

The Texas Commission on Environmental Quality (commission) proposes amendments to §§293.1, 293.11, 293.41, 293.44, 293.51, 293.59, 293.80, 293.83, 293.113, 293.201, and 293.202.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water-related districts and to approve the issuance and sale of bonds for district improvements in accordance with Texas Water Code (TWC), Chapters 12 and 49 - 67. The commission oversees approximately 1,100 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of all 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 the engineering standards and economic feasibility of district construction project design and completion.

A corresponding rulemaking published in this issue of the *Texas Register* includes changes to 30 TAC Chapter 301, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements.

The proposed rulemaking would establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over the districts' actions under TWC, Chapters 49, 54, and 57. House Bill (HB) 1541, 78th Legislature, 2003, amends provisions in TWC, Chapter 49, relating to the administration, management, operation, and authority of water districts and authorities. HB 1541 also amends provisions in TWC, Chapter 54, concerning municipal utility districts and in Chapter 57, concerning levee improvement districts. HB 2887 amends TWC,

§49.278, to exempt construction of temporary erosion control facilities from having to comply with competitive bidding requirements. Senate Bill (SB) 624, 78th Legislature, 2003, amends provisions in TWC, Chapter 49, to allow districts located in certain areas of the state to use tax proceeds for the construction and/or maintenance of recreational facilities, subject to voter authorization. SB 898 amends TWC, §49.181, to include additional requirements that exempt certain districts from having to obtain commission approval of its bond issues.

Specifically, the proposed rules would provide certain districts with additional exemptions from having to obtain commission approval of bonds and notes; modify requirements that establish when a district is to obtain commission approval of refunding bonds; allow districts in specific counties to submit bond applications for recreational facilities that are supported by taxes; add provisions relating to the definition of recreational facilities and the funding of recreational facilities; specify bidding requirements; add provisions to allow a construction contract to include certain economic incentives or disincentives; specify provisions for the use of proceeds from the sale of property; modify provisions regarding the ability of a district and water supply corporation to require connection to the provider's wastewater collection system; and modify provisions regarding a municipal utility district's petitioning the commission for road utility district powers.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the sections to be consistent with *Texas Register* and agency requirements.

§293.1, *Objective and Scope of Rules; Meaning of Certain Words*

Proposed §293.1(c) adds the definition for “recreational facilities” to be consistent with TWC, §49.462, and in accordance with SB 624, §7, which adds TWC, §49.466. The commission determined that the definition of “recreational facilities” as used in these proposed rules includes the following facilities that benefit all persons within a district and are available for all district residents: parks (children’s outdoor playground facilities, outdoor tennis courts, outdoor basketball courts, outdoor swimming pools, bathrooms/changing rooms, barbeque grills or fire pits, park trash receptacles, drinking water fountains, picnic tables, benches, open-air pavilions/gazebos, outdoor ball fields and associated bleachers designed for less than 500 people, skate/roller blade facilities, and concession stands); recreational equipment storage facilities; park landscaping; parkways; greenbelts; sidewalks; trails; pedestrian bridges unrelated to golf courses that have a total span of less than 200 feet; trail fitness equipment; public lakes or ponds; docks or piers; wood deck overlooks; emergency call boxes; public right-of-way beautification projects (trees, shrubs, berms, and fences eight feet high or less); open air shade structures; water playground equipment; and associated security lighting, parking facilities, and information signs related to these recreational facilities. The commission determined that the definition of “recreational facilities” does not include development and subdivision signs or structures, golf courses, clubhouses, sound barrier walls, retaining walls used for roadway purposes, or the portion of lakes or ponds which have single-family lots or other private property abutting them.

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

Proposed §293.11(a)(10) includes the requirement that a creation application shall contain a detailed summary of proposed recreational facility projects, the projects’ estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report. This will allow the executive director to implement SB 624, §4, which amends TWC, §49.463, and states that financing

recreational facilities for the people in the district is an authorized purpose for which a district is created.

§293.41, Approval of Projects and Issuance of Bonds

Proposed §293.41(a) requires commission approval for refunding bonds if the debt being refunded was not originally approved by the commission, exempts refunding bonds from commission approval if issued by a district to refund bonds issued by a municipality that paid the cost of financing facilities, and exempts from commission approval bonds issued to and approved by the North American Development Bank, in accordance with HB 1541, §12, which amends TWC, §49.181(a). Proposed §293.41(d) exempts from commission approval bonds issued by a municipal utility district that is located in two counties, has long-term indebtedness rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections, in accordance with SB 898, §1, which amends TWC, §49.181(h). Proposed §293.41(e) allows districts in certain counties to submit tax-supported bond applications which include funding for certain recreational facilities and limits principal debt for recreational facilities to 1% or less of a district's taxable assessed valuation, in accordance with SB 624, §6, which adds TWC, §49.4645. In addition, §293.41(e)(3) provides that a district may submit a bond application for recreational facilities if the district has funded water, wastewater, and drainage facilities, or either of those facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads necessary to provide access to the recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.4645(b). SB 624, §7 adds TWC, §49.4645, which requires the commission to develop rules for districts that emphasize the primary goal of financing water, wastewater, and drainage

facilities, and the secondary goal of financing recreational facilities. Proposed §293.41(e) implements these goals.

