

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §50.31, relating to purpose and applicability of actions by the executive director, without changes to the proposed text as published in the January 9, 1998, issue of the *Texas Register* (23 TexReg 318). The text of the rule will not be republished.

EXPLANATION OF THE ADOPTED RULE

The purpose of the adopted amendment is to clarify which matters may be delegated to the executive director for action on behalf of the commission. The following matters may not be delegated to the executive director: approval of a fire department or fire-fighting services plan under Texas Water Code, §49.351; applications for conversion of a district to a municipal utility district under Texas Water Code, §54.030; and application for creation of a municipal management district under Local Government Code, Chapter 375. Also, pursuant to Senate Bill (SB) 1865, Acts of the 75th Legislature, 1997, the executive director may now be delegated authority to act on applications for creation of a district and for approval of standby fees. The executive director may also be delegated authority to act on impact fee petitions under Texas Local Government Code, Chapter 395; therefore, the adopted amendments delete the reference to such petitions in §50.31(c), which specifies the matters on which the executive director may not act.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to

§2001.0225 because it does not meet the definition of “major environmental rule” because the specific intent of the amendment is to make the rule consistent with statutory authority, not to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to make the rule consistent with statutory authority. The rules will substantially advance this specific purpose by specifying that certain matters may or may not be delegated to the executive director. Promulgation and enforcement of these rules will not burden private real property because private real property is not subject to these rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission has reviewed this rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the CMP.

COMMENTS RECEIVED

No written or oral comments were received by the commission. The commission has made no changes to the text of the proposed rule.

STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and to implement Texas Water Code, §§36.014, 49.011, 49.231, 51.028, 54.018, 55.042, 58.028, 65.018, and 66.018.

SUBCHAPTER C : ACTION BY EXECUTIVE DIRECTOR

§50.31

STATUTORY AUTHORITY

The section is adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§50.31. Purpose and Applicability.

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

(c) This subchapter does not apply to:

(1) - (4) (No change.)

(5) district matters under Texas Water Code, Chapters 49 - 66, as follows:

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

(E) an application under Texas Water Code, §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(6) - (10) (No change.)

(11) an application for creation of a municipal management district under Local Government Code, Chapter 375; and

(12) emergency or temporary orders or temporary authorizations;

(d) (No change.)

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§293.5, 293.11-293.13, 293.15, 293.41, 293.47, 293.48, 293.51, 293.54, 293.62, 293.64, 293.65, 293.67, 293.69, 293.70, 293.80, 293.81, 293.83, 293.84, 293.94, 293.96, 293.101, 293.125, 293.131, 293.133, 293.145, 293.171, 293.173, 293.174, 293.180, 293.361, and 293.365, and new §293.89 and §293.112 relating to Water Districts. Sections 293.11-293.12, 293.41, 293.65, 293.67, 293.89, 293.112, and 293.145 are adopted with changes to the proposed text as published in the January 9, 1998 issue of the *Texas Register* (23 TexReg 325). Amendments to §§293.5, 293.13, 293.15, 293.47, 293.48, 293.51, 293.54, 293.62, 293.64, 293.69, 293.70, 293.80, 293.81, 293.83, 293.84, 293.94, 293.96, 293.101, 293.125, 293.131, 293.133, 293.171, 293.173, 293.174, 293.180, 293.361, and 293.365 are adopted without changes and will not be republished.

EXPLANATION OF THE ADOPTED RULE

The purpose of the adopted amendments and new rules is to incorporate new requirements relating to the administration of water districts and the commission's supervision over their actions as provided by SB 1865, Acts of the 75th Legislature, 1997, which related to the administration, management, operation, and authority of water districts. The adopted amendments would also incorporate new references and requirements related to priority groundwater management areas required by SB 1, Acts of the 75th Legislature, 1997. The adopted amendments would also make several procedural changes related to the agency's oversight of water districts designed to clarify the responsibilities of water districts, or to clarify the intent of the rules. Additionally, these amendments update definitions to conform to 30 TAC Chapter 3 and make other wording changes to generally conform to agency usage.

The adopted amendment to §293.5 will extend the time for the commission to hold a hearing on the filing of a request from 10 days to 19 days to give staff time to process and review the request prior to the hearing.

The adopted amendments to §293.11(b) would update references to conform to SB 1, 75th Legislature, 1997. Adopted amendments to §293.11 delete subsection (d)(8) because the requirements are duplicated in subsection (d)(7). Section 293.11(d)(7) remains in effect. All applicants subject to the Texas Water Code, §54.016, will have to continue to insure that the municipal consent fully complies with that statute. The adopted amendment to §293.11(h)(9) clarifies the requirements for dissolution of a water supply corporation that is converted to a special utility district. The adopted §293.11(h)(9)(B) has been modified to correct the Water Code citation.

The adopted amendments to §293.12 and §293.13 consolidate notice and hearing requirements for creation of various types of districts pursuant to the statutory changes made by SB 1865. The adopted amendments will create one procedure for the creation of most types of water districts and also allow the commission to create districts, which are not protested, without having to hold a hearing. The adopted amendments to former §293.12(f), which is to be renumbered as §293.12(e), clarify the additional notice requirements for creation of a special utility district and approval of an impact fee, if requested. The adopted §293.12(b)(1) has been modified to clarify the notice requirements where a district is proposed to be located in more than one county.

The adopted amendments to §293.15 are to make the rule conform to statutory requirements for conversion of a district to a municipal utility district under Texas Water Code, §54.030.

