granted by its  
23 certificate and this chapter.

24        (b) The commission may not extend a municipality's  
25 certificate of public convenience and necessity beyond its  
26 extraterritorial jurisdiction if an owner of land that is located  
27 wholly or partly outside the extraterritorial jurisdiction elects

1 to exclude some or all of the landowner's property within a proposed  
2 service area in accordance with Section 13.246(h). This subsection  
3 does not apply to a transfer of a certificate as approved by the  
4 commission. [A municipality that seeks to extend a certificate of  
5 public convenience and necessity beyond the municipality's  
6 extraterritorial jurisdiction must ensure that the municipality  
7 complies with Section 13.241 in relation to the area covered by the  
8 portion of the certificate that extends beyond the municipality's  
9 extraterritorial jurisdiction.]

10 (b-1) Subsection (b) does not apply to an extension of  
11 extraterritorial jurisdiction in a county that borders the United  
12 Mexican States and the Gulf of Mexico or a county adjacent to such a  
13 county.

14 (b-2) Subsection (b) does not apply to an extension of  
15 extraterritorial jurisdiction in a county:

16 (1) with a population of more than 30,000 and less than  
17 35,000 that borders the Red River; or

18 (2) with a population of more than 100,000 and less  
19 than 200,000 that borders a county described by Subdivision (1).

20 (b-3) Subsection (b) does not apply to an extension of  
21 extraterritorial jurisdiction in a county:

22 (1) with a population of 130,000 or more that is  
23 adjacent to a county with a population of 1.5 million or more that  
24 is within 200 miles of an international border; or

25 (2) with a population of more than 40,000 and less than  
26 50,000 that contains a portion of the San Antonio River.

27 SECTION 3. Subsection (h), Section 13.246, Water Code, is

1 amended to read as follows:

2 (h) Except as provided by Subsection (i), a landowner who  
3 owns a tract of land that is at least 25 acres and that is wholly or  
4 partially located within the proposed service area may elect to  
5 exclude some or all of the landowner's property from the proposed  
6 service area by providing written notice to the commission before  
7 the 30th day after the date the landowner receives notice of a new  
8 application for a certificate of public convenience and necessity  
9 or for an amendment to an existing certificate of public  
10 convenience and necessity. The landowner's election is effective  
11 without a further hearing or other process by the commission. If a  
12 landowner makes an election under this subsection, the application  
13 shall be modified so that the electing landowner's property is not  
14 included in the proposed service area. An applicant for a  
15 certificate of public convenience and necessity that has land  
16 removed from its proposed certificated service area because of a  
17 landowner's election under this subsection may not be required to  
18 provide service to the removed land for any reason, including the  
19 violation of law or commission rules by the water or sewer system of  
20 another person.

21 SECTION 4. Section 13.254, Water Code, is amended by  
22 amending Subsections (a), (a-1), (a-2), and (a-3) and adding  
23 Subsections (a-5) through (a-11) and (h) to read as follows:

24 (a) The commission at any time after notice and hearing  
25 may [~~on its own motion or on receipt of a petition described by~~  
26 ~~Subsection (a-1),~~] revoke or amend any certificate of public  
27 convenience and necessity with the written consent of the

1 certificate holder or if it finds that:

2 (1) the certificate holder has never provided, is no  
3 longer providing, is incapable of providing, or has failed to  
4 provide continuous and adequate service in the area, or part of the  
5 area, covered by the certificate;

6 (2) in an affected county as defined in Section  
7 16.341, the cost of providing service by the certificate holder is  
8 so prohibitively expensive as to constitute denial of service,  
9 provided that, for commercial developments or for residential  
10 developments started after September 1, 1997, in an affected county  
11 as defined in Section 16.341, the fact that the cost of obtaining  
12 service from the currently certificated retail public utility makes  
13 the development economically unfeasible does not render such cost  
14 prohibitively expensive in the absence of other relevant factors;

15 (3) the certificate holder has agreed in writing to  
16 allow another retail public utility to provide service within its  
17 service area, except for an interim period, without amending its  
18 certificate; or

19 (4) the certificate holder has failed to file a cease  
20 and desist action pursuant to Section 13.252 within 180 days of the  
21 date that it became aware that another retail public utility was  
22 providing service within its service area, unless the certificate  
23 holder demonstrates good cause for its failure to file such action  
24 within the 180 days.