§293.44, Special Considerations

An amendment to §293.44(a)(1) is proposed to reference recreational facility service, in addition to the existing water, wastewater, and drainage services referenced, in accordance with SB 624, §7, which adds TWC, §49.466. Proposed amendments to §293.44(a)(24) would reflect that portion of amenity lake facilities which can be funded as a recreational facility, in accordance with SB 624, §4, which amends TWC, §49.463 and SB 624, §7, which adds TWC, §49.466. Proposed amendments to §293.44(b)(4) would modify the reference regarding a definition of recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466; delete the reference to TWC, §54.772, in accordance with HB 1541, §27, which amends TWC, §54.201(b); and reflect that districts in certain counties may issue tax-supported bonds for recreational facilities, in accordance with SB 624, §6, which adds TWC, §49.4645. Proposed amendments to §293.44(b)(5) reflect that bidding requirements are not applicable to contracts or services related to temporary erosion-control devices or to cleaning of silt and debris from streets and storm sewers, in accordance with HB 2887, §1, which amends TWC, §49.278(a). Proposed amendments to §293.44(b)(6) allow a district's construction contract to include economic incentives for early completion or disincentives for late completion of the work, in accordance with HB 1541, §19, which amends TWC, §49.271. The economic incentives for early completion or disincentives for late completion would be part of the proposal prepared by each bidder before the bid opening, and not negotiated after bid opening.

§293.51, Land and Easement Acquisition

Section 293.51(a) is proposed to be amended to require that easements or right-of-way areas for recreational facilities be donated without reimbursement, in accordance with SB 624, §7, which adds TWC, §49.466. Proposed new §293.51(b)(8) adds district funding of recreational facilities sites at a cost similar to sites for other district facilities, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.51(d) is proposed to be modified to allow district funding of land costs for that portion of an amenity lake considered a recreational facility, in accordance with SB 624, §4, which amends TWC, §49.463 and §7, which adds TWC, §49.466. New §293.51(i) would reflect that costs for dual-use recreational and drainage/detention sites should be split 50% for each use, and would reflect that the costs for recreational sites should be reduced due to an existing drainage/detention easement, if any, in accordance with SB 624, §7, which adds TWC, §49.466. Allocating costs 50% to each use for dual-use items is common in the commission's existing Chapter 293 rules, such as clearing and grubbing right-of-way for district and developer use.

§293.59, Economic Feasibility of Project

Section 293.59 is proposed to be amended to include taxes for recreational purposes in the combined and overlapping taxes, in accordance with SB 624, §7, which adds TWC, §49.466.

§293.80, Revenue Notes

Section 293.80(a) is proposed to be amended to exempt from commission approval revenue notes executed by the North American Development Bank, in accordance with HB 1541, §11, which amends TWC, §49.153(e).

§293.83, District Use of Surplus Funds for Any Purpose and Use of Maintenance Tax Revenue for Certain Purposes

Section 293.83(a) is proposed to be amended to reflect that proceeds from the sale of property originally acquired with bond funds are subject to commission rules regarding surplus funds, unless the proceeds are used to retire outstanding bonds of a district, in accordance with HB 1541, §16, which amends TWC, §49.266(d).

§293.113, District and Water Supply Corporations' Authority Over Wastewater Facilities

Section 293.113(a) is proposed to be amended to reflect that a district or corporation may not require a property owner who installed an on-site wastewater system before the adoption of the district or corporation's rule to connect to the district or corporation's system, in accordance with HB 1541, §17, which amends TWC, §49.234(a).

§293.201, District Acquisition of Road Utility District Powers and §293.202, Application Requirements for Commission Approval

Sections 293.201 and 293.202 are proposed to be amended to reflect that a municipal utility district only needs to petition the commission for road utility district powers, in lieu of the commission and Texas Department of Transportation (TxDOT), in accordance with HB 1541, §29, which amends TWC, §54.234.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for

the agency or other units of state and local government as a result of the administration or enforcement of the proposed rules. However, water districts may experience minor fiscal impacts under the proposed rules and the commission may see a slight increase in revenue. In return for the fees that water districts may have to pay under these proposed rules, the water districts will have more flexibility in serving their customers and may see an increase in administrative efficiency.

The proposed rules implement provisions of HB 1541, HB 2887, SB 624, and SB 898, 78th Legislature, 2003, and modify the administrative and oversight functions of the agency under TWC, Chapters 49, 54, and 57. The provisions having a fiscal impact on water districts and the agency are summarized as follows.

According to HB 1541, refunding bonds must be approved by the commission if the debt being refunded was not originally approved by the commission. However, if a water district issues refunding bonds to retire bonds issued by a municipality that financed facilities, then those refunding bonds are exempt from agency approval. Bonds issued to and approved by the North American Development Bank are also exempt from agency approval. A municipal utility district no longer has to obtain approval from TxDOT for road utility district powers. Commission approval will suffice.