The adopted amendments to §293.41 would require Drainage Districts and Levee Improvement Districts to obtain commission approval before issuance of bonds and also add a reference to provide that the bond approval requirements apply to proceeds of a contract tax that are used to reimburse a developer. In addition, the adopted amendments clarify that the definition of bond applies to the entire subchapter, and the commission has also clarified the language in the adopted rule to provide that the subchapter related to issuance of bonds applies to revenue notes or contract tax revenues only to the extent set out in §293.80(d) and §293.89, respectively. The adopted amendment to §293.41(c) is to clarify that districts meeting the test of that subsection are exempt from all the commission rules related to the issuance of bonds.

The adopted amendments to §293.47(d)(5) clarify the intent of the commission to consider costs associated with constructing lift stations and force mains connecting the district's system to regional wastewater trunklines the same as connecting to a regional wastewater facility, and therefore eligible for 100 percent reimbursement on a sale of the system to the district by the developer.

The adopted amendment to §293.48(a)(1) deletes the reference to a hearing which is no longer required.

The adopted amendment to §293.51(b) clarifies that the basis of reimbursement to a developer for land can include the interest on any borrowed funds the developer used to acquire the land, at the rate of the lesser of the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer. If the developer did not use borrowed funds, the net effective interest rate on the bonds may be used to calculate eligible interest reimbursement expense. The subsection also clarifies that taxes as well as interest on the land are eligible reimbursable expenses.

The commission has clarified the adopted amendment to §293.65 to require a district's engineer to notify the appropriate commission regional office, rather than the executive director, of the date and time of final inspection of construction projects.

The adopted amendments to §293.67 and §293.69 address repairing or accounting for damages to project facilities prior to purchase and immediately after purchase by the district, during the transfer of the project facilities. The title of §293.67 in the adopted amendment has been clarified to reflect more accurately the intent of that section.

The adopted amendments to §293.80 exempt those districts issuing revenue notes to other governmental agencies from having to obtain commission approval.

The adopted new §293.89 would require approval of the executive director for obligations to collect taxes for debt that exceed three years, if the district is required under the Texas Water Code, §49.181,

to obtain commission approval for bond issuance. The adopted rule also sets out the information requirements of the application for this type of approval.

The adopted amendments to §293.94 would exempt those districts which collect taxes, if total revenues, including tax revenue, are less than \$100,000, from having to file audited financial reports, as provided in Texas Water Code, §49.198, as amended.

The adopted new §293.112 would require districts to adopt rules providing for persons to provide notice to the district before making any improvement or starting any construction on easements, rights-of-way, or property where district facilities are located, pre- and post-construction inspection of district facilities, and repair of any damages prior to connection for service by the district.

The adopted amendments to §293.145 are to establish notice requirements for standby fee applications as provided in SB 1865, and will also allow the commission to approve standby fees, which are not protested, without having to hold a hearing. The cross references in the adopted amendments have been modified to reflect the correct titles of the referenced sections.

Adopted amendments to §293.171 are intended to exempt certain tap fees and retail or wholesale service, financed by revenue bonds, to nontaxable entities, from the notice and approval process required for impact fees.

Adopted amendments to §293.173 and §293.174 are intended to establish notice requirements for impact fee applications similar to those as provided for standby fees in SB 1865, and will allow the commission to approve impact fees, which are not protested, without having to hold a hearing.

Other adopted amendments would change word usage to conform to the definitions in 30 TAC Chapter 3, word usage in this chapter generally, and correct references.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule” as defined in the act because the specific intent of the rules is to regulate the administration of water districts, not to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to adopt new requirements relating to the administration of water districts and the commission’s supervision over their actions as provided by SB 1865, Acts of the 75th Legislature, 1997, and to incorporate new references and requirements related to priority groundwater management areas required by SB 1, Acts of the 75th Legislature, 1997, to clarify the intent of the

rules, to streamline the agency's procedures, and to update definitions to conform to 30 TAC Chapter 3 and make other wording changes to conform to general agency usage. The rules will substantially advance this specific purpose by providing a procedure for public notice and hearing for applications for creation of water districts, delegating routine functions to the executive director, allowing the commission to create districts and approve standby fees that are uncontested without a hearing, and exempting districts issuing revenue notes to other governmental agencies from having to seek agency approval. Promulgation and enforcement of these rules will not burden private real property because private real property is not subject to these rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission has reviewed this rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the CMP, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the CMP.

COMMENTS RECEIVED

Written comments suggesting changes to a section of the rules were provided by the Lower Colorado River Authority (LCRA). Vinson & Elkins submitted written comments, and an individual provided oral comments suggesting changes and clarifications to proposed §293.112. The following paragraphs summarize the written and oral comments received.

The LCRA objected to §293.89 as proposed. The LCRA expressed concern about regulation by the commission under this section of certain projects of the LCRA whereby a district receives water or wastewater service from the LCRA and the district pledges a tax to secure payments to the LCRA. The LCRA first suggested a revision to §293.89 that would provide that the requirements of a complete Bond Application Report and the requirements of §§293.41-293.61 related to Issuance of Bonds (subsections (b)(6) and (c) of the proposed rule) would not apply where a district involved in the transaction is located in four or more counties; the bonds issued by that district are payable from the revenues of a combined electric, water, and wastewater system; the proceeds of the district's bonds are to be used to provide reimbursement to a developer; and the amount of the reimbursement to the developer is limited to the amount of eligible reimbursement under the commission's rules.

Alternatively, the LCRA suggested revising §293.89 to allow the commission to waive any of the requirements of that section upon a showing by the applicant that the requirements were not necessary to protect the public interest or that the waiver would encourage regionalization or otherwise promote the public interest.