25 (a-1) As an alternative to decertification under Subsection  
26 (a), the owner of a tract of land that is at least 50 acres and that  
27 is not in a platted subdivision actually receiving water or sewer

1 service may petition the commission under this subsection for  
2 expedited release of the area from a certificate of public  
3 convenience and necessity so that the area may receive service from  
4 another retail public utility. The fact that a certificate holder  
5 is a borrower under a federal loan program is not a bar to a request  
6 under this subsection for the release of the petitioner's land and  
7 the receipt of services from an alternative provider. On the day  
8 the petitioner submits the petition to the commission, the [The]  
9 petitioner shall send [~~deliver~~], via certified mail, a copy of the  
10 petition to the certificate holder, who may submit information to  
11 the commission to controvert information submitted by the  
12 petitioner. The petitioner must demonstrate that:

13 (1) a written request for service, other than a  
14 request for standard residential or commercial service, has been  
15 submitted to the certificate holder, identifying:

16 (A) the area for which service is sought;

17 (B) the timeframe within which service is needed  
18 for current and projected service demands in the area;

19 (C) the level and manner of service needed for  
20 current and projected service demands in the area;

21 (D) the approximate cost for the alternative  
22 provider to provide the service at the same level and manner that is  
23 requested from the certificate holder;

24 (E) the flow and pressure requirements and  
25 specific infrastructure needs, including line size and system  
26 capacity for the required level of fire protection requested; and

27 (F) [~~(D)~~] any additional information requested

1 by the certificate holder that is reasonably related to  
2 determination of the capacity or cost for providing the service;

3 (2) the certificate holder has been allowed at least  
4 90 calendar days to review and respond to the written request and  
5 the information it contains;

6 (3) the certificate holder:

7 (A) has refused to provide the service;

8 (B) is not capable of providing the service on a  
9 continuous and adequate basis within the timeframe, at the level,  
10 at the approximate cost that the alternative provider is capable of  
11 providing for a comparable level of service, or in the manner  
12 reasonably needed or requested by current and projected service  
13 demands in the area; or

14 (C) conditions the provision of service on the  
15 payment of costs not properly allocable directly to the  
16 petitioner's service request, as determined by the commission; and

17 (4) the alternate retail public utility from which the  
18 petitioner will be requesting service possesses the financial,  
19 managerial, and technical capability to provide [~~is capable of~~  
20 ~~providing~~] continuous and adequate service within the timeframe, at  
21 the level, at the cost, and in the manner reasonably needed or  
22 requested by current and projected service demands in the area.

23 (a-2) A landowner is not entitled to make the election  
24 described in Subsection (a-1) or (a-5) but is entitled to contest  
25 under Subsection (a) the involuntary certification of its property  
26 in a hearing held by the commission if the landowner's property is  
27 located:

1           (1) within the boundaries of any municipality or the  
2 extraterritorial jurisdiction of a municipality with a population  
3 of more than 500,000 and the municipality or retail public utility  
4 owned by the municipality is the holder of the certificate; or

5           (2) in a platted subdivision actually receiving water  
6 or sewer service.

7           (a-3) Within 60 [~~90~~] calendar days from the date the  
8 commission determines the petition filed pursuant to Subsection  
9 (a-1) to be administratively complete, the commission shall grant  
10 the petition unless the commission makes an express finding that  
11 the petitioner failed to satisfy the elements required in  
12 Subsection (a-1) and supports its finding with separate findings  
13 and conclusions for each element based solely on the information  
14 provided by the petitioner and the certificate holder. The  
15 commission may grant or deny a petition subject to terms and  
16 conditions specifically related to the service request of the  
17 petitioner and all relevant information submitted by the petitioner  
18 and the certificate holder. In addition, the commission may  
19 require an award of compensation as otherwise provided by this  
20 section.

21           (a-5) As an alternative to decertification under Subsection  
22 (a) and expedited release under Subsection (a-1), the owner of a  
23 tract of land that is at least 25 acres and that is not receiving  
24 water or sewer service may petition for expedited release of the  
25 area from a certificate of public convenience and necessity and is  
26 entitled to that release if the landowner's property is located in a  
27 county with a population of at least one million, a county adjacent

1 to a county with a population of at least one million, or a county  
2 with a population of more than 200,000 and less than 220,000 that  
3 does not contain a public or private university that had a total  
4 enrollment in the most recent fall semester of 40,000 or more, and  
5 not in a county that has a population of more than 45,500 and less  
6 than 47,500.