According to SB 898, bonds are exempt from agency approval if the bonds are issued by a municipal utility district that is located in two counties, has a long-term debt rating of BBB or better, and has at least 5,000 water connections.

According to SB 624, tax-supported bonds can be issued by water districts in the Austin, San Antonio, and Houston regions to fund recreational facilities once commission approval is obtained.

According to HB 2887, water districts are permitted to address debris removal and temporary erosion control along streets and storm sewers without complying with bidding requirements.

These proposed rules could affect any of the existing 1,100 active water districts in the state. Newly created districts would also be affected.

Refunding Bond Issues

If a water district elects to issue refunding bonds that require commission approval, it would have to pay a \$500 filing fee and a 0.25% bond proceeds fee. The water district would also incur the cost of preparing a bond application, which is estimated to range from \$1,000 to \$10,000 per application.

Bonds to Fund Recreational Facilities

Water districts in Austin, San Antonio, and Houston can elect to issue tax-supported bonds to fund recreational facilities. Through informal surveys, agency staff estimates that many water districts would choose to fund recreational facilities each year for an estimated bond debt of \$1 million each. Water districts would pay the commission a \$500 filing fee and a 0.25% bond proceeds fee per bond issue to approve these types of bond issues.

Exempt Bond Issues

The agency estimates that one or two water districts per year would be able to exempt their bond issues from commission approval. If exempted, water districts would not pay the \$500 filing fee, the 0.25% bond proceeds fee to the commission, nor the cost of an application, estimated to range from \$5,000 to \$20,000. This would result in a slight savings to the eligible water districts and a slight loss in revenue to the agency. This type of exemption should decrease the water district's administrative workload and allow for more efficient financing of projects.

If a water district meets the criteria to exempt its bond issues from commission approval, the Office of the Attorney General would still approve the bond issue. Given the small number of districts that would qualify for this exemption, the workload impact on the Office of Attorney General would be slight.

Summary of Revenue Impact from Bond Issues

Staff estimates that as many as 28 water districts would issue refunding bonds or recreational facility bonds annually. The increase in filing fee revenue would be approximately \$14,000, assuming 28 water districts pay the \$500 filing fee for each type of bond. The increase in revenue from the 0.25% bond proceeds fee would be \$70,000, if 28 water districts issue \$1 million in bonds. Total revenue from both fees is estimated to be \$84,000 per year under these assumptions. This revenue will be credited to the water resource management account. Over a five-year period, fees from these types of bond issues are estimated to be as much as \$420,000.

Workload Issues

The commission expects to see an increase in bond applications for refunding bonds and bonds to finance recreational facilities. If this type of activity conforms to agency estimates, any additional workload would be absorbed using existing resources. If bond applications exceed agency estimates, then the agency may have to reassess workload implications.

Because municipal utility districts would no longer have to seek TxDOT approval for road utility district powers, there should be a slight decrease in workload at TxDOT related to these issues.

PUBLIC BENEFITS AND COSTS

Ms. 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 in the proposed rules will be more flexible powers given to water districts allowing a wider range of options to serve their customers.

If certain water districts elect to fund the construction of recreational facilities, there may be an increase in business for some construction companies. Residents may see an increase in the ad valorem property taxes that they pay for these recreational facilities and for refunding bond issues. However, these types of bond issues would be subject to voter approval.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses. Some small and micro-businesses may benefit from increased business activity if they are awarded contracts to construct recreational facilities.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 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 §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act. A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed rules is primarily to establish new or revise existing requirements relating to the administration of water districts and the commission’s supervision over their actions under TWC, Chapters 49, 54, and 57, as amended by HB 1541, HB 2887, SB 624, and SB 898. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the proposed rules do not exceed a federal standard because no applicable federal standards exist. The proposed rules do not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The proposed rules are not developed solely under the general powers of the agency; but also under the specific authority of TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes. The proposed rules are also specifically developed to implement TWC, §§49.463,

49.4645, and 49.466, as amended by SB 624; to implement TWC, §§49.153, 49.181, 49.234, 49.266, 49.271, and 54.234, as amended by HB 1541; to implement TWC, §49.278, as amended by HB 2887; and to implement TWC, §49.181, as amended by SB 898. The proposed rules do not exceed the express requirements of those state statutes. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed a preliminary assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49 and 54, as amended by HB 1541, HB 2887, SB 624, and SB 898. Promulgation and enforcement of these amendments will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the proposed rules neither relate to, nor have any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a preliminary consistency determination for the proposed rules in

accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the proposed rules is to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The CMP policy applicable to the proposed rules requires that the commission's rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water districts under TWC, Chapter 49; water control and improvement districts under TWC, Chapter 51; municipal utility districts under TWC, Chapter 54; regional plan implementation agencies under TWC, Chapter 54; special utility districts under TWC, Chapter 65; stormwater control districts under TWC, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the commission comply with the policies in 31 TAC §501.14(m).