The commission disagrees in part with the comments. Section 49.108(e) of the Water Code now provides that any district required to obtain commission approval of its bonds must obtain the executive director's approval before entering into an obligation to collect tax for debt that exceeds three years; therefore, the review requirements of §293.89 could not be waived entirely. The purpose of the proposed rule is to subject contract tax obligations by water districts to substantially the same regulatory oversight as other long term district debt (i.e., bonds). The

purpose of the regulatory oversight is to protect district customers and taxpayers from excessive debt of the district by requiring the district to demonstrate that the project is financially feasible and is cost-effective. The rule is not intended to subject entities such as the LCRA to regulation by the commission that would not otherwise be required. The risk that a water district will enter into an infeasible transaction, however, is not necessarily diminished by the fact that the other party is located in four or more counties, is financing its obligations with a combination of electric, water and wastewater system revenues, and is willing to include provisions in its contracts concerning developer reimbursement.

The commission does recognize that some of the regulatory requirements applicable to the issuance of bonds should not apply to contract tax obligations, even where the proceeds are used to reimburse a developer, and that there may be some situations where a diminished level of oversight is appropriate. Accordingly, the adopted rule has been clarified to provide in subsection (b)(6) that only certain provisions in the rule chapter concerning bond issuance apply to applications for approval of a contract tax obligation where the proceeds are to be used to reimburse a developer, and the rule has also been reworded to allow a district to submit information to demonstrate that the requirements of subsection (b)(6) should be waived because doing so will promote regionalization or is otherwise justified. The commission will examine this showing on a case-by-case basis. However, in all cases the commission will not waive the requirements of §293.59 (relating to Economic Feasibility of Project).

Vinson & Elkins suggested changes to proposed §293.112 to clarify the applicability of that section where a district provides drainage or flood control services only. An individual suggested that because many of a district's water or sewer lines may be located in easements or rights-of-way, §293.112 should be clarified to specifically include construction near district facilities located on these types of property.

The commission has determined that because drainage and flood control facilities are not generally subject to the type of construction damage contemplated by §293.112, the rule should not apply where a district provides drainage and flood control services only. Therefore, the adopted rule has been modified to apply only to districts providing water or wastewater services. The commission also agrees with the second comment concerning this section. Accordingly, the rule is being adopted with clarifying language. In addition, the commission has made other modifications to clarify the language of the rule and has also modified subsection (4) to clarify that repairs may be performed by the responsible party or that the district may make the repairs provided that the district is reimbursed for those repairs.

STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. Section 293.12 is also proposed under Texas Water Code, §49.011, which requires the

commission to establish a procedure by rule for public notice and hearing for applications for creation of general law water districts.

The amendment to §293.12 implements Texas Water Code, §§36.014, 49.011, 51.028, 54.018, 54.020, 55.042, 58.028, 58.030, 59.007, 65.018, and 66.018. The amendment to §293.15 implements Texas Water Code, §§65.020-65.021. The amendment to §293.41 implements Texas Water Code, §54.030. The amendment to §293.80 implements Texas Water Code, §49.181. The amendment to §293.89 implements Texas Water Code, §49.108. The amendment to §293.94 implements Texas Water Code, §49.198. The amendment to §293.145 implements Texas Water Code, §49.231. The amendment to §293.171 implements Texas Water Code, §49.212.

SUBCHAPTER A : GENERAL PROVISIONS

§293.5

STATUTORY AUTHORITY

The section is adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.5. Petition to Commission.

The provisions of Chapter 281 of this title (relating to Applications Processing) notwithstanding, in the event that the executive director has not forwarded to the commission a memorandum recommending approval or disapproval of any application or request required or permitted under this chapter within 90 days after receipt thereof, the petitioner may request that the commission immediately consider such matter on the basis of the materials and data on file with the commission. Within 19 days after the filing of the request, the commission shall hold a hearing on the request. If the commission determines that sufficient material and data have been provided, the commission shall direct the executive director to present to the commission a complete memorandum on the application within 10 days. If the commission determines that sufficient material and data have not been provided, the commission shall specify the additional information and material to be submitted by

petitioner. An order directing the executive director to prepare the memorandum shall in no way prejudice the action which the commission may take on the merits of the application.

SUBCHAPTER B : CREATION OF WATER DISTRICTS

§§293.11, 293.12, 293.13, 293.15

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas. Section 293.12 is also proposed under Texas Water Code, §49.011, which requires the commission to establish a procedure by rule for public notice and hearing for applications for creation of general law water districts.

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

(a) (No change.)

(b) Creation applications for Chapter 36, Texas Water Code, Groundwater Conservation

Districts shall contain the items listed in subsection (a) of this section and the following items:

(1) a petition containing the items required by Texas Water Code, §36.013, signed by the majority of the landowners in the proposed district, or if there are more than 50 landowners, at least 50 of those landowners. The petition shall include the following:

(A) - (E) (No change.)

(2) evidence that the boundaries are coterminous with or inside the boundaries of a delineated groundwater management area, priority groundwater management area, or groundwater reservoir or subdivision thereof. A groundwater conservation district may include all or part of one or more counties, cities, districts, or other political subdivision and may consist of separate bodies of land within a groundwater management area, priority groundwater management area, or groundwater reservoir or subdivision thereof separated by land not included in the proposed district. Evidence shall show:

(A) a rule adopted by the commission designating a groundwater management area as provided in the Texas Water Code, §35.004, and §§293.21-293.25 of this title (relating to Designation of Groundwater Management Areas), an order designating a priority groundwater management area as provided under the Texas Water Code, §35.008, or an order designating delineation of a groundwater reservoir or subdivision thereof; or

(B) if part of the proposed district is not included within either a delineated groundwater management area, priority groundwater management area, or groundwater reservoir or a subdivision thereof, the petition may also contain a request (meeting the requirements of the Texas Water Code, §35.005 and §§293.21 - 293.25 of this title) to create or alter the boundaries of a

management area. If such a request is made, it may be acted upon separately by the commission from the petition for the creation of the proposed district;

(3) - (4) (No change.)

