

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

**AGENDA REQUESTED:** November 18, 2015

**DATE OF REQUEST:** October 30, 2015

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Sherry Davis, (512) 239-2141

**CAPTION: Docket No. 2015-0984-RUL.** Consideration for the publication of, and hearing on, proposed amended section of 30 TAC Chapter 290, Public Drinking Water, Section 290.51.

The proposed rulemaking would implement House Bill 1, Article IX, Section 18.01 (General Appropriations Act), 84th Texas Legislature (2015), Regular Session, which instructed the agency to raise fee rates by rule to ensure adequate revenue is available to support the agency water appropriation. The proposed rulemaking provides the commission the ability to increase Public Health Services fee on an annual basis in order to address future funding shortages. (Greg Yturralde, Todd Galiga) (Rule Project No. 2015-031-290-AD)

Dorca Zaragoza-Stone  
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**Deputy Director**

John Racanelli  
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**Division Director**

Sherry Davis  
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**Agenda Coordinator**

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

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** October 30, 2015

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Dorca Zaragoza-Stone, Deputy Director  
Office of Administrative Services

**Docket No.:** 2015-0984-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 290, Public Drinking Water  
HB 1: Public Health Service Fee Increase  
Rule Project No. 2015-031-290-AD

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

The proposed rulemaking would implement House Bill 1, Article IX, Section 18.01 (General Appropriations Act), 84th Texas Legislature (2015), Regular Session, which instructed the agency to raise fee rates by rule to ensure adequate revenue is available to support the agency water appropriation.

The Texas Commission on Environmental Quality (TCEQ) has seen the general revenue appropriated for water programs decline over the past few biennia, which has led to a greater dependence on fee revenue. The agency underwent a rule making in FY 2009 and raised the Public Health Service (PHS), the Consolidated Water Quality (CWQ), and the Water Use Assessment fees. The increases resulted in approximately \$19 million in additional revenue for FY 10. The agency has seen funding obligations of the water resource management account increase over the past few years from increases to appropriation, fringe, and the Statewide Cost Allocation Plan. These costs have been supported by adjustments to the CWQ fee parameters, but there is a limitation on how much the agency can increase this fee in the future.

The agency requested additional General Revenue appropriations for the water program but did not receive the amount necessary to offset the programs costs. The legislature instructed the agency in the General Appropriation Act (HB 1 of 84th Texas Legislature) to increase fee revenue to meet funding needs. This rule will provide the agency the ability to increase the PHS fee by a maximum of \$17 million per year which will ensure adequate cash to support the agency's water program moving forward.

### **Scope of the rulemaking:**

The rule making will replace the current fee rates for the PHS fee authorized under 30 TAC §290.51.

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

The current rate for Tier I (fewer than 25 connections) is \$100, Tier II (25-160 connections) is \$175, and Tier III (over 160 connections) is \$2.15 per connection. The new rates will be Tier I up to \$200, Tier II up to \$300, and Tier III up to \$4.00 per connection.

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The agency anticipates only increasing the Tier I and II rates by \$25 and the Tier III rate to \$2.45 in FY 17 to meet the water program's costs. The agency will adjust the rates on an annual basis to fulfill the water programs funding needs.

The agency has been successful over the past few years with meeting the funding needs of various accounts using the "up to" language in fee rules. This provides the agency the ability to adjust fees based on necessary funding needs and gradually increases PHS fees as the water funding needs increase. This rule change is anticipated to provide the agency with adequate flexibility to address water funding needs for the next 10 years.

By providing the flexibility to increase the PHS fee, the agency can allocate the increase across more regulated entities. Recently, any increase to the water resource management account had to be supported by the CWQ fee and the approximately 3,500 regulated entities subject to that fee. Using the PHS fee to supplement some of those costs will result in an additional 7,000 entities sharing the burden, and limits the potential fee burden of each.

The method of increasing fee revenue by rule is supported by the 84th Legislature and HB 1, Article IX, Section 18.01 (General Appropriation Act). The new section states the agency should increase fee rates by rule to support additional program needs. The PHS fee is specifically listed as a fee to be increased to meet water funding demands.

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

None.

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

None.