The proposed rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The proposed rules, which implement HB 1541, HB 2887, SB 624, and SB 898, amend the existing rules that govern construction and funding of district facilities and that govern the commission's process for reviewing applications for district creation, bond issue, and other district matters.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with the CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal

natural resource areas, and because the rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers.

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

A public hearing on this proposal will be held in Austin on November 18, 2004, at 10:00 a.m. at the Texas Commission on Environmental Quality complex in Building E, Room 254S, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to 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 the 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 Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-015-293-WT. Comments must be received by

5:00 p.m. on November 29, 2004. For further information, please contact Debra Barber, Office of Environmental Policy, Analysis, and Assessment, (512) 239-0412.

SUBCHAPTER A: GENERAL PROVISIONS

§293.1

STATUTORY AUTHORITY

The amendment is proposed under the authority of 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 the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The proposed amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624; and TWC, Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

§293.1. Objective and Scope of Rules; Meaning of Certain Words.

(a) The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water related districts and to approve the issuance and sale of bonds for district improvements in accordance with the Texas Water Code (TWC). This chapter, adopted under TWC, [pursuant to] §§5.103, 5.105, and 5.235 [of the Texas Water Code], shall govern the creation, supervision, and dissolution of all general and special law districts subject to and within the applicable limits of the jurisdiction of the commission.

(b) This chapter shall govern the conversion of districts into municipal utility districts as provided in TWC, §§54.030 - 54.036 [the Water Code, §§54.030 through 54.036].

(c) The term "recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting.

SUBCHAPTER B: CREATION OF WATER DISTRICTS

§293.11

STATUTORY AUTHORITY

The amendment is proposed under the authority of 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 the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The proposed amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624.

§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 [non refundable] 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 [pursuant to] 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, §42.042₂ have been followed; [.]

(3) if city consent was obtained under [pursuant to] paragraph (2) of this subsection, provide the following:

(A) (No change.)

(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);

(4) (No change.)

(5) evidence of submitting a creation petition and report to the appropriate commission [agency] regional office;

(6) (No change.)

(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 agreement₂ as appropriate₂

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) - (9) (No change.)

(10) if the petitioner anticipates recreational facilities being an intended purpose, then 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) [(10)] other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC [Texas Water Code], Chapter 36, Groundwater Conservation Districts are provided in Subchapter C of this chapter (relating to Special Requirements for [Creation of] Groundwater Conservation Districts [in Priority Groundwater Management Areas]).

(c) Creation applications for TWC [Texas Water Code], 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 [Texas Water Code], §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) - (D) (No change.)

(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) - (3) (No change.)

(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) - (F) (No change.)

(G) an investigation and evaluation of the availability of comparable service from other systems[,] including₂ but not limited to₂ 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) - (iv) (No change.)

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

(vi) (No change.)

(I) (No change.)

(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 district₂ and will further the public welfare₂ [.]

(6) (No change.)

(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 [Texas Water Code, §51.072 and §49.052];

(8) - (9) (No change.)

(d) Creation applications for TWC [Texas Water Code], 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 [Texas Water Code], §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 [, 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) - (C) (No change.)

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

(E) statement of estimated cost of project; [.]

(2) - (3) (No change.)

(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) - (F) (No change.)

(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) - (iv) (No change.)

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

(vi) (No change.)

(I) - (J) (No change.)

(6) (No change.)

(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 [pursuant to Texas Water Code], §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 [Texas Water Code], §54.016 have been followed;

(8) [the petitioners] for districts proposed to be created within the corporate boundaries of a municipality, evidence [should show] 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 [the] 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 [Texas Water Code, §54.102 and §49.052];

(10) - (11) (No change.)

(e) Creation applications for TWC [Texas Water Code], Chapter 55, Water Improvement Districts₂ 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 [Texas Water Code], §55.040₂ 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) (No change.)

(2) (No change.)

(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) - (F) (No change.)

(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) - (iv) (No change.)

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

(vi) (No change.)

(I) - (J) (No change.)

(5) - (7) (No change.)

(f) Creation applications for TWC [Texas Water Code], 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 [the Texas Water Code], §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) - (E) (No change.)

(F) statement of the estimated costs of the project; [.]

(2) - (4) (No change.)

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

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

(B) (No change.)

(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) - (E) (No change.)

(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) - (iv) (No change.)

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

(vi) (No change.)

(H) - (I) (No change.)

(6) (No change.)

(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 [Texas Water Code], §58.072; and

(8) (No change.)

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

(1) a petition, as required by TWC [Texas Water Code], §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) - (D) (No change.)

(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) (No change.)

(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 [ETJ] of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC [Texas Water Code], §59.006;

(4) a preliminary engineering report including as appropriate:

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

(B) - (E) (No change.)

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

(G) an investigation and evaluation of the availability of comparable service from other systems[,] including₂ but not limited to₂ 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 [Texas Water Code, §59.021 and §49.052];

(6) - (7) (No change.)