7 (a-6) The commission shall grant a petition received under  
8 Subsection (a-5) not later than the 60th day after the date the  
9 landowner files the petition. The commission may not deny a  
10 petition received under Subsection (a-5) based on the fact that a  
11 certificate holder is a borrower under a federal loan program. The  
12 commission may require an award of compensation by the petitioner  
13 to a decertified retail public utility that is the subject of a  
14 petition filed under Subsection (a-5) as otherwise provided by this  
15 section.

16 (a-7) The utility shall include with the statement of intent  
17 provided to each landowner or ratepayer a notice of:

18 (1) a proceeding under this section related to  
19 certification or decertification;

20 (2) the reason or reasons for the proposed rate  
21 change; and

22 (3) any bill payment assistance program available to  
23 low-income ratepayers.

24 (a-8) If a certificate holder has never made service  
25 available through planning, design, construction of facilities, or  
26 contractual obligations to serve the area a petitioner seeks to  
27 have released under Subsection (a-1), the commission is not

1 required to find that the proposed alternative provider is capable  
2 of providing better service than the certificate holder, but only  
3 that the proposed alternative provider is capable of providing the  
4 requested service.

5 (a-9) Subsection (a-8) does not apply to a county that  
6 borders the United Mexican States and the Gulf of Mexico or a county  
7 adjacent to a county that borders the United Mexican States and the  
8 Gulf of Mexico.

9 (a-10) Subsection (a-8) does not apply to a county:

10 (1) with a population of more than 30,000 and less than  
11 35,000 that borders the Red River; or

12 (2) with a population of more than 100,000 and less  
13 than 200,000 that borders a county described by Subdivision (1).

14 (a-11) Subsection (a-8) does not apply to a county:

15 (1) with a population of 130,000 or more that is  
16 adjacent to a county with a population of 1.5 million or more that  
17 is within 200 miles of an international border; or

18 (2) with a population of more than 40,000 and less than  
19 50,000 that contains a portion of the San Antonio River.

20 (h) A certificate holder that has land removed from its  
21 certificated service area in accordance with this section may not  
22 be required, after the land is removed, to provide service to the  
23 removed land for any reason, including the violation of law or  
24 commission rules by a water or sewer system of another person.

25 SECTION 5. The changes made by this Act to Sections 13.245,  
26 13.2451, 13.246, and 13.254, Water Code, apply only to:

27 (1) a retail public utility's application for a

1 certificate of public convenience and necessity for a service area  
2 in the extraterritorial jurisdiction of a municipality that is made  
3 on or after the effective date of this Act;

4           (2) an extension of a municipality's certificate of  
5 public convenience and necessity for a service area in the  
6 extraterritorial jurisdiction of the municipality on or after the  
7 effective date of this Act; and

8           (3) a petition to release an area from a certificate of  
9 public convenience and necessity that is made on or after the  
10 effective date of this Act.

11           SECTION 6. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 573 passed the Senate on April 26, 2011, by the following vote: Yeas 26, Nays 5; and that the Senate concurred in House amendments on May 26, 2011, by the following vote: Yeas 25, Nays 6.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 573 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 126, Nays 22, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to the applicability to certain regional water districts of provisions concerning bond approval by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (h), Section 49.181, Water Code, is amended to read as follows:

(h) This section does not apply to a district if:

(1) the district's boundaries include one entire county;

(2) the district was created by a special Act of the legislature and:

(A) the district is located entirely within one county;

(B) is entirely within one or more home-rule municipalities;

(C) the total taxable value of the real property and improvements to the real property zoned by one or more home-rule municipalities for residential purposes and located within the district does not exceed 25 percent of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(D) the district was not required by law to

1 obtain commission approval of its bonds before the effective date  
2 of this section;

3 (3) the district is a special water authority;

4 (4) the district is governed by a board of directors  
5 appointed in whole or in part by the governor, a state agency, or  
6 the governing body or chief elected official of a municipality or  
7 county and does not provide, or propose to provide, water, sewer,  
8 drainage, reclamation, or flood control services to residential  
9 retail or commercial customers as its principal function; ~~or~~

10 (5) the district on September 1, 2003:

11 (A) is a municipal utility district that includes  
12 territory in only two counties;

13 (B) has outstanding long-term indebtedness that  
14 is rated BBB or better by a nationally recognized rating agency for  
15 municipal securities; and

16 (C) has at least 5,000 active water connections;

17 or

18 (6) the district:

19 (A) is a conservation and reclamation district  
20 created under Section 59, Article XVI, Texas Constitution, that  
21 includes territory in at least three counties; and

22 (B) has the rights, powers, privileges, and  
23 functions applicable to a river authority under Chapter 30.