(5) a geologic/hydrologic report including as appropriate:

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

(E) if the proposed district is located in a designated priority groundwater management area, a description of how the proposed projects will address issues identified within the priority groundwater management area;

(F) - (K) (No change.)

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

(c) (No change.)

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

(1) a petition containing the matters required by Texas Water Code, §54.014 and §54.015 signed by persons holding title to land representing a total value of more than 50 percent of value of all land in proposed district as indicated by county tax rolls, if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

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

(C) necessity for the work;

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

(E) statement of estimated cost of project.

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

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

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

(5) a preliminary engineering report including as appropriate:

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

(B) land use plan;

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

(D) existing and projected populations;

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

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

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

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

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

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

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

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

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district 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 provisions of Texas Water Code, §54.016 have been followed;

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

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

(e) - (g) (No change.)

(h) Creation applications for Chapter 65, Texas Water Code, 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 Texas Water Code, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply corporation, and stating that the water supply corporation, acting through its board of directors, has found that it is necessary and desirable for the water supply corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

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

(2) - (8) (No change.)

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

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating pursuant to Texas Water Code, Chapter 65;

(B) a vote by the membership in accordance with the requirements of Texas Water Code, Chapter ~~67~~ **65**, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply 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 water supply corporation to the special utility district upon dissolution.

(10) - (12) (No change.)

(i) - (j) (No change.)

§293.12. Creation Notice Actions and Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for creation of a district by the commission pursuant to Texas Water Code, Chapter 36, Groundwater Conservation Districts, Chapter 51, multi-county Water Control & Improvement Districts, Chapter 54, Municipal Utility Districts, Chapter 55, Water Improvement Districts, Chapter 58, multi-county Irrigation Districts, Chapter 59, Regional Districts, Chapter 65, Special Utility Districts, and Chapter 66, Stormwater Control Districts, the executive director shall notify the chief clerk that the application is administratively complete.

(b) For those applications described in paragraph (a) of this section, the chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. The applicant shall cause the notice to be published as follows:

(1) notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county **or counties** where the district is proposed to be located with the last publication not later than the 30th day before the date on which the commission may act on the application, and

(2) posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.

(c) For those applications described in subsection (a) of this section, the commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

(d) If a petition for the creation of a groundwater conservation district pursuant to Texas Water Code, §36.013 contains a request to create or alter the boundaries of a groundwater management area in all or part of the proposed district, the notice must also be given in accordance with the requirements of Texas Water Code, §35.006 and §§293.21-293.25 of this title (relating to Designation of Groundwater Management Areas);

(e) For a petition for the creation of a Special Utility District pursuant to Texas Water Code, Chapter 65, which includes transfer of the certificate of convenience and necessity, the applicant shall also, unless waived by executive director, mail copies of the notice to customers of the water supply corporation and other affected parties at least 120 days prior to approval. Such notice shall include the following:

(1) name and business address of the district;

(2) a description of the service area involved;

(3) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and

(4) a statement that if a hearing is granted, persons may attend the hearing and participate in the process.

(f) If a petition for the creation of a Special Utility District pursuant to Texas Water Code, Chapter 65, contains a request for approval of an impact fee, the applicant shall comply with the notice provisions of §293.173 of this title (relating to Impact Fee Notice Actions and Requirements).

(g) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts are as follows:

(1) The chief clerk shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.

(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.

§293.13. Commission Actions Following Consideration of Creation Application.

(a) If the commission finds that the petition does not conform to the requirements of the applicable statutes the commission shall deny the petition. With respect to regional plan implementation agencies, the commission will consider the regional plan submitted with the petition in connection with its findings.

(b) If the commission grants the petition for creation:

(1) the commission shall issue an order including a finding that the project meets applicable statutory requirements;

(2) if the commission finds that any of the lands to be included in the district will not be benefitted by the creation of the district, the commission shall exclude the lands not to be benefitted and shall redefine the boundaries of the proposed district to include only those lands that will receive benefits from the district;

(3) the commission shall appoint directors as provided in applicable statutes, who shall serve until permanent directors are elected and qualified;

(c) A copy of the order of the commission granting or denying the petition shall be mailed by the chief clerk to each city having extraterritorial jurisdiction and/or to each county.

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

(a) (No change.)

(b) The application shall be accompanied by the following:

(1) (No change.)

(2) a \$700 application fee;

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

(c) Prior to the hearing, the following requirements shall be met with evidence of such compliance filed with the chief clerk at or prior to the hearing:

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

(A) - (C) (No change.)

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

(d) (No change.)

SUBCHAPTER E : ISSUANCE OF BONDS

§§293.41, 293.47, 293.48, 293.51, 293.54

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§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 or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to refunding bonds, and bonds issued to and approved by the Farmers Home Administration of the United States Department of Agriculture or the Texas Water Development Board, or successor agencies. This subchapter does apply to revenue notes to the extent described [as stated] in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described [as stated] in §293.89[(d)] of this title (relating to Contract Tax Obligations).

(b) (No change.)

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

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

(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.