(h) Creation applications for TWC [Texas Water Code], 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 [Texas Water Code], §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) - (C) (No change.)

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

(E) if the proposed district also seeks approval of an impact fee, [the resolution should also include] a request for approval of an impact fee and [state] 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 [Texas Water Code], §65.001(10), to a special utility district that conforms [shall conform] 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) (No change.)

(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) (No change.)

(C) for proposed system expansion:

(i) (No change.)

(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) - (E) (No change.)

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

(i) - (iv) (No change.)

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

(vi) (No change.)

(G) (No change.)

(6) - (8) (No change.)

(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 [pursuant to Texas Water Code], Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC [Texas Water Code], 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, [Texas Water Code, §65.102 and §49.052] 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) [or Consolidation] and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);

(12) - (13) (No change.)

(i) Creation applications for TWC, Chapter 66, [Texas Water Code,] 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, [Texas Water Code, §§66.014, 66.015 and 66.016] requesting creation of a stormwater 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) - (C) (No change.)

(2) (No change.)

(3) a preliminary engineering report including:

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

(B) - (C) (No change.)

(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) - (ii) (No change.)

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

(iv) (No change.)

(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, [Texas Water Code, §66.102 and §49.052] where applicable; and

(5) (No change.)

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

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district, 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) - (C) (No change.)

(D) [include] name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District";

(E) list of proposed initial directors and experience and term of each; and[,]

(F) [include] 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, [Local Government Code] including budget, statement of expenses, revenues, and sources of such revenues;

(3) (No change.)

(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 [of the Texas Local Government Code]; and

(5) (No change.)

SUBCHAPTER E: ISSUANCE OF BONDS

§§293.41, 293.44, 293.51, 293.59

STATUTORY AUTHORITY

The amendments are proposed under the authority of 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 the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and under TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The proposed amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624, SB 898, HB 1541, and HB 2887.

§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; or [and]

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

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

(d) [(c)] This subchapter does not apply to a district if:

(1) the 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 and entirely within one or more home-rule municipalities;

(B) the total taxable value of the real property and improvements to the real property, zoned by [the] 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

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

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

(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 [.]

(5) the district:

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

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

(C) has at least 5,000 active water connections.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, 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 shall not include indoor or outdoor swimming pools, golf courses, and related structures.

(2) A district's outstanding principal debt 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.

(3) 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 necessary to provide access to the recreational facilities.

§293.44. Special Considerations.

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

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

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

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

amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) (No change.)

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

(6) - (7) (No change.)

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

(A) (No change.)

(B) the district has entered into an agreement with the party being served by such oversized capacity which provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such

oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

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

(ii) (No change.)

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

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

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

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not be paid by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site [off-site] for another eligible project.

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

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

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

(i) (No change.)

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

(iii) (No change.)

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

(14) (No change.)

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

(A) (No change.)

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

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

(D) provided, however, that the [foregoing] limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows_ [:]

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

(B) (No change.)

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

(D) (No change.)

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

(18) - (21) (No change.)

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

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

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

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

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

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

(B) The district's share is subject to the developer's 30% contribution unless exempt under §293.47 of this title.

(b) All projects.

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

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, under [pursuant to] contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

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

(A) (No change.)

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

(C) (No change.)

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) [TWC, §49.462,] for all affected districts [and as also defined in TWC, §54.772, for municipal utility districts,] that benefit persons within the district. If financing involves reimbursement to a developer of property in the district, as defined by TWC, §49.052(d), the district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. Otherwise, a district's financing of costs associated with recreational facilities shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

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

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

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, [and] 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; [, and] the right-of-way [right of way] necessary for a drainage swale or ditch constructed generally along a street or road [right of way] 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 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) - (6) (No change.)

(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.

(c) Price of land acquisition. If a district acquires such a site, as described in subsection (b) of this section, 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 [he] 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 site must contain a request by the district to acquire the site in such manner and must explain the reason the seller is unable to provide price and carrying cost records. 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 stormwater 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) - (h) (No change.)

(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.

§293.59. Economic Feasibility of Project.

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

(c) Projected debt service tax rate is the tax rate required to meet the projected annual debt service requirement using projected assessed valuations and an appropriate tax collection rate. The projected annual debt service requirement shall include the previous and proposed debt. The projected debt service tax rate for any bond issue shall be shown in the cash flow table as a level or decreasing tax rate.

(d) (No change.)

(e) Combined no-growth tax rate is the sum of the following:

(1) no-growth [No-growth] debt service tax rate of the district;

(2) projected [Projected] no-growth debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage, or recreational that are smaller in size than a county, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct [.]. (In other words, for road districts or road utility districts that are as large as one county commissioner's precinct, the road district tax is not counted.); [.]

(3) an [An] equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) city [City] tax rate specifically attributable to water, sewage, [and]drainage, and recreational if the district is located within a city;

(5) current [Current] or proposed district or overlapping maintenance tax levy, if any;

(6) contract [Contract] tax, if any; and

(7) less [Less] any equivalent tax rebate or other payments.