24 SECTION 2. The change in law made by this Act does not apply  
25 to bonds with regard to which an application and report were  
26 submitted to the Texas Natural Resource Conservation Commission or  
27 the Texas Commission on Environmental Quality under Subsection (b),

1 Section 49.181, Water Code, before the effective date of this Act.  
2 Those bonds are governed by the law as it existed immediately before  
3 the effective date of this Act, and that law is continued in effect  
4 for that purpose.

5 SECTION 3. This Act takes effect immediately if it receives  
6 a vote of two-thirds of all the members elected to each house, as  
7 provided by Section 39, Article III, Texas Constitution. If this  
8 Act does not receive the vote necessary for immediate effect, this  
9 Act takes effect September 1, 2011.

S.B. No. 914

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 914 passed the Senate on April 7, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 914 passed the House on April 26, 2011, by the following vote: Yeas 148, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to municipal management districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivisions (3) and (4), Section 375.003, Local Government Code, are amended to read as follows:

(3) "Commission" means the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(4) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;

(B) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described by Paragraph (A);

(C) a partnership that is formed for the purpose of making a profit, in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A), and in which minority or women partners have a

1 proportionate interest in the control, operation, and management of  
2 the partnership affairs;

3 (D) a joint venture between minority and women's  
4 group members formed for the purpose of making a profit and the  
5 minority participation in which is based on the sharing of real  
6 economic interest, including equally proportionate control over  
7 management, interest in capital, and interest earnings, other than  
8 a joint venture in which majority group members own or control debt  
9 securities, leasehold interest, management contracts, or other  
10 interests; ~~or~~

11 (E) a supplier contract between persons  
12 described in Paragraph (A) and a prime contractor in which the  
13 disadvantaged business is directly involved for the manufacture or  
14 distribution of the supplies or materials or otherwise for  
15 warehousing and shipping the supplies; or

16 (F) a person certified as a disadvantaged  
17 business by:

18 (i) this state;

19 (ii) a political subdivision of this state;

20 or

21 (iii) a regional planning commission,  
22 council of governments, or similar regional planning agency created  
23 under Chapter 391.

24 SECTION 2. Subsection (c), Section 375.022, Local  
25 Government Code, is amended to read as follows:

26 (c) The petition must:

27 (1) describe the boundaries of the proposed district;

- 1                    (A) by metes and bounds;
- 2                    (B) by verifiable landmarks, including a road,
- 3 creek, or railroad line; or
- 4                    (C)  if there is a recorded map or plat and
- 5 survey of the area, by lot and block number;
- 6                    (2) state the specific purposes for which the district
- 7 will be created;
- 8                    (3) state the general nature of the work, projects, or
- 9 services proposed to be provided, the necessity for those services,
- 10 and the costs as estimated by the persons filing the petition;
- 11                    (4) include a name of the district, which must be
- 12 generally descriptive of the location of the district, followed by
- 13 "Management District" or "Improvement District";
- 14                    (5) include a proposed list of initial directors that
- 15 includes the directors' experience and initial term of service; and
- 16                    (6) include a resolution of the governing body of the
- 17 municipality in support of the creation of the district.

18                    SECTION 3. Section 375.043, Local Government Code, is

19 amended to read as follows:

20                    Sec. 375.043. ANNEXATION. A district may annex land as

21 provided by Section 49.301 and Chapter 54, Water Code, subject to

22 the approval of the governing body of the municipality.

23                    SECTION 4. Subsection (b), Section 375.044, Local

24 Government Code, is amended to read as follows:

25                    (b) The board shall call a hearing on the exclusion of land

26 or other property from the district if a signed petition evidencing

27 the consent of the owners of a majority of the acreage in the

1 district, according to the most recent certified tax roll of the  
2 county, is filed [~~landowner or property owner in the district~~  
3 ~~files~~] with the secretary of the board [~~a written petition~~]  
4 requesting the hearing before the issuance of bonds.