**Statutory authority:**

Texas Health and Safety Code, §341.041, Fees

General Appropriation Act for the 2016-2017 Biennium (HB 1, Article IX, Section 18.01)

**Effect on the:**

**A.) Regulated community:**

Entities that provide drinking water services will see an increase in their annual PHS fee rate. The increase will depend on the size of the water system. Tiers I and II will see an annual increase of \$25 in the first year, while Tier III will see an increase per connection. The amount of the increase for Tier III will depend on the number of connections in that system, but the agency anticipates the rate for FY 17 to increase by approximately \$0.30 per connection.

**B.) Public:**

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There is potential that the increase in the PHS fee will be passed along to the individual customer. The anticipated cost to the individual customer in FY 17 will be approximately \$0.30 per year, based on the water funding needs in FY 17.

**C.) Agency programs:**

The rule will provide the agency the necessary flexibility to fund the various water programs for the next 10 years.

**Stakeholder meetings:**

There were no stakeholder meetings held related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin. Additionally, the agency will publish information about the rule on the external website and will include an insert in the Public Health Service Fee billing.

**Potential controversial concerns and legislative interest:**

The agency requested additional general revenue to support the agency's water programs during the 84th Legislative Session. The agency did not receive the necessary funding and was instructed to raise the fee rate by rule under HB 1, Article IX, Section 18.01 (General Appropriation Act). The legislature provided TCEQ the authority to adjust fees to ensure the agency has adequate funding for our water programs.

**Will 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?**

The agency requested additional general revenue to support the agency's water programs during the 84th Legislative Session. The agency did not receive the necessary funding and was instructed to raise the fee rate by rule under HB 1, Article IX, Section 18.01 (General Appropriation Act). The legislature provided us the authority to adjust fees to ensure the agency has adequate funding for our water programs. If the agency does not adopt this rule package the agency will eventually run out of water revenue necessary to support water programs cost and will have to discontinue certain water activities.

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

**Anticipated proposal date:** November 18, 2015

**Anticipated *Texas Register* publication date:** December 4, 2015

**Anticipated public hearing date (if any):** January 5, 2016

**Anticipated public comment period:** December 4, 2015 - January 11, 2016

**Anticipated adoption date:** May 11, 2016

**Agency contacts:**

Greg Yturralde, Rule Project Manager, Financial Administration Division, (512) 239-1951

Commissioners  
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October 30, 2015

Re: Docket No. 2015-0984-RUL

Todd Galiga, Senior Attorney, (512) 239-3578  
Sherry Davis, Texas Register Coordinator, (512) 239-2141

**Attachments:**

HB 1, Article IX, Section 18.01

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Greg Yturralde  
Sherry Davis

**CONFERENCE  
COMMITTEE REPORT**  
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**H.B. NO. 1  
GENERAL APPROPRIATIONS  
BILL**



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## **PART 18. CONTINGENCY AND OTHER PROVISIONS**

### **Sec. 18.01. Contingency Appropriation: Water Resource Management Account.**

- (a) Amounts appropriated in this Act out of the Water Resource Management Account No. 153 include: \$56,152,049 in fiscal year 2016 and \$55,864,649 in fiscal year 2017 to the Commission on Environmental Quality; \$2,648,770 each fiscal year to the Public Utility Commission (PUC); and \$509,054 each fiscal year to the Office of Public Utility Counsel (OPUC). These appropriations are contingent on available balances in and revenues to the Water Resources Management Account No. 153 being sufficient during the 2016-17 biennium to cover the appropriations and any additional costs associated with employee benefits for FTEs paid out of the Water Resources Management Account (estimated to be \$17,557,912 for the biennium). In the event that available funds out of the Water Resources Management Account No. 153 are insufficient to meet appropriations in this Act and related benefits costs, the TCEQ shall increase rates for fees deposited to the Water Resources Management Account No. 153 for which it has rulemaking authority, including the Water Quality Fee established in Water Code, Chapter 26 and the Public Health Service Fee established in Health and Safety Code, Section 341.041, at a level to ensure that sufficient balances and revenues are available.
- (b) Contingent on enactment of legislation by the Eighty-fourth Legislature, Regular Session, that transfers a portion of the proceeds of fee revenues deposited to the Water Resource Management Account No. 153 in Water Code, Section 5.701 (n) to the General Revenue Fund:
- (1) appropriations to the PUC in Strategy A.2.1, Utility Regulation, are increased out of the General Revenue Fund by \$2,648,770 each fiscal year, and appropriations are decreased out of the Water Resources Management Account No 153 by \$2,648,770 from the Water Resource Management Account No. 153 each fiscal year; and
  - (2) appropriations to the OPUC in Strategy A.1.1, Participation in cases, are increased out of the General Revenue Fund by \$356,338 each fiscal year and appropriations are decreased out of the Water Resources Management Account No 153 by \$356,338 from the Water Resource Management Account No. 153 each fiscal year; and
  - (3) appropriations to the OPUC in Strategy B.1.1, Utility Projects, are increased by \$152,716 out of the General Revenue Fund and appropriations are decreased by \$152,716 out of the Water Resource Management Account No. 153 each fiscal year.
- (c) Out of amounts appropriated elsewhere in this Act, the TCEQ shall also conduct a study to determine the level of agency workload related to each group of entities paying fees deposited to the Water Resource Management Account No. 153 and the relative benefit each fee payer group receives from agency water quality permitting, water quality regulation, and safe drinking water programs. Using this analysis, the agency shall develop a methodology to determine the appropriate level of rates for water-related fees that would generate revenue in proportion to agency workload and fee payer benefits. The TCEQ shall base any future fee rate modifications made to ensure sufficient revenues to the Water Resource Management Account on the findings of that study, provided such fee rate changes do not conflict with any statutory provisions relating to water-related fees or water-related programs, and provided such fee rates do not exceed any maximum levels set in statute.

### **Sec. 18.02. Appropriation for a Salary Increase for General State Employees.**

- (a) As used in this section, "salary increase" shall mean a two and a half percent (2.5%) increase in annual salary, to begin on September 1, 2015.
- (b) Contingent on enactment House Bill 9, or similar legislation to increase the member contribution to the Employees Retirement System, for the biennium the Comptroller of Public Accounts is appropriated an amount estimated to be \$274,904,477 out of the General Revenue Fund, an amount estimated to be \$18,781,528 out of General Revenue-Dedicated, an amount estimated to be \$36,131,794 out of State Highway Fund No. 006, an amount estimated to be \$3,392,652 out of Other Funds and accounts, and an amount estimated to be \$55,697,356 out of Federal Funds to fund a salary increase as described in Subsection (a) of this section for employees of state agencies, including employees of the Higher Education Coordinating Board. Included in the amounts above are General Revenue Funds intended to provide the salary increase for certain FTEs currently paid from federal fund sources that would not be available for this purpose.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §290.51.

### **Background and Summary of the Factual Basis for the Proposed Rule**

Water Resource Management Account 153 (Account 153) is the primary source of state funding for essentially all water program-related activities of the commission. In 2001, the 77th Texas Legislature passed House Bill 2912 which provided that revenues deposited to Account 153 would be available to support activities associated with ensuring the protection of the state's water resources. Account 153 supports a wide range of activities including water rights, storm water, public drinking water, total maximum daily load development, water utilities, wastewater, river compacts, water availability modeling, water assessment, concentrated animal feeding operations, sludge, Clean Rivers Program, and groundwater protection. Historically, the agency has used Account 153 as well as the majority of its general revenue appropriations to support its water program activities.

General revenue appropriations to the TCEQ have declined over the past few years. In addition, many of the water-related fees that the agency assesses have not increased in at least six years. While revenue from existing fees deposited to Account 153 has remained stable, the overall financial obligations of the account have increased. Current revenue estimates for Account 153 reveal insufficient funds for the TCEQ to cover the costs of its water program activities in fiscal year (FY) 2016. The agency is facing an

approximate \$1 million dollar shortfall in Account 153 for FY 2016. The shortage is due to additional appropriations, an increase in cost of fringe benefits, and the Statewide Cost Allocation Plan.

The revenue estimates for Account 153 revealed that without an increase in fees there will be insufficient funds for the agency to cover the costs of its water program activities in FYs 2016 - 2017. Article IX of the General Appropriation Act, 84th Texas Legislative Session, Section 18.01, Contingency Appropriation: Water Resource Management Account, authorized the agency to increase the public health service (PHS) fee and the consolidated water quality (CWQ) fee.