(f) Combined projected tax rate is the sum of the following:

(1) projected [Projected] debt service tax rate of the district;

(2) projected [Projected] debt service tax rate of all overlapping entities specifically attributable to water, wastewater, [and] drainage, recreational, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct; [.]

(3) an [An] equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) city [City] tax rate specifically attributable to water, sewage, [and] drainage, and recreational if the district is located within a city;

(5) current [Current] or proposed district or overlapping maintenance tax levy, if any;

(6) contract [Contract] tax, if any; and

(7) less [Less] any equivalent tax rebate or other payment.

(g) (No change.)

(h) For districts collecting surcharge revenues, the equivalent surcharge tax rate shall be calculated as follows; [.]

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

(i) For districts receiving a rebate for taxes paid to a city or other entity for water, wastewater, drainage, recreational, or road service, the equivalent tax rebate shall be calculated as follows:

<p>Figure: 30 TAC §293.59(i) (No change.)

(j) (No change.)

(k) For a district's first bond issue, the following paragraphs apply except that paragraphs (5), (6), (8), and (10) of this subsection are only applicable to a district that has a developer as defined by Texas Water Code (TWC), §49.052(d).

(1) The district [District] shall provide the current and projected tax rates of all entities levying or proposing to levy taxes on land within the district and a comparison of such taxes with the total tax levy on all competing projects in the same market area, as defined in the market study, if applicable, shall be provided.

(2) A cash flow analysis to determine the projected debt service revenue and projected tax rate shall be provided. It should include the following assumptions. [:]

(A) - (D) (No change.)

(3) The combined projected tax rate must [shall] not exceed the following:

(A) (No change.)

(B) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson,
Comal, and Guadalupe Counties; or

(C) (No change.)

(4) The combined no-growth tax rate must [shall] not exceed the following:

(A) \$2.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria
Counties;

(B) \$2.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson,
Comal, and Guadalupe Counties; or

(C) (No change.)

(5) The following apply [applies] to the central appraisal district certificate. [:]

(A) (No change.)

(B) In determining the projected or no-growth tax rates, a certificate of
estimated assessed valuation may be used under the following conditions:

(i) the [The] developer or landowner to receive bond proceeds shall certify, represent, and agree that it will not challenge and attempt to reduce its valuations below the values shown on the certificate for the life of the bonds;

(ii) if [If] the valuation contained in the certificate of estimated taxable valuation is at least 25% higher than that contained in the most recent certified valuation, a written explanation from the district of such increase shall be provided;

(iii) if [If] the estimated taxable valuation results in an exemption from §293.47 of this title (relating [Relating] to Thirty Percent of District Construction Costs To Be Paid by Developer) and the final certificate of taxable value is not sufficient for an exemption from that section, the developer will be obligated to refund to the district the difference in the bond issue requirement without developer contribution and with developer contribution plus interest at the bond interest rate to the district; and

(iv) developed [Developed] land values will not be used in the commission's analysis for lots which do not have completed water, wastewater, and drainage facilities and roads constructed to county or city standards, as applicable, at the time of development.

(6) At the time of commission approval, the following shall apply:

(A) - (B) (No change.)

(C) sufficient lift station, water plant, and sewage treatment plant capacity, as applicable depending on the type of district, to serve the connections projected for a period of not less than 18 months shall be either 95% complete as certified by the district's engineer or available in existing plants in accordance with [pursuant to] executed contracts for capacity in plant(s) owned by other entities (but in no event less than 50,000 gallons per day water plant and sewage treatment plant capacity);

(D) water supply, lift station, and wastewater treatment capacity needed to support the projected build-out used to support the feasibility of the subject bond application must [shall] be existing or funds for that capacity must [shall] be included in the bond issue or secured by a letter of credit or other acceptable guarantees approved by the executive director; and

(E) all street and road construction to provide access to the areas provided with utilities to be financed with proceeds from the proposed bond issue, or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, must [shall] be 95% complete as certified by the district's engineer. All streets and roads shall be constructed in accordance with city or county standards, as appropriate.

(7) At least 25% of the projected value of houses, buildings, and/or other improvements shown in the projected tax rate calculations must [shall] be completed prior to advertising for the bond issue. The projections used to satisfy this section shall also be used in the calculations required by paragraphs (2) and (3) of this subsection.

(8) (No change.)

(9) One or more of the [foregoing] requirements in paragraphs (1) - (8) of this subsection may be waived for good cause by commission order if all of the facilities proposed under a bond issue application are essential because of valid orders, permits, or actions against the district by a governmental agency or court. If only a portion of the bond issue is for facilities essential because of valid orders, permits, or actions against the district by a governmental agency or court and if a waiver of any of the [foregoing] requirements is requested, all nonessential projects may be deleted from the bond issue if not feasible under the other provisions of these rules.