5 SECTION 5. Section 375.061, Local Government Code, is  
6 amended to read as follows:

7 Sec. 375.061. NUMBER OF DIRECTORS; TERMS. A district is  
8 governed by a board of at least five [~~nine~~] but not more than 30  
9 directors who serve staggered four-year terms.

10 SECTION 6. Section 375.071, Local Government Code, is  
11 amended to read as follows:

12 Sec. 375.071. QUORUM. One-half of the serving directors  
13 constitutes a quorum, and a concurrence of a majority of a quorum of  
14 directors is required for any official action of the district. The  
15 written consent of at least two-thirds of the directors is required  
16 to authorize the levy of assessments, the levy of taxes, the  
17 imposition of impact fees, or the issuance of bonds.

18 SECTION 7. Section 375.091, Local Government Code, is  
19 amended to read as follows:

20 Sec. 375.091. GENERAL POWERS OF DISTRICT. [~~(a)~~] A district  
21 has the rights, powers, privileges, authority, and functions  
22 conferred by the general law of this state applicable to  
23 conservation and reclamation districts created under Article XVI,  
24 Section 59, of the Texas Constitution, including those conferred by  
25 Chapter 54, Water Code.

26 [~~(b) The district may contract and manage its affairs and~~  
27 ~~funds for any corporate purpose in accordance with Chapter 54,~~

1 ~~Water Code.~~

2       ~~[(c) The district has all the rights, powers, privileges,~~  
3 ~~authority, and functions of road districts and road utility~~  
4 ~~districts created pursuant to Article III, Section 52, of the Texas~~  
5 ~~Constitution, including the power to levy ad valorem taxes for the~~  
6 ~~construction, maintenance, and operation of macadamized, graveled,~~  
7 ~~or paved roads and turnpikes, or in aid thereof. This power~~  
8 ~~includes the power to levy ad valorem taxes to provide for mass~~  
9 ~~transit systems in the manner and subject to the limitations~~  
10 ~~provided in Article III, Section 52, and Article III, Section~~  
11 ~~52(a), of the Texas Constitution.~~

12       ~~[(d) A district has those powers conferred by Chapters 365~~  
13 ~~and 441, Transportation Code, and the additional rights,~~  
14 ~~privileges, authority, and functions contained in those chapters.]~~

15       SECTION 8. Subchapter E, Chapter 375, Local Government  
16 Code, is amended by adding Sections 375.0921 and 375.0922 to read as  
17 follows:

18       Sec. 375.0921. AUTHORITY FOR ROAD PROJECTS. (a) Under  
19 Section 52, Article III, Texas Constitution, a district may design,  
20 acquire, construct, finance, issue bonds for, improve, operate,  
21 maintain, and convey to this state, a county, or a municipality for  
22 operation and maintenance macadamized, graveled, or paved roads, or  
23 improvements, including storm drainage, in aid of those roads.

24       (b) The district may impose ad valorem taxes to provide for  
25 mass transit systems in the manner and subject to the limitations  
26 provided by Section 52, Article III, and Section 52-a, Article III,  
27 Texas Constitution.

1       Sec. 375.0922. ROAD STANDARDS AND REQUIREMENTS. (a) A  
2 road project must meet all applicable construction standards,  
3 zoning and subdivision requirements, and regulations of each  
4 municipality in whose corporate limits or extraterritorial  
5 jurisdiction the road project is located.

6       (b) If a road project is not located in the corporate limits  
7 or extraterritorial jurisdiction of a municipality, the road  
8 project must meet all applicable construction standards,  
9 subdivision requirements, and regulations of each county in which  
10 the road project is located.

11       (c) If the state will maintain and operate the road, the  
12 Texas Transportation Commission must approve the plans and  
13 specifications of the road project.

14       SECTION 9. Subsection (a), Section 375.097, Local  
15 Government Code, is amended to read as follows:

16       (a) The board may appoint a hearings examiner to conduct any  
17 hearing called by the board, including a hearing required by  
18 Chapter 395. The hearings examiner may be an employee or contractor  
19 of the district, or a member of the district's board.

