

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §20.19 as part of the implementation of House Bill (HB) 2912, Article 1 (Administration and Policy), §1.10, as passed by the 77th Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill 2912 amended Texas Water Code (TWC), §5.107, relating to Advisory Committees, which authorizes the commission to create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that the commission may consider appropriate. The amendment to §5.107 changed the title of the section from “Advisory Councils” to “Advisory Committees, Work Groups, and Task Forces.” The amended section authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, public information, or any other matter that the commission or the executive director may consider appropriate; requires the commission to identify affected groups of interested persons for advisory committees, work groups, and task forces and make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces; and requires the commission to monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and to maintain that information in a form and location that is easily accessible to the public, including making the information available on the commission’s website. The amended section provides that the commission is not required to ensure that all representatives attend a scheduled meeting, and further provides that a rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

Additionally, HB 2914, §45, amended Texas Government Code, Chapter 2110, relating to State Agency Advisory Committees. Among the more significant amendments are changes to the definition of advisory committee, addition of a section relating to applicability of Chapter 2110, addition of a section relating to establishment of advisory committees, and changes to the section relating to the duration of advisory committees. A change to the definition of advisory committee in §2110.001 clarifies that an entity must have multiple members to be considered an advisory committee, and other changes remove the statements that an advisory committee is not a state agency and that it is created by or under state law. New §2110.0011 provides that Chapter 2110 applies unless and to the extent that another state law specifically states that the chapter does not apply; or a federal law or regulation imposes an unconditional requirement that irreconcilably conflicts with the chapter; or imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with the chapter. New §2110.0012 provides that a state agency has established an advisory committee if state or federal law has specifically created the committee to advise the agency; or the agency, under state or federal law, created the committee to advise the agency. The changes to §2110.008 provide that unless the state agency, in establishing an advisory committee, by rule designates a different date on which the committee will be automatically abolished, the committee is automatically abolished on the later of September 1, 2005, or the fourth anniversary of the date of its creation.

The major part of implementing this statutory amendment is being proposed as an amendment to 30 TAC Chapter 5, Advisory Committees, and is being proposed in the Proposed Rules section of this issue of the *Texas Register*. This part of the implementation of HB 2912 changes the title and adds a

requirement to §20.19 that appointment of any workgroups or persons to advise the commission or the executive director on rulemaking must be in accordance with the process established under Chapter 5.

SECTION DISCUSSION

The proposed amendments to §20.19 add a requirement that the process established under Chapter 5, Subchapter C, relating to Advisory Groups, shall be followed. The proposed amendments to this section also change the title of the section from “Working Groups” to “Working Committees and Groups.”

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed amendment is in effect, there will be no significant fiscal implications for units of state and local government due to administration and enforcement of the proposed amendment. The proposed amendment is intended to affect the operations of the commission. No other units of state or local government are anticipated to be affected by the proposed amendment.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2914. House Bill 2912 authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or any other matter that the commission or executive director may consider appropriate. The bill also requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level;

and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

In a separate rulemaking, the commission is proposing rule changes to Chapter 5 that would adopt the advisory committee provisions from HB 2912 and HB 2914. The proposed amendment in this rulemaking adds a requirement to Chapter 20 that specifies the appointment of any work groups or persons to advise the commission or the executive director on a formal rulemaking action must be in accordance with the processes established under Chapter 5.

The proposed amendment is not anticipated to result in fiscal implications for any other unit of state or local government, because it is procedural in nature and only intended to update rule references that require commission and executive director compliance with new advisory committee procedures.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be the commission's compliance with provisions that are intended to increase the diversity of participants in commission and executive director advisory committees, work groups, and task forces.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2914. House Bill 2912 authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or

any other matter that the commission or executive director may consider appropriate. The bill also requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

In a separate rulemaking, the commission is proposing rule changes to Chapter 5 that would adopt the advisory committee provisions from HB 2912. The proposed amendment in this rulemaking adds a requirement to Chapter 20 that specifies the appointment of any work groups or persons to advise the commission or the executive director on a formal rulemaking action must be in accordance with the processes established under Chapter 5.

The proposed rule amendment is not anticipated to result in fiscal implications for any individual or business, because it is procedural in nature and only intended to update rule references that require commission compliance with new advisory committee procedures.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications to small or micro-business due to implementation of the proposed amendment, which is intended to implement certain provisions of HB 2912 and HB 2914.

The bill authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or

any other matter that the commission or executive director may consider appropriate. House Bill 2912 requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

In a separate rulemaking, the commission is proposing rule changes to Chapter 5 that would adopt the advisory committee provisions from HB 2912 and HB 2914. The proposed amendment in this rulemaking adds a requirement to Chapter 20 that specifies the appointment of any work groups or persons to advise the commission or the executive director on a formal rulemaking action must be in accordance with the processes established under Chapter 5.

The proposed rule amendment is not anticipated to result in fiscal implications for any small or micro-business, because it is procedural in nature and only intended to update rule references that require commission compliance with new advisory committee procedures.

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 has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks from environmental exposure and is not anticipated to 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 because the proposed rule is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The amendment is procedural in nature and is only intended to implement procedures for the appointing of persons to commission-initiated advisory committees and executive director-created work groups, monitoring of the composition and activities of the committees and groups, and making information available on the commission website. The amendment also modifies the effect of other state or federal law on the membership of advisory committees and alters the procedures allowed to set the duration of advisory committees.

As for the four applicability requirements, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government,

nor is the rule proposed solely under the general powers of the commission. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. This proposed rule amendment would assist in the implementation of HB 2912, §1.10 which authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces and requires the commission to make reasonable attempts to have balanced representation on those entities, monitor the composition and activities of the entities and maintain that information in a form and location easily accessible to the public, including placing the information on the commission's website.

The proposed rule amendment also implements HB 2914 which modified the effect of other state or federal law on the membership of advisory committees and altered the procedures allowed to set the duration of advisory committees.

The proposed rule substantially advances those purposes by defining balanced representation, requiring the commission and executive director to make reasonable attempts to provide such balance, monitor the composition and activities through attendance lists, annual reports, and minutes if they are kept and make the information available on the commission's website. The proposed rule also substantially advances those purposes by utilizing the statutory language concerning the effect of state and federal law on membership and duration of advisory committees.

Promulgation and enforcement of the proposed rule amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule amendment does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the amended rule.

Because the amended rule affects only advisory entities, this action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more.

No exceptions set out in Texas Government Code, §2007.003(b) apply to the proposed rule.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the proposed amended rule is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 20, 2002, at 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210.

The hearing is structured for the receipt of oral or written comments by interested persons.

Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when

called upon in order of registration. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend a hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-068-005-AD. For further information, please contact Debra Barber at (512) 239-0412.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive

director may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

The proposed amendment implements TWC, Chapter 5, Texas Natural Resource Conservation Commission, §5.107, Advisory Committees, Work Groups, and Task Forces; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

CHAPTER 20: RULEMAKING

§20.19

§20.19. Working Committees and Groups.

Before initiating any formal rulemaking action, the commission or the executive director may convene informal working groups to obtain viewpoints and advice of interested persons. The commission or the executive director may also appoint working groups of experts or interested persons or representatives of the general public to advise it regarding any contemplated rulemaking. The powers of such working groups shall be advisory only. The processes established under Chapter 5, Subchapter C of this title (relating to Advisory Committees and Groups), shall be followed.