(10) A current market study is required for districts using growth projections to support the feasibility of the bond issue. The market study will meet the guidelines set out in the Bond Application Report Format. The market study provided will specifically address the projected building program for the three years subsequent to filing of the bond application and the period of projected build-out shown in the bond application and the competing projects in the surrounding market area. The study must [shall] contain a detailed description of the proposed development and the houses, buildings, and other improvements which are proposed.

(11) Requirements of paragraph (6)(A), (C), and (E) of this subsection, and the requirements of paragraph (7) of this subsection shall not apply in the following cases where:

(A) the no-growth tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed \$1.30; the no-growth tax rate of a district providing

major water and sewage facilities which it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed \$1.30, and the combined no-growth tax rate does not exceed \$2.00; and, the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district; [or]

(B) the district has an acceptable credit rating as defined in §293.47(b)(4) of this title [(Relating to Thirty Percent of District Construction Costs To Be Paid by Developer)] or a credit enhanced rating as defined in paragraph (5) of this subsection; or

(C) the district is providing water, wastewater, and drainage facilities and the combined no-growth tax rate of all overlapping entities specifically attributable to water, sewage, [and] drainage, recreational, and roads if the entity is a special district encompassing less than one county commissioner's precinct, if any, does not exceed the following:

(i) (No change.)

(ii) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or

(iii) (No change.)

(D) for the [immediately preceding] exceptions in subparagraph (A) or (C) of this paragraph, the developer shall provide a guarantee for its 30% share of utilities, if required under

[pursuant to] §293.47 of this title [(relating to Thirty Percent of District Construction Costs To Be Paid by Developer)], in the form and manner required by §293.47(g) of this title;

(E) for utilities which are not funded and not complete but necessary to support the feasibility of the bond issue, the developer shall provide a guarantee for 100% of utilities for the [immediately preceding] exceptions in subparagraphs (A), (B), or (C) of this paragraph in the form and manner required by §293.47(g) of this title;

(F) for the [preceding] exceptions in subparagraph (B) or (C) of this paragraph, the developer shall provide a paving guarantee under [pursuant to] §293.48 of this title (relating to Street and Utilities Construction by Developer); or

(G) for the [preceding] exceptions in subparagraph (A) of this paragraph, financial guarantees for the internal subdivision utilities and streets are not required.

(I) For a district's second and subsequent bond issues, [all of the foregoing of] subsection (k) of this section shall apply, and the following shall apply except that only paragraph (1) of this subsection applies to districts that do not have a developer as defined by TWC [Texas Water Code], §49.052(d) or to districts which meet the criteria set out in subsection (k)(11) of this section.

(1) (No change.)

(2) The water, wastewater, and drainage facilities financed by the district under previous bond issues and all road and street construction to serve such connections shall be at least 95% complete as certified by the district's engineer.

(3) - (5) (No change.)

(m) Bond issues supported only by revenue from a defined area must [shall] be analyzed to assure that the defined area meets the requirements of this section independently of the remainder of the issuing district.

(n) A district may request a variance if it does not meet the guidelines contained in subsections (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The commission shall not grant a variance to the maximum combined projected tax rate or the maximum combined no-growth tax rate specified in subsection (k) of this section for districts that have a developer and the district is financing 100% of construction costs under the [pursuant to] criteria set out in §293.47(a) of this title, which would otherwise require 30% developer participation. In determining whether to grant a variance, the following factors shall be considered:

(1) - (7) (No change.)

SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION

CONSIDERATION FOR APPROVAL

§293.80, §293.83

STATUTORY AUTHORITY

The amendments are proposed under the authority of 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 the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The proposed amendments implement TWC, Chapter 49, relating to Provisions Applicable to All Districts, and Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

§293.80. Revenue Notes.

(a) A district, as defined by Texas Water Code (TWC), §49.001 may not execute a revenue note as described by TWC [Water Code], §49.153 for a term longer than three years unless approved by the commission. This section does not apply to a note issued to and approved by the Farmers Home Administration, [of] the United States Department of Agriculture, [or] the Texas Water Development Board, North American Development Bank, or successor agencies.

(b) This section does not apply to special water authorities, as defined by TWC [Water Code], §49.001 or a district described by TWC [Water Code], §49.181(h).

(c) Applications for commission approval of revenue notes except as provided in subsection (d) of this section shall include the following:

(1) - (7) (No change.)

(8) copies of all existing notes, liens, or judgements against revenues associated with the facility;

(9) - (10) (No change.)

(d) Revenue notes proceeds of which are used to reimburse a developer as defined in TWC [the Water Code], §49.052(d) are subject to Subchapter E [§§293.41 - 293.61] of this chapter [title] (relating to the Issuance of Bonds).

§293.83. District Use of Surplus Funds for Any Purpose and Use of Maintenance Tax Revenue for Certain Purposes.

(a) Except as provided in subsection (c)(3) and (4) of this section, and as provided in subsection (d) of this section, a district must receive approval from the executive director before obligating the use of: [contemplating use of]

(1) surplus bond funds; [,]

(2) interest earned on invested bond proceeds, grants, or contributions by others for costs sharing of facilities constructed with bond funds; [.]