Given the declining availability of funds in Account 153, the commission reviewed the water-related fees it has the authority to change. Article IX of the General Appropriation Act, 84th Texas Legislative Session, Section 18.01, Contingency Appropriation: Water Resource Management Account, authorized the agency to increase the PHS fee or the CWQ fee. After a review of the commission's existing water-related fees, the commission is proposing revisions to the PHS fee to generate sufficient revenue to cover the costs of its water program activities beginning in FY 2017. This fee was identified for a fee increase because, in terms of numbers and categories of fee payers, it represents the most broad-based water-related fee the agency assesses, revision of this fee does not require statutory changes, and the revenue stream is relatively stable and represents significant water fee collections.

This proposed rulemaking amends Chapter 290 to ensure that there are sufficient funds in FY 2017 to carry out the tasks required to protect the water resources of the state. It is anticipated that to the extent affected fee payers need to increase rates to their customers through a tariff change, such a change could be requested pursuant to 30 TAC §291.21(b)(2)(A)(iv), which authorizes the executive director to approve minor tariff changes in certain instances based on governmental requirements beyond the utility's control.

### **Section Discussion**

#### *§290.51, Fees for Services to Drinking Water System*

The commission proposes to amend §290.51(a)(3) by increasing the maximum fee amount in subparagraph (A) from \$100 to \$200 and in subparagraph (B) from \$175 to \$300. These increases were determined to be minimal for small systems with 160 connections or less. For system equal to or more than 161 connections, the commission proposes to increase the maximum fee amount in subparagraph (C) from \$2.15 per connection to \$4.00 per connection to generate the necessary revenue to cover the cost of the TCEQ's water program activities. The assessment determined under §290.51(a)(3)(C) will be applied uniformly to all fee payers with equal to or greater than 161 connections and will be determined by the annual appropriations and other associated costs from Account 153. The commission proposes these changes to allow the

ability to assess fees as needed to cover the costs of its water program activities.

The agency purpose in proposing maximum fee rates is to ensure adequate water program funding for multiple biennia. The anticipated increase in 2017 will be less than 15% from the current rate. The plan is to adjust this fee based on funding needs on an annual basis in order limit the financial impact to water systems required to pay this fee.

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

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that, for the first five-year period the proposed rule is in effect, significant fiscal implications are anticipated for the agency and for other units of state or local government as a result of the administration or enforcement of the proposed rule. The proposed rule increases the PHS fee which is assessed to public water systems. The PHS fee is assessed and collected by the TCEQ in order to provide services to community and nontransient noncommunity water systems.

These rules are proposed in order to allow the agency to manage the increasing demands and associated costs of administering its water program activities which are funded out of Account 153. This account is projected to have a negative fund balance in FY 2016 - 2017. Article IX of the General Appropriations Act, 84th Texas Legislature, 2015, Section 18.01 provides that, "In the event that available funds out of the Water

Resources Management Account No. 153 are insufficient to meet appropriations in this Act and related benefits costs, the TCEQ shall increase rates for fees deposited to the Water Resources Management Account No. 153 for which it has rulemaking authority, including the Water Quality Fee established in Water Code, Chapter 26 and the Public Health Service Fee established in Health and Safety Code, 341.041, at a level to ensure that sufficient balances and revenues are available..." At this time, the agency has determined that the PHS fee is the most appropriate fee to increase because it is the most broad-based water-related fee the agency assesses, and the revenue stream is relatively stable.

Fees are assessed for services provided by the agency to community and nontransient, noncommunity water systems. The proposed fee increase will affect three classes of public water systems. The fee increase is proposed as follows: 1) for a system with fewer than 25 connections, the maximum for the fee will be increased from \$100 to \$200; 2) for systems with 25 - 160 connections, the maximum for the fee will be increased from \$175 to \$300; and 3) for a system with greater than or equal to 161 connections, the maximum for the fee will be increased from a maximum of \$2.15 per connection to \$4.00 per connection.

Even though the proposed rules would increase the maximum fee assessment for public water systems, at this time the commission does not intend to increase any of the fees to

the maximum amounts allowed by the proposed rules. The rules are proposed in order to allow the commission flexibility for future rate increases should they be necessary.

For a Tier I system, (those with fewer than 25 connections) the fee would be increased from \$100 to \$125. Tier II systems (25 - 160 connections) the fee would be increased from \$175 to \$200. For a Tier III system (those with 161 connections or more), the commission intends to increase the fee from \$2.15 per connection to \$2.45 per connection. The proposed change in fees is projected to increase agency revenue to Account 153 by an estimated \$2.8 million each year. It is anticipated that the additional fee revenue will allow Account 153 to maintain a positive fund balance for the foreseeable future.

There are an estimated 6,948 water systems that will be affected by the proposed rules. Agency staff estimates that of this total number of systems, there are approximately 2,143 entities that are publically owned or classified as districts and 4,805 are privately owned. Of the 2,143 publically owned water systems, approximately 94% of them have 160 or more connections and will be subject to the per connection fee increase. Of these systems, over 90% have 2,000 or fewer connections. The anticipated first year cost increase based on a proposed \$2.45 rate is estimated to be \$600 per year for each of the systems with 2,000 or fewer connections.

The 30 systems with the largest increase under the proposed rules are cities with over 37,000 connections. The City of Houston would see the largest increase under the proposed rules. The City of Houston has over 800,000 connections. The agency anticipates that assessing \$2.45 per connection in the first year of this rulemaking would result in an increase of \$265,000 above the current assessment for the City of Houston. The City of San Antonio would see an estimated increase of \$160,000 each year, Dallas Water Utility would see an estimated increase of \$137,417, the City of Fort Worth would see an estimated increase of \$96,462, and the City of Austin would see an estimated increase of \$63,864. It is expected that governmental entities will pass the fee increase on to their customers in their water utility bill.

### **Public Benefits and Costs**

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law and adequately funded water program activities to meet the increasing water-related demands from a growing population.

Fiscal implications are anticipated for businesses and individuals as a result of the administration and enforcement of the proposed rule, though these fiscal implications are not expected to be significant. Even though the proposed rule would increase the maximum fee assessment for public water systems, at this time, the commission does

not intend to increase any of the fees to the maximum amounts allowed by the proposed rule.

All systems that currently pay the PHS fee will be affected. The fee amount is determined by the number of connections from the most recent agency field inspection report.

There are an estimated 6,948 water systems that will be affected by the proposed rules. Agency staff estimates that of this total number of systems, there are approximately 4,805 entities that are privately owned. Of the 4,805 privately owned water systems, the vast majority, or about 89%, has less than 160 connections. Fees for these systems are expected to increase approximately \$25 in the first year. Over 90% of the water systems have 2,000 or fewer connections. For these systems, the anticipated first year cost increase based on a proposed \$2.45 rate is estimated to be \$600 per year. It is anticipated that privately owned systems will pass any cost increase on to their customers in the water utility bill. The first year cost per connection for systems with 161 connections or more will be \$2.45 per connection or \$0.30 more per year than customers are currently paying.

### **Small Business and Micro-Business Assessment**

Adverse fiscal implications are anticipated for small or micro-businesses as a result of

the proposed rule, though they are not expected to be significant. The proposed rule would have the same effect on a small business as it does on a large business. It is not known how many water systems are small or micro-businesses, but it is estimated that most of the smaller water systems that are privately owned are small and micro-businesses. The proposed rule would increase the maximum fee assessment for public water systems, but at this time, the commission does not intend to increase any of the fees to the maximum amounts allowed by the proposed rule.

For systems with fewer than 25 connections and for systems with greater than 25 connections and less than or equal to 160 connections, the commission expects to increase the fee \$25 in the first year. For drinking water systems with fewer than 1,500 connections, the increase would be up to approximately \$72 in the first year. The cost for connections for small or micro-businesses with systems greater than or equal to 161 connections will be \$2.45 for the first year. It is anticipated that small or micro-businesses will pass the increase on to the customers. The first year cost per connection for system 161 connection or greater will be \$2.45 per connection or \$0.20 cents per month.

### **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 rule is

necessary in order to comply with state law and does not adversely affect small or micro-businesses in a material way for the first five years that the proposed rule is 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

### **Draft Regulatory Impact Analysis Determination**

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

This rulemaking does not meet the statutory definition of a "major environmental rule"

because the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of the proposed rulemaking is to provide the commission with the additional revenue necessary to carry out the tasks required under the Texas Health and Safety Code (THSC) and the Texas Water Code (TWC) to protect the water resources of the state.

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

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency's adoption of a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to

implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. In this case, the proposed rulemaking does not meet any of these requirements. There are no federal standards that this rulemaking would address. Second, the proposed rulemaking does not exceed an express requirement of state law but, rather, seeks to provide the commission with the additional revenue necessary to operate its water program activities in a manner that is consistent with state law. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking is not proposed pursuant to the general powers of the commission but is instead authorized by specific sections which are cited in the Statutory Authority section of this preamble.

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

### **Takings Impact Assessment**

The commission evaluated the proposed rulemaking and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The commission determined

that the proposed rulemaking does not constitute a taking. The specific purpose of the proposed rulemaking is to provide the commission with the additional revenue necessary to operate agency water program activities in a manner that is consistent with the statutory requirements set forth in the TWC and THSC.

This rulemaking substantially advances this stated purpose by adjusting the PHS fee to provide funding at a level that is sufficient to support the commission's water program activities.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because the rulemaking does not burden, restrict, or limit the owner's right to real property and does not reduce the market value of real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rulemaking will not burden private real property because it amends fee rules which relate to funding for the commission's water program activities.

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

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it

affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

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

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on January 5, 2016, at 10 a.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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Sherry Davis, 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://www1.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 2015-031-290-AD. The comment period closes on January 11, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Greg Yturralde, Revenue Operations Section at (512) 239-1951.

## **SUBCHAPTER E: FEES FOR PUBLIC WATER SYSTEMS**

### **§290.51**

#### **Statutory Authority**

The amendment is proposed under the Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over various statutory programs, including water programs; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §5.701, which provides statutory direction regarding the uses of fees collected for deposit to the water resource management account; Texas Health and Safety Code (THSC), §341.0315, which establishes the commission's authority over public drinking water supply systems; and THSC, §341.041, which authorizes the commission to assess fees for public drinking water supply systems.

The proposed amendment implements Article IX of the General Appropriation Act, Section 18.01.

#### **§290.51. Fees for Services to Drinking Water System.**

(a) Purpose and scope.

(1) The purpose of this section is to establish fees for services provided by the commission to public water systems.

(2) The commission will provide services to public water systems, as follows:

(A) scheduling of analysis of drinking water for chemical content;

(B) collection of samples of drinking water for chemical analyses;

(C) review system data for evaluation of sampling waivers;

(D) inspect public water systems;

(E) review plans for new systems and major improvements to existing systems; and

(F) provide technical assistance as needed.

(3) The fees which the commission will charge for services provided to community and nontransient noncommunity water systems under this subsection will be according to the following schedule.

(A) For a system with fewer than 25 connections, the fee will be an amount up to a maximum of \$200 [\$100].

(B) For systems with 25 - 160 connections, the fee will be an amount up to a maximum of \$300 [\$175].

(C) For a system with greater than or equal to 161 connections, the fee will be an amount up to a maximum of \$4.00 [\$2.15] per connection.

(i) The number of connections will be determined from data collected from the latest agency inspection report.

(ii) All nontransient noncommunity systems, state, federal, and other community water system installations determined by the commission to serve large populations through a few connections will have the number of connections for fee purposes determined by dividing the population served by a value of ten.

(iii) Examples of such installations include, but are not limited to, universities, children's homes, correctional facilities, and military facilities which generally do not bill customers for water service.

(4) New public water systems will not be assessed a fee for services until water is supplied to the first connection.

(5) The commission will charge a fee of \$100 for services provided to noncommunity water systems which are not addressed in paragraph (3) of this subsection.

(6) All fees are due by January 1 of each year, shall be paid by check, money order, electronic funds transfer, or through the agency's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees).

(b) Failure to make payments as required under this section will subject the violator to the penalty provisions of the Texas Health and Safety Code, Chapter 341, Subchapter C.