§293.47. Thirty Percent of District Construction Costs To Be Paid by Developer.

(a) It has been determined by experience that some portion of the cost of district water, wastewater and drainage facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to districts which have a ratio of debt (including proposed debt) to certified assessed valuation of more than 10%.

This section does not apply to:

(1) - (2) (No change.)

(3) a district which obtains a credit enhanced rating on its proposed bond issue and which the executive director, in his discretion, finds to be feasible and justified, based upon satisfactory evidence submitted by the district, without such developer contribution.

(b) - (c) (No change.)

(d) Except as provided in subsection (a) of this section or in the remaining provisions of this subsection, the developer shall contribute to the district's construction program an amount not less than 30% of the construction costs for all water, wastewater and drainage facilities, including attendant engineering fees and other related expenses, with the following exemptions:

(1) - (4) (No change.)

(5) pump stations and force mains located within the boundaries of the district which directly connect the district's wastewater system to a regional trunkline or a regional plant, regardless of whether such line or plant is located within or without the boundaries of the district;

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

(e) A developer will also be required to contribute toward construction costs in districts which are within the limits of a city, except for:

(1) (No change.)

(2) districts previously created or in the process of creation which, prior to December 1, 1986, have submitted petitions to the executive director requesting creation; or

(3) (No change.)

(f) - (k) (No change.)

§293.48. Street and Water, Wastewater and Drainage Utility (street and utility) Construction by Developer.

Except as otherwise provided, unless street and utility construction is completed within the area to be developed by the proposed bond issue, the developer must provide assurance to the satisfaction of the executive director, prior to advertisement for sale of the district's bonds, that such street and utility construction will be completed as hereinafter provided.

(1) The developer must enter into an agreement with the district, secured by a letter of credit, specifying that if street and utility construction is not completed within a reasonable and specified period of time after the district sells its bonds, the district may award a contract for completion of the streets and utilities with financing to be accomplished by utilizing the letter of credit; provided, however, the district shall not proceed in such a manner until the executive director, after having given at least ten days written notice to both the district and the developer, has reviewed the

matter, either on the petition of the district or on his own motion and has approved the district's awarding of the contract and utilization of the letter of credit; and provided further, the executive director may extend the time for the developer to complete the streets and utilities if the developer renews the letter of credit and adequately compensates the district for lost revenues and taxes resulting from failure to complete the streets and utilities within the specified time. In the event that the letter of credit has not been renewed or replaced 45 days prior to its expiration date, or in the event that the developer commences any proceeding, voluntary or involuntary, or any proceeding, voluntary or involuntary, is commenced against the developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the developer, or any receiver is appointed for the developer, or the developer makes a general assignment for the benefit of creditors, the district shall have the immediate right to draw down the lesser of the current cost, as estimated by the district's engineer, to construct the streets and utilities, or the entire remaining balance of the letter of credit. The current estimated costs to construct the streets and utilities shall include construction contract amounts, engineering, surveying and testing fees, and a 10% contingency. The district shall deposit such funds in a separate account and shall not commit or expend such funds until the executive director has authorized use of the funds as provided in this subsection. Within 30 days after final completion of the streets and utilities, the district shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the developer or his designee. A district shall not allow any letter of credit to expire, except upon completion of the paving in substantial compliance with the agreement or written approval of the executive director. A copy of the street and utility construction agreement meeting the criteria specified in §293.57 of this title (relating to Form of

Street and Utility Construction Agreement), the letter of credit and any amendments or renewals thereof shall be submitted to the executive director within ten days after their execution or receipt by the district. The letter of credit must be from a financial institution meeting the qualifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit).

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

§293.51. Land and Easement Acquisition.

(a) (No change.)

(b) Plants, Lift or Pump Stations, Detention Ponds and Levee Sites. All land needed by a district for plants, lift or pump stations, detention/retention ponds, or levees may be acquired in fee simple or by easement from any person, including the developer, in accordance with this section, 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. If a district acquires such a site 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, 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.

(c) - (g) (No change.)

§293.54. Bond Anticipation Notes (BAN).

A district may issue bond anticipation notes for any purpose for which bonds of the district have previously been voted or may be issued for the purpose of refunding previously issued bond anticipation notes. All bond anticipation notes issued by a district shall conform to the following requirements:

(1) - (8) (No change.)

(9) Except as hereinafter otherwise provided, BAN shall not be used to finance facilities unless the plans and specifications therefor have been approved by all regulatory authorities having jurisdiction thereof and such plans and specifications have been submitted to the executive director in connection with the district's pending bond application.

(10) - (13) (No change.)

SUBCHAPTER F : DISTRICT ACTIONS RELATED TO CONSTRUCTION

PROJECTS AND PURCHASE OF FACILITIES

§§293.62, 293.64, 293.65, 293.67, 293.69, 293.70

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.62. Construction Related Documents To Be Submitted to the Agency.

Every district required to obtain commission approval of its projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Projects and Issuance of Bonds), is required to submit the following construction related reports and/or documents:

(1) Within 10 days after construction contract execution, the district shall furnish to the appropriate agency field office true copies of the following documents.

(A) - (F) (No change.)

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

§293.64. Control of Work.

The governing board shall have control of contracts for construction work being done for the district, and shall direct the district's engineer to provide a qualified project representative to perform periodic or continuous on-site observation of the progress and quality of the executed work to determine if construction is in substantial accordance with and includes all items in plans and specifications approved by the executive director. The scope of work and construction schedules shall govern the amount of on-site observation that is necessary to effectively monitor construction activities. The governing board shall authorize the services of a resident project representative if necessary to further protect the district against defects and deficiencies in construction. The responsibility for determining the optimum amount of on-site observation should remain with the consulting engineer who is required during the progress of the construction work to submit to the governing board and the executive director detailed written reports showing whether or not the contractor is complying with the contract.

§293.65. Commission Inspection.

The executive director or his designated representative may inspect a district construction project at any time. When individual contracts for construction are substantially complete, the engineer for the district will notify the agency's regional office [~~executive director~~] of date and time of final inspection. The engineer will conduct, in company with the owner or his representative, a final inspection of the work for conformance with the design concept and compliance with the contract

documents. The district shall not accept the project or release the statutory retainage on partial payments until work is determined to be in substantial compliance with plans and specifications as approved by the executive director.

§293.67. Project Completion and Acceptance by District [~~Prior to Purchase~~].

(a) Upon completion of the project, the district's engineer shall submit to the governing board a final detailed report including revised contract "as built" drawings showing the work as actually constructed, and the engineer shall certify to the executive director that the work was substantially completed in accordance with and includes all items in plans and specifications submitted to, or approved by the executive director.

(b) Prior to accepting facilities for operation and maintenance, the district shall adopt rules as required by §293.112 of this title (relating to Water, Wastewater and Drainage Facilities).

§293.69. Purchase of Facilities.

(a) A district shall not purchase facilities financed or constructed by a developer, investor owned utility or water supply corporation in contemplation of sale to the district or assume facility contracts from the developer or reimburse the developer, investor owned utility or water supply corporation for funds advanced to finance construction of facilities until the executive director has given

written authorization to finalize the purchase or reimbursement. Prior to requesting authorization to purchase, the district shall require its engineer to inspect the facilities and provide a written report of the condition of the facilities as they relate to the plans and specifications and note any deficiencies. A copy of the report must be submitted to the executive director along with the request for authorization to purchase. The executive director may inspect the facilities. Subject to the requirements contained in this subsection, the executive director shall issue his written approval or disapproval of such proposed purchase within 30 days after receipt of written request from a district or a district's authorized representative. If substantial deficiencies are found, the executive director may require the district to obtain an appraisal reflecting the adjusted value of the deficient facilities or deny purchase until repairs are made. The written approval shall be valid for 120 days.

(b) - (g) (No change.)

§293.70. Audit of Payments to Developer.

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

(c) Upon completion, the auditor shall prepare a reimbursement report to the district. Such report shall include sufficient details and disclosures to serve the needs of the district and the commission. Within 10 days after approval by the governing board of the district, a copy of this report shall be submitted to the executive director. The contents of the report shall include the following:

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

SUBCHAPTER G : OTHER ACTIONS REQUIRING COMMISSION

CONSIDERATION FOR APPROVAL

§§293.80, 293.81, 293.83, 293.84, 293.89

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.80. Revenue Notes.

(a) A district, as defined by Water Code, §49.001 may not execute a revenue note as described by 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, or successor agencies.

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

(c) - (d) (No change.)

§293.81. Change Orders.

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

(1) - (2) (No change.)

(3) If the change order is \$25,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be submitted to the executive director within 10 days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e. city, county, state, other, if required.

(4) - (6) (No change.)

**§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 contemplating use of surplus bond funds, interest earned on invested bond proceeds, grants, contributions by others for costs sharing of facilities constructed with bond funds and 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) (No change.)

(c) Application requirements are:

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

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

(A) receive all required approvals of associated plans and specifications from other governmental agencies, including the agency, prior to construction;

(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).

(C) report expenditures of all surplus funds in their annual audit report in the notes to the financial statements disclosing any amounts transferred among the funds including the use of surplus funds and the authority for such transfers.

(d) (No change.)

§293.84. District Use of Escrowed Funds.

(a) A district contemplating the use of agency-directed escrowed funds for a purpose approved in the bond application must submit the following documents to the executive director:

(1) - (2) (No change.)

(3) other information as the executive director may require and requested within 10 days of receipt of application; and

(4) (No change.)

(b) A district contemplating use of agency-directed escrowed funds for purposes other than as approved by the commission in the bond application must receive approval of the executive director.

To secure such approval, the following documents must be submitted:

(1) - (4) (No change.)

§293.89. Contract Tax Obligations.

(a) A district that is required under Water Code, §49.181 to obtain approval by the commission of the issuance of bonds may not enter into an obligation under Water Code §49.108 to collect taxes for debt that exceeds three years unless approved by the executive director. This section does not apply to contract taxes that are levied to pay for a district's share of bonds that have been issued by another district and approved by the commission.

(b) Applications for commission approval of contract tax obligations shall include the following:

- (1) a resolution by the governing board requesting approval of the contract;
- (2) a copy of the proposed contract;
- (3) a detailed explanation of the intended use and project to be financed, and complete justification for the [proposed] project to be financed;

(4) a proposed cash flow over the life of the obligation which includes all debt obligations of the district;

(5) unless waived by the executive director, if growth is used to support the projected tax rates, an independent market study;

(6) if funds received under [H] the contract [~~tax proceeds~~] are proposed to reimburse a developer as defined in the Water Code, §49.052(d), a complete Bond Application Report as described in §293.43(5) of this title (relating to Application Requirements) for the issuance of bonds[;]. The reimbursement is subject to §293.44, §§293.46-293.53, §293.56, §293.57, §293.59, and §293.60 of this title (relating to the issuance of Bonds) and, if appropriate, subject to executive director approval before reimbursement to the developer. The executive director may waive any of the requirements of this subsection upon a showing by the applicant that waiver will promote regionalization or is otherwise justified.

(7) an application fee in the amount of \$100; and

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

(c) All applications for executive director approval of contract tax obligations will be subject to the limitations in §293.59 of this title (relating to Economic Feasibility of Project). [~~Contract tax~~

~~obligations, the proceeds of which are used to provide reimbursement to a developer as defined in the
Water Code, §49.052(d) are subject to §§293.41-293.61 of this title (relating to the Issuance of
Bonds).]~~

SUBCHAPTER H : REPORTS

§§293.94, 293.96

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.94. Annual Financial Reporting Requirements.

(a) - (d) (No change.)

(e) Audit report exemption.

(1) A district may elect to submit annual financial reports to the executive director in lieu of the district's compliance with Texas Water Code, §49.191 provided:

(A) (No change.)

(B) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of \$100,000 during the fiscal period; and

(C) (No change.)

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

(f) - (g) (No change.)

(h) Submitting of audits, financial reports, and affidavits.

(1) Submittal dates.

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

(C) Financial dormancy affidavits. Financial dormancy affidavits shall be submitted as prescribed by paragraph (2) of this subsection by January 31 of each year. The calendar year affidavit affirms that the district met the financial dormancy requirements stated in subsection (f) of this section during part or all of the calendar year immediately preceding the January 31 filing date.

(2) Submittal locations. Copies of the audit, financial report, or financial dormancy affidavit described in subsections (c), (e) and (f) of this section shall be submitted annually to the executive director, and within the district's office.

(i) - (j) (No change.)

§293.96. Miscellaneous Reports To Be Submitted to the Executive Director.

(a) Certified copy of order canvassing results of any maintenance tax elections shall be submitted within 30 days after adoption.

(b) (No change.)

SUBCHAPTER I : DISTRICT NAME CHANGES AND POSTING SIGNS

§293.101

STATUTORY AUTHORITY

The section is adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.101. Posting Signs in the District.

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

(c) Within 10 days following the installation of the signs, the district shall submit a statement to the executive director indicating the location of the signs.

SUBCHAPTER J : WATER AND WASTEWATER SYSTEM

RULES AND REGULATIONS

§293.112

STATUTORY AUTHORITY

The section is adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.112. Water, Wastewater and Drainage Facilities.

All water districts that provide or propose to provide water ~~or~~[-] wastewater [~~or drainage~~] service to residential retail or commercial customers shall adopt rules that require inspection and repair of all damages to facilities the district is responsible for maintaining prior to initiation of service. The rules must, at a minimum:

- (1) require that the district's operator or the district be notified prior to making [~~starting~~] any [~~construction or~~] improvement or starting any construction on property within the district if such improvement, construction or equipment used in the construction will be within easements, rights-of-way or property where district facilities are located;

(2) require that an inspection be completed by the district's operator or the district to verify district facilities prior to starting construction;

(3) require that an inspection be completed by the district's operator or the district to verify district facilities after completion of construction; and

(4) require that any damages found be repaired to the satisfaction of the district or that reimbursement for repairs be made to the district before service is initiated.

SUBCHAPTER K : FIRE DEPARTMENT PROJECTS

§293.125

STATUTORY AUTHORITY

The section is adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.125. Additional Data and Information.

Additional data and information may be required by the executive director when deemed pertinent to the bond application under consideration.

SUBCHAPTER L : DISSOLUTION OF DISTRICTS

§293.131, §293.133

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.131. Authorization for Dissolution of Water District by the Commission.

(a) (No change.)

(b) Proceedings for the dissolution of a district may be initiated by the executive director upon his own initiative or upon the receipt of an application submitted to the executive director by the owners of land or interests in land within the district which is sought to be dissolved, a member or members of the board of directors of the district, or any other party who can demonstrate an interest in having the district dissolved.

(c) - (g) (No change.)

§293.133. Investigation by the Staff of the Commission.

The executive director will examine the application and the facts and circumstances contained therein and prepare a written report which will be filed with the chief clerk two weeks prior to the hearing as prepared testimony. A copy of the written report will be mailed to any landowner, director or other interested party who has filed an application for dissolution of the district or has requested notice of the hearing or otherwise indicated an interest in the proceeding.

**SUBCHAPTER M : APPLICATION FOR APPROVAL
OF STANDBY FEES**

§293.145

STATUTORY AUTHORITY

The section is adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.145. Public Notice Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for standby fees as required by §§293.141- 293.144 of this title (relating to Standby Fees, Application Requirements for Imposition of Standby Fees To Be Used to Supplement the Debt Service Account, Application Requirements for Standby Fees to Be Used To Supplement the Operation and Maintenance Fund, Application Requirements For Imposition of Standby Fees To Supplement the Debt Service Account and the Operation and Maintenance Account [Operator]), the executive director shall notify the chief clerk that the application is administratively complete.

(b) The chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing.

The applicant shall cause the notice to be published and mailed as follows:

(1) notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district is proposed to be located with the last publication not later than the 30th day before the date on which the commission may consider the application.

(2) The district shall send, not later than the 30th day before the date of consideration by the commission, copies of the notice by certified mail, return receipt requested, to each owner of undeveloped property in the district identified on the district's tax rolls. Notice must be provided by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any application. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the district, and a brief property description.

(c) The district shall submit an affidavit certifying compliance with the requirements of subsection (b) of this section ~~(relating to Public Notice Requirements)~~ to the Commission at least one week prior to commission consideration.

(d) The commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

SUBCHAPTER N : PETITION FOR APPROVAL OF IMPACT FEES

§§293.171, 293.173 and 293.174

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.171. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Impact fee** - Impact fee means a charge or assessment imposed by a district against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, wastewater, or drainage facilities, including all necessary service lines and meters, or for wholesale facilities that serve such water, sanitary sewer, or drainage facilities, that:

(A) does not exceed three times the actual and reasonable costs to the district for such tap or connection or

(B) if made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district, shall not be deemed to be an impact fee.

(2) **Capital improvement plan** - Capital improvement plan means a plan which identifies capital improvements or facility expansions pursuant to which impact fees may be assessed.

(3) **Capital improvements** - Capital improvements means water supply, treatment, and distribution facilities, wastewater collection and treatment facilities, stormwater, and drainage, and flood control facilities, including facility expansions, whether or not located within the service area, with a life expectancy of three or more years, owned and operated by or on behalf of a district with authorization to finance and construct such facilities, but such term does not include materials and devices for making connections to or measuring services provided by such facilities to district customers.

(4) **Connection** - Connection means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with

generally accepted engineering or planning standards. Connections shall be described in terms of single family equivalent connections, living unit equivalents, or other generally accepted unit typically attributable to a single family household. The assumed population equivalent per service unit shall be indicated.

(5) **Service area** - Service area means an area within or without the boundaries of a district to be served by the capital improvements specified in the capital improvements plan. The service area may include all or part of the land within a district or land outside a district served by the facilities identified in the capital improvements plan.

§293.173. Impact Fee Notice Actions and Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for impact fees as required by §§293.171-293.172 of this title (relating to Definitions of Terms and Information Required To Accompany Applications for Approval of Impact Fees), the executive director shall notify the chief clerk that the application is administratively complete.

(b) The chief clerk shall send to the applicant a copy of a notice indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing.

The notice shall also:

(1) be of sufficient size to be easily legible;

(2) include an easily understandable map showing the location of the district in relation to roads and other major landmarks and designating the areas upon which impact fees will be imposed;

(3) state the amount of the impact fee; and

(4) state that the impact fee application and supporting information are available for inspection and copying in the commission's offices during regular business hours and that the capital improvements plan is available for inspection and copying at the district's office during regular business hours.

(c) The applicant shall cause the notice to be published and mailed as follows:

(1) Notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district intends to levy an impact fee with the last publication not later than the 30th day before the date on which the commission may consider the application;

(2) The district shall send not later than the 30th day before the date of consideration by the commission, notice of the application to each owner of property within the service area, as of the

date of submitting the application to the executive director, unless good cause is shown why such notice should not be given. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls or by the appraisal district for the county, as applicable, as of the date of submitting of the application to the commission; and

(3) The district shall file an affidavit certifying compliance with the requirements of this subsection with the chief clerk at least one week prior to the date of consideration by the commission.

(d) The commission may act on an application without holding a public hearing, if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

§293.174. Commission Actions Following Consideration of the Impact Fee Application.

(a) (No change.)

(b) The commission shall issue an order defining the impact fee to be imposed based on evidence presented.

SUBCHAPTER O : APPEAL OF DECISION REGARDING FACILITIES

CONSTRUCTED FOR A MUNICIPAL UTILITY DISTRICT

§293.180

STATUTORY AUTHORITY

The section is adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

**§293.180. Appeal of a Decision of the Board of Municipal Utility District Regarding Facilities
Constructed for the District.**

(a) A person aggrieved by a decision of a board of directors of a Municipal Utility District operating under the Texas Water Code, Chapter 54 may appeal a decision that involves the cost, purchase, or use of improvements constructed by a developer for the district to the commission.

Before such an appeal will be considered the following must be submitted:

(1) A petition signed by the present or former property owners affected by the decision of the district board of directors must be filed with the chief clerk seeking appropriate relief within 30 days after the date of the decision. The petition shall contain:

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

(2) - (9) (No change.)

(b) (No change.)

(c) Commission Actions.

(1) - (2) (No change.)

(3) A record of actual cost for the commission to conduct preparations for and the hearing shall be maintained by the executive director and SOAH. An amount for indirect costs shall also be included. The commission may deduct its cost from the deposit. If the commission's cost exceeds the amount of the deposit, it may require payment of the additional amount from the petitioner prior to rendering its decision. If the commission's cost is less than the amount of the deposit, the surplus amount shall be returned to the petitioner.

(4) (No change.)

**SUBCHAPTER Q : SPECIAL ACTIONS RELATING TO THE HARRIS-GALVESTON
COASTAL SUBSIDENCE DISTRICT**

§293.361, §293.365

STATUTORY AUTHORITY

These sections are adopted under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§293.361. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) **Board** - Board of directors of the Harris-Galveston Coastal Subsidence District.
- (2) **Monitoring** - Water samples taken and analyzed, continuous water quality measurements, and/or physical measurements of water flow and pressure in certain water collection and distribution lines as deemed appropriate by the executive director to determine the groundwater and surface water percentages of alternative water supply.

(3) **Permit year** - A 365-day period of time during which a person is authorized by the Harris-Galveston Coastal Subsidence District to use groundwater.

(4) **Samples** - Water samples taken to determine groundwater and surface water percentages in the alternative water supply.

(5) **Water chemist** - A person or persons with expertise in water chemistry designated by the executive director to be the principal investigator

§293.365. Appeal of Final Decision of Board.

(a) (No change.)

(b) If the person appealing the final decision of the board to the commission has requested written findings and conclusions from the board, such findings and conclusions shall be submitted to the executive director either with the request for commission review if the findings and conclusions are then available or as soon thereafter as they become available.

(c) - (e) (No change.)