20       SECTION 10. Subchapter E, Chapter 375, Local Government  
21 Code, is amended by adding Section 375.098 to read as follows:

22       Sec. 375.098. DISTRICT ACT OR PROCEEDING PRESUMED VALID.

23       (a) A governmental act or proceeding of a district is conclusively  
24 presumed, as of the date it occurred, valid and to have occurred in  
25 accordance with all applicable statutes and rules if:

26               (1) the third anniversary of the effective date of the  
27 act or proceeding has expired; and

1           (2) a lawsuit to annul or invalidate the act or  
2 proceeding has not been filed on or before that third anniversary.

3           (b) This section does not apply to:

4           (1) an act or proceeding that was void at the time it  
5 occurred;

6           (2) an act or proceeding that, under a statute of this  
7 state or the United States, was a misdemeanor or felony at the time  
8 the act or proceeding occurred;

9           (3) a rule that, at the time it was passed, was  
10 preempted by a statute of this state or the United States, including  
11 Section 1.06 or 109.57, Alcoholic Beverage Code; or

12           (4) a matter that on the effective date of this  
13 section:

14           (A) is involved in litigation if the litigation  
15 ultimately results in the matter being held invalid by a final  
16 judgment of a court; or

17           (B) has been held invalid by a final judgment of a  
18 court.

19           SECTION 11. Subsection (a), Section 375.112, Local  
20 Government Code, is amended to read as follows:

21           (a) An improvement project or services provided by the  
22 district may include the construction, acquisition, improvement,  
23 relocation, operation, maintenance, or provision of:

24           (1) landscaping; lighting, banners, and signs;  
25 streets and sidewalks; pedestrian skywalks, crosswalks, and  
26 tunnels; seawalls; marinas; drainage and navigation improvements;  
27 pedestrian malls; solid waste, water, sewer, and power facilities,

1 including electrical, gas, steam, cogeneration, and chilled water  
2 facilities; parks, plazas, lakes, rivers, bayous, ponds, and  
3 recreation and scenic areas; historic areas; fountains; works of  
4 art; off-street parking facilities, bus terminals, heliports, and  
5 mass transit systems; theatres, studios, exhibition halls,  
6 production facilities and ancillary facilities in support of the  
7 foregoing; and the cost of any demolition in connection with  
8 providing any of the improvement projects;

9 (2) other improvements similar to those described in  
10 Subdivision (1);

11 (3) the acquisition of real property or any interest  
12 in real property in connection with an improvement, project, or  
13 services authorized by this chapter, Chapter 54, Water Code, or  
14 Chapter 365 or 441, Transportation Code;

15 (4) special supplemental services for advertising,  
16 economic development, promoting the area in the district, health  
17 and sanitation, public safety, maintenance, security, business  
18 recruitment, development, elimination or relief of traffic  
19 congestion, recreation, and cultural enhancement; and

20 (5) expenses incurred in the establishment,  
21 administration, maintenance, and operation of the district or any  
22 of its improvements, projects, or services.

23 SECTION 12. Section 375.114, Local Government Code, is  
24 amended to read as follows:

25 Sec. 375.114. PETITION REQUIRED. The board may not finance  
26 services and improvement projects under this chapter unless a  
27 written petition has been filed with the board requesting those

1 improvements or services signed by:

2 (1) the owners of 50 percent or more of the assessed  
3 value of the property in the district subject to assessment,  
4 according to [~~as determined from~~] the most recent certified county  
5 property tax rolls; or

6 (2) the owners of 50 percent or more of the surface  
7 area of the district, excluding roads, streets, highways, and  
8 utility rights-of-way, other public areas, and any other property  
9 exempt from assessment under Section 375.162 or 375.163, according  
10 to [~~as determined from~~] the most recent certified county property  
11 tax rolls.

12 SECTION 13. Subsection (e), Section 375.202, Local  
13 Government Code, is amended to read as follows:

14 (e) If provided by the bond order or resolution, the  
15 proceeds from the sale of bonds may be used to pay interest on the  
16 bonds during and after the period of the acquisition or  
17 construction of any improvement project to be provided through the  
18 issuance of the bonds, to pay administrative and operation expenses  
19 to create a reserve fund for the payment of the principal of and  
20 interest on the bonds, to pay costs associated with the issuance of  
21 the bonds, and to create any other funds. The proceeds of the bonds  
22 may be placed on time deposit or invested, until needed, in  
23 securities in the manner provided by the bond order or resolution.