(3) proceeds from the sale of property originally acquired with bond proceeds, unless the proceeds are applied to retire the outstanding bonds of the district; and

(4) litigation settlements related to projects financed by bond proceeds [must receive approval from the executive director prior to obligation of these funds for any purpose].

(b) A district contemplating the use of operation and maintenance tax revenue for reimbursement to a developer (as defined in Texas Water Code (TWC), §49.052(d)), of property, or its assigns, for planning, construction, or acquiring facilities must receive approval from the executive director.

(c) Application requirements are as follows. [:]

(1) For engineering projects, the following documents shall be submitted:

(A) - (I) (No change.)

(J) evidence of compliance with the requirements of Subchapter E [§§293.41 - 293.60] of this chapter [title] (relating to Issuance of Bonds);

(K) - (L) (No change.)

(2) (No change.)

(3) Subject to the requirements prescribed in paragraph (4) of this subsection, a district which has a no-growth tax rate of \$2.00 per \$100 assessed valuation or less calculated by dividing its average annual debt service on existing tax supported debt by current taxable assessed valuation/100, may use surplus funds for improvements necessary to serve development within the district as follows without further approval:

(A) - (B) (No change.)

(C) pump stations and force mains located within the boundaries of the district which directly connect the districts wastewater system to a regional plant; or

(D) (No change.)

(4) Districts contemplating the use of surplus funds as provided in paragraph (3) of this subsection must:

(A) (No change.)

(B) submit to the executive director and the appropriate field office those documents required by §293.62 of this title (relating to Construction Related Documents To Be Submitted to the Agency); and

(C) (No change.)

(d) (No change.)

SUBCHAPTER J: UTILITY SYSTEM RULES AND REGULATIONS

§293.113

STATUTORY AUTHORITY

The amendment is proposed under the authority of 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 the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The proposed amendments implement TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by HB 1541.

§293.113. District and Water Supply Corporations' [Corporations] Authority Over Wastewater Facilities.

(a) A district or water supply corporation (WSC) that operates or proposes to operate a wastewater collection system may prohibit by rule the installation of private on-site wastewater holding or treatment facilities on land within the district or the corporation's service area that is not served by the district's or corporation's wastewater collection system. A district or WSC that has not received funding under Texas Water Code, Chapter 17, Subchapter K, may not require a property owner who has [already] installed an on-site wastewater holding or treatment facility before the adoption of the rule to connect to the district's or corporation's wastewater collection system.

(b) (No change.)

**SUBCHAPTER P: ACQUISITION OF ROAD UTILITY DISTRICT POWERS BY
MUNICIPAL UTILITY DISTRICT**

§293.201, §293.202

STATUTORY AUTHORITY

The amendments are proposed under the authority of 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 the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The proposed amendments implement TWC, Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

§293.201. District Acquisition of Road Utility District Powers.

(a) Texas Water Code (TWC), §54.234, [Transportation Code, Chapter 441] authorizes a municipal utility district with [operating pursuant to the Texas Water Code, Chapter 54, and which has] the power to levy taxes to petition the [Department of Transportation, after first obtaining approval of the Texas Commission on Environmental Quality, effective September 1, 2002,] commission to acquire the powers granted under [said] Texas Transportation Code, Chapter 441, to road utility districts. [Texas Transportation Code, §441.051 requires the written consent of the landowners within the boundaries of the district to be given to the governing board of the district to file a petition with the Department of Transportation.]

(b) A municipal utility district may petition the commission to acquire the [Authority to add] road utility district powers authorized in [is also given to municipal utility districts in Chapter 951, Acts of the 69th Legislature, 1985, which added §54.234 and] TWC, §54.235 [to the Texas Water Code]. This section and §293.202 of this title (relating to Application Requirements for Commission Approval) [of this chapter will] provide the requirements for [obtaining approval of] petitioning the commission [to petition the Texas Department of Transportation] for road utility district powers.

§293.202. Application Requirements for Commission Approval.

A conservation and reclamation district, operating under [pursuant to the] Texas Water Code (TWC), Chapter 54, and which has the power to levy taxes, may [shall] submit to the executive director of the commission an application for road utility district powers which shall include the following documents[, prior to petitioning the Texas Department of Transportation for road utility district powers]:

(1) (No change.)

(2) a certified copy of the resolution of the governing board of the district authorizing the request [for approval of] to petition the commission [to petition the Texas Department of Transportation] for road utility district powers;

(3) a certification that the district is operating under TWC [the Texas Water Code], Chapter 54, and has the power to levy taxes, with proper statutory references;

(4) evidence [that the governing board of the district received written consent of all landowners within its boundaries prior to adopting the resolution of the governing board of the district authorizing it to petition for road utility district powers and] that the petition or written request to the commission requesting road utility district powers was filed with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with filing its application for such powers with the commission;

(5) a certified copy of the latest audit of the district performed under TWC [pursuant to Water Code], §§49.191 - 49.194;

(6) - (11) (No change.)