24 SECTION 14. Subsection (a), Section 375.205, Local  
25 Government Code, is amended to read as follows:

26 (a) The district shall submit bonds and the appropriate  
27 proceedings authorizing their issuance to the attorney general for

1 examination. This subsection applies only to bonds that are public  
2 securities, as that term is defined by Section 1202.001, Government  
3 Code.

4 SECTION 15. Subchapter J, Chapter 375, Local Government  
5 Code, is amended by adding Section 375.209 to read as follows:

6 Sec. 375.209. TAXES FOR BONDS. At the time the district  
7 issues bonds payable wholly or partly from ad valorem taxes, the  
8 board shall provide for the annual imposition of a continuing  
9 direct annual ad valorem tax, without limit as to rate or amount,  
10 while all or part of the bonds are outstanding as required and in  
11 the manner provided by Sections 54.601 and 54.602, Water Code.

12 SECTION 16. Section 375.221, Local Government Code, is  
13 amended to read as follows:

14 Sec. 375.221. APPLICABILITY OF WATER DISTRICTS LAW TO  
15 COMPETITIVE BIDDING ON CERTAIN [~~PUBLIC WORKS~~] CONTRACTS. (a)  
16 Except as provided by Subsection (b) of this section, Subchapter I,  
17 Chapter 49, Water Code, applies to a district contract for  
18 construction work, equipment, materials, or machinery.

19 (b) [~~A contract, other than a contract for services, for~~  
20 more than \$50,000 for the construction of improvements or the  
21 purchase of material, machinery, equipment, supplies, and other  
22 property, except real property, may be entered into only after  
23 competitive bids. Notice of the contract for the purpose of  
24 soliciting bids shall be published once a week for two consecutive  
25 weeks in a newspaper with general circulation in the area in which  
26 the district is located. The first publication of notice must be  
27 not later than the 14th day before the date set for receiving bids.]

1 The board may adopt rules governing receipt of bids and the award of  
2 the contract and providing for the waiver of the competitive bid  
3 requirement if:

4 (1) there is an emergency;

5 (2) the needed materials are available from only one  
6 source;

7 (3) in a procurement requiring design by the supplier  
8 competitive bidding would not be appropriate and competitive  
9 negotiation, with proposals solicited from an adequate number of  
10 qualified sources, would permit reasonable competition consistent  
11 with the nature and requirements of the procurement; or

12 (4) after solicitation, it is ascertained that there  
13 will be only one bidder.

14 ~~[(b) If a proposed contract for works, plant improvements,~~  
15 ~~facilities other than land, or the purchase of equipment,~~  
16 ~~appliances, materials, or supplies is for an estimated amount of~~  
17 ~~more than \$50,000 or for a duration of more than two years,~~  
18 ~~competitive sealed proposals shall be asked from at least three~~  
19 ~~persons.]~~

20 SECTION 17. Subsection (a), Section 375.263, Local  
21 Government Code, is amended to read as follows:

22 (a) The ~~[Except as limited by Section 375.264, the]~~  
23 governing body of a municipality in which a district is wholly  
24 located, by a vote of not less than two-thirds of its membership,  
25 may adopt an ordinance dissolving the district.

26 SECTION 18. Section 375.264, Local Government Code, is  
27 amended to read as follows:

1           Sec. 375.264. LIMITATION ON DISSOLUTION BY BOARD.    A  
2 district may not be dissolved by its board [~~or by a municipality~~] if  
3 the district has any outstanding bonded indebtedness until that  
4 bonded indebtedness has been repaid or defeased in accordance with  
5 the order or resolution authorizing the issuance of the bonds.

6           SECTION 19. Subchapter N, Chapter 375, Local Government  
7 Code, is amended by adding Section 375.282 to read as follows:

8           Sec. 375.282. STRATEGIC PARTNERSHIP AGREEMENT. A district  
9 with territory in the extraterritorial jurisdiction of a  
10 municipality may negotiate and enter into a written strategic  
11 partnership with the municipality under Section 43.0751.

12           SECTION 20. Sections 375.021 and 375.027 and Subsection  
13 (f), Section 375.064, Local Government Code, are repealed.

14           SECTION 21. The change in law made by this Act to Section  
15 375.221, Local Government Code, applies only to a contract awarded  
16 on or after January 1, 2012. A contract awarded before January 1,  
17 2012, is governed by the law in effect on the date the contract was  
18 awarded, and that law is continued in effect for that purpose.

19           SECTION 22. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1234 passed the Senate on May 5, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1234 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor