

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §293.11, Information Required To Accompany Applications for Creation of Districts; §293.12, Creation Notice Actions and Requirements; §293.32, Qualifications of Directors; §293.33, Commission Appointment of Directors; §293.42, Submitting of Documents; §293.44, Special Considerations; §293.46, Construction Prior to Commission Approval; §293.47, Thirty Percent of District Construction Costs To Be Paid by Developer; §293.48, concerning Street and Water, Wastewater and Drainage Utility (Street and Utility) Construction by Developer; §293.51, Land and Easement Acquisition; §293.54, concerning Bond Anticipation Notes (BAN); §293.59, concerning Economic Feasibility of Project; §293.88, Petition for Authorization To Proceed in Federal Bankruptcy; §293.97, Adoption of Fiscal Year and Operating Budget; §293.131, Authorization for Dissolution of Water District by the Commission; and §293.143, Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund. The commission also adopts the repeal of §293.96, concerning Miscellaneous Reports to be Submitted to the Executive Director.

The commission adopts *with changes*, as published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3483) §§293.42, 293.44, 293.46, and 293.51. Sections 293.11, 293.12, 293.32, 293.33, 293.47, 293.48, 293.54, 293.59, 293.88, 293.97, 293.131, and 293.143 are adopted without changes and will not be republished in this adoption.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adoption of the amendments and the repeal in Chapter 293 establishes new requirements relating to the administration of water districts and the commission's supervision over their actions under Chapters

49, 51, 53, and 65 of the Texas Water Code (TWC), as amended by House Bill (HB) 846 and HB 1069, 76th Legislature, 1999. Specifically, the adopted amendments allow sewer service corporations to petition for conversion to a special utility district; clarify other rules related to district creation; update the qualifications for directors of fresh water supply districts; adopt procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopt procedures for expedited review of certain bond applications; revise provisions concerning reimbursement for district project costs; add provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allow developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revise rules related to bond feasibility analysis; increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repeal or delete unnecessary rules; and correct and clarify the 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 the TWC. Chapter 293, entitled "Water Districts," governs the creation, supervision, and dissolution of all general and special law districts and governs the conversion of districts into municipal utility districts. There are approximately 1,300 water districts in Texas which are overseen by the commission. Chapter 293 provides the rules which govern the review of bonds for engineering standards and economic feasibility of applications in order to assure that construction projects are designed and completed with the proper approvals, thereby ensuring quality service. The chapter is also important because it ensures that bond funds are used for the benefit of the residents of the districts

and that proceeds from bond issues are used to promote a district's intended purpose.

In 1989, after many water districts were found to be in financial distress or bankruptcy and could not meet debt obligations, the commission adopted its feasibility rules to protect the integrity of the water district bonds and to prevent further defaults. The adoption of the repeal and the amendments clarifies provisions in order to further protect the integrity of the water district bonds.

Amendments are also adopted in Chapter 293 as a result of HB 846 and HB 1069. First, HB 846 amends provisions in TWC, Chapters 36, 49, and 53 relating to the administration, management, operation, and authority of water districts and authorities. The adopted amendments to Chapter 293 implement provisions of HB 846 that authorize the commission to appoint directors to fill positions on district boards that have been vacated for more than 90 days, revise statutory provisions concerning types of expenses that districts may finance, and revise the qualifications for directors of fresh water supply districts. The other portions of HB 846 did not require changes to the commission's rules.

HB 1069 eliminates the requirement in TWC, Chapter 65 that a water supply corporation (WSC) must have been providing service prior to January 1, 1985 in order to be eligible to convert to a special utility district (SUD). No changes to the commission's rules were necessary to implement this statutory change. HB 1069 also amends TWC, Chapter 65, to allow sewer service corporations, as well as water supply corporations, to convert to SUDs. There are currently approximately 900 WSCs operating in the state.

#### SECTION BY SECTION DISCUSSION

The following paragraphs describe the adopted amendments. Sections 293.42, 293.44, 293.46, and 293.51 are adopted with changes to the proposed text as published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3483).

The adopted amendments in §293.11(h) implement HB 1069, which amended TWC, Chapter 65, to allow sewer service corporations, along with water supply corporations, to petition the commission for conversion to a special utility district. The adopted amendments also clarify the section.

Amendments in §293.12(a) specify that the commission may also approve the creation of single county water control and improvement districts if additional powers are requested that are not otherwise available from the county, as provided by TWC, §51.333. Section 293.12(b) is adopted, with amendments, to provide that notice of an application to create a district must be posted on a bulletin board used for posting legal notice in each county where the proposed district is to be located, not later than 30 days before the commission may act on the application. Additional changes are adopted in §293.12 for compatibility with *Texas Register* formatting requirements.

The amendment to §293.32(a) is adopted to provide the qualifications for a director of a fresh water supply district under TWC, §53.063, as amended by HB 846, and to clarify the section.

The title of §293.33 is adopted to amend the title from “Commission Appointment of Directors” to “Commission Appointment of Directors to Fill Vacancies” in order to specify that the section applies to

the appointment of directors to fill vacancies on district boards. The procedures for the appointment of directors at the time of a district's creation are provided in §293.11 and §293.13. The amendment to §293.33 is adopted to provide the circumstances under which the commission may appoint directors to fill vacancies; to identify which procedures apply to a request for appointment of a director or directors as a result of the number of board members being reduced to less than a quorum; and to implement TWC, §49.105(c), as amended by HB 846, by adding procedures to request appointment of a director to fill a position that has been vacant for more than 90 days.

The amendment in §293.42 is adopted to change the title from "Submitting of Documents" to "Submitting of Documents and Order of Review" in order to more accurately reflect the subject matter of the section. The amendment in §293.42(b) is adopted to allow for the expedited review of bond applications that are submitted after the district meets certain criteria indicating its financial soundness and that fully comply with the commission's feasibility rules. The commission adopts this rule with changes from the proposal to clarify that an application submitted for expedited review under §293.42(b) must still comply with the bond application requirements in §293.43.

Section 293.42(c) is adopted to allow for the expedited review of nondeveloper bond applications for districts that are near full development and have a low tax rate. The commission also adopts this rule with changes from the proposal to provide that an application submitted under this subsection must also comply with §293.43, which requires, among other things, that an application for approval of bonds must include a bond application report prepared in accordance with the applicable "Bond Application

Report Format” manual adopted by the Executive Director. The commission has concluded that this change to the rule as proposed is necessary to implement TWC, §49.181(b), which requires that a bond application include an engineering report. The “Bond Application Report Format” manual specifies the engineering information that must be submitted with a bond application. The Executive Director has adopted a “Nondeveloper's Bond Application Report Format” that may be used for applications submitted for expedited review under the adopted §293.42(c). The commission has also revised the adopted rule to eliminate the requirements that an application submitted under this subsection include a summary of costs and copies of required permits; that information is addressed by the “Bond Application Report Format” manual.

The adoption of §293.42(d) provides that an application that does not meet the requirements for expedited review as initially submitted must be withdrawn and resubmitted with an additional filing fee in order to qualify for expedited review. The amendment adopted in §293.42(e) sets out the applicability of the expedited review processes to applications pending on the effective date of the rule changes.

The amendments adopted in §293.44(a)(3), relating to developer reimbursements from bond proceeds, clarify language in the rule for ease of interpretation without changing the intent. The amendments adopted in §293.44(a)(9) and (10) add language to clarify that §293.47, relating to developers’ 30% contribution, applies. The amendments adopted in §293.44(a)(12) clarify the criteria for determining what portion of the costs for combined lake and detention facilities a district may pay. The adoption of the amendments in §293.44(a)(13) corrects a grammatical error and clarifies the rule so that all districts

are allowed to fund a pro rata share of bridges and culverts which further the district's purposes. The existing rule allows only two types of districts created prior to September 1, 1989 to fund these costs. A new §293.44(a)(21) is adopted to allow districts to finance certain costs associated with flood plain and wetlands regulation.

The adoption of §293.44(a)(22) and (23) implement amendments to TWC, §49.155 made by HB 846. The revised statute allows districts to pay for costs associated with requirements for federal stormwater permits and endangered species permits. In response to comments, §293.44(a)(22), is adopted, with changes from the proposal, to provide that a district may finance up to 70% of the costs associated with endangered species permits; however, the district's share is not further subject to the developer's 30% contribution under §293.47. The adoption of §293.44(a)(22) also includes a change for clarification.

Section 293.44(b), relating to the reimbursement of project costs from bond proceeds, is adopted to clarify the calculation of the value of facilities not constructed by a developer for resale to the district or facilities constructed by a developer in contemplation of resale to the district, but for which original cost documentation is not available. To eliminate a duplication in §293.59, the commission also adopts the deletion of §293.44(b)(2), which required that all wastewater permits necessary to serve the projected development be in place in order for a project to be considered feasible.

In response to comments, §293.46(3) is adopted, with amendments, to clarify the rule. The rule change is intended to encourage compliance with local and state requirements for plan approval by disallowing reimbursement of any additional costs associated with changes required after contract award, unless all

required state and local approvals were obtained prior to contract award. An amendment to §293.46(5) is also adopted to delete an unnecessary grandfather provision concerning construction contracts awarded prior to September 5, 1986.

Amendments are adopted throughout §293.47 to correct grammatical errors and for compatibility with *Texas Register* formatting requirements. The amendments adopted in §293.47(a) provide that 30% of district construction costs are to be paid by the developer, and clarify that these rules apply to all districts except those specifically excluded by the rule and also clarify the exception for districts that have a ratio of debt to assessed valuation of 10% or less. The adopted amendments also add an exception to the rule for those districts that enter into an agreement with another political subdivision to receive significant revenues and that meet other criteria concerning buildout and tax rate. This adoption increases the financial integrity of district bonds by encouraging developers of in-city districts created after September 1, 1986, and of other commercial districts, to negotiate sales tax and other tax or revenue rebate agreements with the city or other local governments.

The amendments adopted in §293.47(b)(2) clarify that the total debt used in calculating the 10% debt to assessed valuation ratio includes all bonds of the district, including bonds not approved by the commission, and adds a provision concerning the calculation of the ratio where more than one bond application is pending. The amendments adopted in §293.47(b)(4) and (5) add Fitch IBCA to the list of acceptable investment firms that may rate a district's credit.

The amendment adopted in §293.47(c) updates the rule, which relates to requesting a conditional waiver

to the 30% contribution, by deleting the reference to a bond application hearing. TWC, §49.181, the applicable statute, does not require a hearing for commission action on a bond application.

Section 293.47(g) is adopted to add flexibility to the rule by allowing a developer to satisfy the financial guarantee requirement for the developer's share of costs with an escrow of funds in the name of the district.

Section 293.48 is adopted to add flexibility to the rule by allowing a developer to satisfy the financial guarantee requirement for street and utility construction with an escrow of funds in the name of the district or a deferral of reimbursement of bond funds owed. Additional changes are adopted in §293.48 to correct grammatical errors.

Modifications are adopted throughout §293.51 for consistency with *Texas Register* formatting, to correct grammatical errors, and to add appropriate catch lines at the beginning of the subsections for consistency throughout the section. The amendments adopted in §293.51(a) require that the rights-of-way necessary for roadside ditches be dedicated as easements by the developer. The amendments adopted in §293.51(b) specify the purposes for which a district may acquire land in fee simple, including allowing districts to purchase land for flood plain or wetlands mitigation, for certain drainage channels, and for buffer zones around water and wastewater plants. The adopted amendments also implement TWC, §49.155(a)(16), which was added by HB 846, by allowing districts to fund a portion of the cost for mitigation sites required for compliance with an endangered species permit. In response to comments, the commission adopts §293.51(b)(7) with changes from the proposal. Section

293.51(b)(7), as adopted, provides that the cost of mitigation sites or payments in lieu of mitigation must be shared between the developer and the district as set out in adopted §293.44(a)(22), which allows a district to finance up to 70% of such costs.

Amendments adopted in §293.54 correct grammatical errors. Additionally, §293.54(2) is adopted to clarify the basis of the opinion given by the district's financial advisor to support issuance of bond anticipation notes. Section 293.54(13) is adopted to add language providing that the requirement to obtain a street and road construction agreement prior to issuing bond anticipation notes does not apply if the district would otherwise be exempt when issuing bonds.

Changes in §293.59 are adopted to correct grammatical errors and for compatibility with *Texas Register* formatting requirements. The amendments to §293.59(k)(8) require that for first bond issues supported by taxes, the developer or other landowner or lender's written agreement, waiving the right to reduce the land values used in the feasibility analysis supporting the proposed bonds, must be submitted at the time of filing the bond application rather than prior to the actual approval. The adopted amendments require that if such agreements are not voluntarily provided by the owners of developable property who are not receiving bond proceeds, and the value of the property is such that a reduction will significantly (defined as 10% of the current assessed value of the district for an individual and 20% cumulatively) impact the district's projected tax rates, the feasibility analysis used to support the bonds will be based on a reduced value for such properties. The adopted amendments to §293.59(k)(11) clarify the commission's interpretation of the applicability of specific sections of the rule relating to financial guarantees required for a district's first bond issue. The adopted amendment to §293.59(l)(5)(B) is to

correct a grammatical error.

The commission adopts the deletion of §293.59(m), concerning the feasibility analysis used by the commission when reviewing a benefit assessment bond application. The commission has not received a benefit assessment bond application since initially adopting this rule. Section §293.59 was adopted as a result of one particular bond application that was submitted by a partially developed district; however, the commission believes that the rule may prohibit some viable districts from using benefit assessment bonds that may be feasible even though they do not comply with the existing rule.

Sections 293.88(b), (c), and (d) are adopted to clarify that the commission does not hold contested case hearings on applications by districts to proceed in federal bankruptcy. The applicable statute, TWC, §49.456, does not provide an opportunity for a contested case hearing. The commission's evaluation is limited to conducting a feasibility review of the district's financial condition to determine whether the district can meet its debts and other obligations through the full exercise of its powers. The commission considers these applications at a regular open meeting.

The commission adopts the repeal of §293.96, which requires districts to file with the commission a certified copy of orders canvassing the results of maintenance tax elections and water and wastewater rate orders. These requirements are unnecessary, as the commission does not use the data filed.

Section 293.97(a) is adopted to specify that the district's fiscal year shall be used for accounting all the district's financial per annum statutory limitations, including the limitations on director fees and per

diems under TWC, §49.060.

Adopted changes in §293.131 are for compatibility with *Texas Register* formatting requirements and to correct a statutory reference. Section 293.131(b) is adopted to clarify the procedures for the executive director to initiate dissolution of a district on the executive director's own motion and specify the application requirements for a petition for dissolution submitted by a party other than the executive director.

The amendment to §293.143(b) is adopted to increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund. Since the adoption of the 1989 water district regulations, the average water and wastewater bills have increased significantly, thereby justifying the change.

#### REGULATORY IMPACT ASSESSMENT

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 a "major environmental rule" as defined in the Administrative Procedures Act.

The specific purpose of the amendments adopted in Chapter 293 is to establish new requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49, 51, 53, and 65, particularly as amended by HB 846 and HB 1069, 76th

Legislature, 1999. Specifically, the adopted rule amendments allow sewer service corporations to petition for conversion to a special utility district; clarify other rules related to district creation; update the qualifications for directors of fresh water supply districts; adopt procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopt procedures for expedited review of certain bond applications; revise provisions concerning reimbursement for district project costs; add provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allow developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revise rules related to bond feasibility analysis; and increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund. The adopted amendments are not anticipated to have an adverse effect in a material way on 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 and will specifically benefit a sector of the economy and the public by updating and clarifying the rules, making them easier to use; by reducing the costs related to the review of certain bond applications; and by further protecting and enhancing the financial integrity and operations of water districts.

In addition, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule

solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” Specifically, the adopted rule amendments do not exceed a standard set by federal law nor exceed a requirement of a federal delegation agreement or contract, because no federal law or federal delegation agreement or contract applies to the rulemaking. The adopted rule amendments were not developed solely under the general powers of the agency, but rather are also adopted under TWC, §§5.235 and §49.011 and were specifically developed to implement TWC, §§49.060, 49.105, 49.154, 49.155, 49.158, 49.181, 49.195, 49.231, 49.321- 49.324, 51.063, 51.333, 65.001, 65.014, 65.015, and 65.022, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999, and do not exceed the express requirements of those state statutes.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rules is to adopt new requirements relating to the administration of water districts and the commission’s supervision over their actions under TWC, Chapters 49, 51, 53, and 65 of the TWC, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999. The adopted rules advance this specific purpose by allowing sewer service corporations to petition for conversion to a special utility district; clarifying other rules related to district creation; updating the qualifications for directors of fresh water supply districts; adopting procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopting procedures for expedited review of certain bond applications; revising

provisions concerning reimbursement for district project costs; adding provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allowing developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revising rules related to bond feasibility analysis; increasing the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repealing and deleting unnecessary rules; and correcting and clarifying the rules. Promulgation and enforcement of these rules does not burden private real property because private real property is not subject to these rules.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.) and found that the rules are consistent with the applicable CMP goals and policies.

CMP goals applicable to the rules include the goal to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. While the rules do not specifically regulate location or type of development allowed, Chapter 293 provides requirements for developers and for water districts. Section §505.11 of 31 TAC provides the actions and rules that are subject to the CMP. Among the list is the creation of a special purpose district or approval of bonds to construct infrastructure on coastal barriers. As the rules are effective throughout the state, the CMP policy is applicable. CMP policies applicable to the rules include the administrative

policy requiring applicants to provide information necessary for an agency to make an informed decision on an action listed in 31 TAC §505.11 and the standards related to the development of infrastructure on coastal barriers set out in 31 TAC §505.14(m).

The rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The specific purpose of the rules is to adopt new requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49, 51, 53, and 65, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999. The rules advance this specific purpose by allowing sewer service corporations to petition for conversion to a special utility district; clarifying other rules related to district creation; updating the qualifications for directors of fresh water supply districts; adopting procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopting procedures for expedited review of certain bond applications; revising provisions concerning reimbursement for district project costs; adding provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allowing developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revising rules related to bond feasibility analysis; increasing the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repealing and deleting unnecessary rules; and correcting and clarifying the rules.

Promulgation and enforcement of these rules does not violate or exceed any standards identified in the

applicable CMP goals and policies because the rules are consistent with these 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 the requirements for infrastructure on coastal barriers.

#### HEARING AND COMMENTERS

The proposed rules were published in the April 21, 2000 issue of the *Texas Register* (25 TexReg3483). A public hearing for this rulemaking was held in Austin on May 18, 2000. The comment period closed on May 22, 2000.

A total of 17 commenters provided comments to the proposal. The following provided written comments on the proposed rules: BVD Partners, L.P. (BVD); CCNG Development Company, L.P. (CCNG); an individual; JadCo Development, Inc. (JadCo); Milburn; Murfee Engineering Company (MEC); Newland Communities, L.L.C. (Newland); Ranch at Cypress Creek Municipal Utility District No. 1 (Cypress Creek); Representative Ron Lewis (Representative Lewis) of the State of Texas House of Representatives; Smith, Robertson, Elliott, and Glenn, L.L.P. (Smith); SWD Holdings, Inc. (SWD); SWTC, Ltd. (SWTC); Stratus Properties Operating Co. (Stratus); Turner Collie & Braden, Inc. (TC&B); Texas Department of Transportation (TxDot); Williamson-Travis Counties Water Control and Improvement District No. 1E (District 1E); and Vinson & Elkins (V&E). In addition to the written comments, V&E also provided oral comments during the public hearing.

#### ANALYSIS OF TESTIMONY

Of the commenters, V&E generally supported the proposal and complimented the expedited bond review process. TC&B supported §293.44(a)(21). TxDot expressed no support or opposition, and provided no suggested changes.

Representative Lewis recommended that the commission revise the proposed rules to allow districts to finance 100% of the costs associated with endangered species permits. Representative Lewis commented that the intent of the changes to TWC, §49.155(a)(16), made by HB 846 was to allow a district to finance all endangered species permitting costs and that a district's board should determine what portion of such costs a district should finance. Further, the statutory amendments were intended in part to clarify the expenses a district may pay, whether directly or indirectly through reimbursement to a developer. He further commented that the commission's existing feasibility rules for bonds adequately protect a district's financial feasibility, thus making unnecessary a limit on the endangered species permitting costs a district may finance. Representative Lewis also noted that in addressing this issue, the commission should consider both the Texas Constitution, Article III, §52, which prohibits a district from making grants of public funds for a private purpose, and the Texas Constitution, Article XVI, §59, which provides that one of the public rights and duties of water districts is the preservation and conservation of all the natural resources of the state. Because endangered species permitting costs directly relate to the preservation, conservation, and development of natural resources, these costs benefit the public regardless of whether a district pays for these expenses directly or reimburses a developer who has paid those expenses.

CCNG also commented that proposed §293.44(a)(22) should be revised to allow a district to finance

100% of the costs associated with endangered species permits. CCNG further commented that compliance with endangered species laws is a significant issue for large development projects, especially in central Texas, and that compliance with those laws generally provides significant ancillary environmental benefits, such as improved water quality. CCNG also suggested that allowing a district to finance 100% of endangered species permitting costs would not result in abuses by developers or districts, but instead would encourage developers to pursue the most effective form of environmental protection.

Stratus, Milburn, Newland, BVD, and JadCo commented that under HB 846, costs associated with federal stormwater permits, addressed in proposed §293.44(a)(23), and costs associated with endangered species permits should not be treated differently. These commenters also believe that the protection of endangered species is consistent with the purposes of water districts under the Texas Constitution, Article XVI, §59. These commenters, SWD, District 1E, Cypress Creek, and an individual also asserted that allowing public financing of endangered species permitting costs will serve to protect and preserve endangered species. Therefore, Stratus, Milburn, Newland, BVD, JadCo, SWD, District 1E, Cypress Creek, and the individual commenter requested that the rules allow district financing of all endangered species permitting expenses, including mitigation land.

SWD and SWTC also commented that HB 846 did not limit the percentage of costs associated with endangered species permits that districts may finance. SWD further suggested that a district's board should determine the specific percentage of such costs to be paid by that district; District 1E, Cypress Creek, and the individual commenter also made this comment.

SWTC also commented that where an endangered species or its habitat is present on or adjacent to land where district facilities are to be built, an endangered species permit must be obtained before those facilities can be constructed. SWTC also noted that current commission rules allow a district to finance all of the costs associated with a water quality permit and asserted that an endangered species permit is even more fundamental to resource conservation than a water quality permit. SWTC also contended that in some cases, endangered species requirements have been applied to districts that were already in existence, resulting in permitting costs that had to be incurred before planned district facilities could be constructed. SWTC also commented that in some instances, the permit not only allowed the construction of district facilities, but also benefitted the public by preserving a large area of endangered species habitat. In addition, SWTC argued that because a district may finance all of the costs of the district facilities that an endangered species permit authorizes to be built, then a district should also be allowed to finance 100% of the costs associated with obtaining the endangered species permit.

MEC commented that protection of endangered species is a matter of public policy and results in other environmental benefits, such as better stormwater control and improved water quality. Therefore, MEC questioned why the commission would consider any rules that would allow a district to finance anything less than 100% of endangered species permitting costs.

Smith also encouraged the commission to allow districts to finance 100% of these costs. Smith commented that the significant costs associated with Endangered Species Act requirements often cause developers to try to avoid obtaining permits under the act, although compliance results in substantial

public benefits such as preservation of species and natural open areas. Smith therefore supports any opportunity to ameliorate the costs of complete compliance with the Endangered Species Act.

**The commission agrees with these comments in part and has revised §293.44(a)(22) and §293.51(b)(7) from the proposal. The commission acknowledges that the preservation and conservation of endangered species is an important activity that provides significant public benefits. The commission also acknowledges that an endangered species permit is often necessary before district facilities such as water and wastewater treatment plants may be constructed. Unlike a stormwater or other water quality permit, however, endangered species permits do not relate solely to functions performed by the district. Endangered species permits are also necessary to allow the construction of homes and other development within the district. The commission believes that obtaining these permits benefits public purposes, through the conservation of endangered species and by allowing a district to build the facilities necessary to provide district services, but also benefits the private interests of developers operating in the district. Therefore, because an endangered species permit benefits both the developer and the district, the commission also believes that it is appropriate for the developer to finance a portion of the costs of obtaining the permit. Because these permits promote the important public purpose of conserving endangered species, however, the commission has concluded that the costs associated with obtaining these permits are not entirely comparable to other costs that the commission requires to be divided equally between the developer and the district and that districts should be allowed to finance more than 50% of endangered species permitting costs, as was provided in the proposed rules. By requiring the developer to finance some portion of these costs, however, the developer**

**has an incentive to keep costs low which will benefit future property owners in the district.**

**The commission has therefore adopted §293.44(a)(22), with changes from the proposal, to provide that a district may finance up to 70% of the costs associated with endangered species permits, and that the district's share is not further subject to the developer's 30% contribution as required under §293.47. In other words, the developer is responsible for financing no more than 30% of the total Endangered Species Act costs. The commission has also adopted §293.51(b)(7), with changes from the proposal, to provide that the cost of mitigation sites or payments in lieu of mitigation must be shared between the developer and the district as set out in adopted §293.44(a)(22), rather than shared equally. The adopted rules are consistent with §293.47, which the commission is also amending as part of this rulemaking and which generally requires developers to contribute 30% of district construction costs with certain exceptions. The purpose of §293.47 is to insure the feasibility of district projects.**

Section 293.46(3) prohibits reimbursement for all costs resulting from changes required by a city or agency after a construction contract is awarded. TC&B, Stratus, Milburn, Newland, BVD, and JadCo expressed concern that even if all approvals were obtained, the rule amendments, as proposed, would prevent reimbursement if changes were necessitated by a governmental entity after construction commences. TC&B also noted that the proposed language appears to conflict with §293.81, which allows districts to issue change orders in response to changes in regulatory criteria. TC&B suggested that no change be made to the existing rule. Stratus, Milburn, Newland, BVD, and JadCo suggested that §293.46(3) be changed to clarify that denial of reimbursement applies only to a developer who

awards a construction contract or commences construction before obtaining all necessary plan approvals. V&E also suggested that §293.46(3) be clarified to provide that change orders are valid if they are issued because a city or other government entity requires changes after approving plans.

**The commission agrees with these comments, in part, and adopts the provision, with changes, to clarify that the developer may not be reimbursed unless all required state and local approvals were obtained prior to contract award. The commission does not agree with the comments that the provision conflicts with §293.81 or that §293.46(3) should address change orders. Existing §293.81 adequately addresses the circumstances under which change orders may be issued and allows for change orders for contracts which comply with the requirements of §293.46.**

#### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. The amendments to §293.12 are also adopted under TWC, §49.011, which requires the commission to establish by rule a procedure for public notice of applications for creation of general law water districts.

**SUBCHAPTER B: CREATION OF WATER DISTRICTS**

**§293.11, §293.12**

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

(a) Creation applications for all types of districts shall contain the following:

(1) \$700 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, 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, §42.042 have been followed.

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

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code, §54.016(e);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting creation petition and report to appropriate agency regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement as appropriate to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development

is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) other related information as required by the executive director.

(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) the name of the proposed district;

(B) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(C) the purpose or purposes of the proposed district;

(D) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated cost of those projects

according to the petitioners if the projects are to be funded by the issuance of bonds or notes; and

(E) any additional terms or conditions that limit the powers of the proposed district from those authorized in Chapter 36, Texas Water Code.

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

(4) a vicinity map (22 - 24 inches by 36 inches or in a digital data electronic format) showing as appropriate the location of municipalities, highways, roads, and other improvements, together with the areal extent of groundwater aquifers, reservoirs, or subdivisions thereof, and showing the location of known recharge (i.e., outcrops of aquifer units, karst features, etc.) or discharge (i.e., known seeps, springs, etc.) features, and any other information pertinent to the creation of the proposed district;

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

(A) the purpose or purposes of the proposed district and its management planning objectives/goals;

(B) a description of the existing area, conditions, topography, economic endeavors which rely heavily upon groundwater, and any proposed improvements;

(C) a description of the groundwater resources, including the characteristics (i.e., recharge/discharge features, depth of usable groundwater, etc.) of individual aquifers within the proposed district;

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

(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) the existing and projected land use in the proposed district;

(G) the existing and projected groundwater quality, quantity, availability, and usage within the proposed district, including any foreseeable quality, quantity, availability, and usage issues as identified by the petitioners;

(H) the existing and projected population;

(I) an evaluation of the effect the proposed district and its programs will have within the district on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater levels;

(iv) groundwater conservation and availability;

(v) groundwater quality;

(vi) monitoring of ambient groundwater conditions;

(vii) groundwater educational initiatives;

(J) financial information including the following:

(i) the projected maintenance tax rate, under Texas Water Code, §36.020, which should not exceed \$.50 on each \$100 of assessed valuation;

(ii) the proposed budget of revenues and expenses for the district;

(iii) an evaluation of the effect the district and its programs will have

on the total tax assessments on all land within the district, including a discussion of current and projected tax rates;

(iv) tentative itemized cost estimates of the proposed projects and itemized cost summary for anticipated bond issue requirements;

(K) if water supply utility services are proposed:

(i) an evaluation of the availability of comparable service from other entities, including, but not limited to, water districts, water supply corporations, municipalities, and regional authorities;

(ii) complete justification, supported by evidence, for the necessity and feasibility of the proposed district to provide water supply services;

(iii) the current and projected water rates in the proposed district;

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

(v) any other related technical information as required by the executive director;

(6) a certificate by the county tax assessor(s) 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 petitioners to be the majority of the landowners within the proposed district, then the petitioners 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 petitioners and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the proposed district;

(7) 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, and in accordance with Texas Water Code, §§36.051(b) , 36.058, and 36.059(b) for appointment of directors; and

(8) any other data as the executive director may require.

(c) Creation applications for Chapter 51, Texas Water Code, 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 Texas Water Code, §51.013, requesting creation signed by majority of persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to

land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail;

(F) statement of estimated cost of project.

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

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

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

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

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

(B) land use plan;

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

(D) existing and projected populations;

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

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

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

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

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

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

(J) complete justification for creation of the district supported by evidence that

the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district and will further the public welfare.

(6) a certificate by the 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 or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the 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) 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 Texas Water Code, §51.072 and §49.052; and

(8) other information as required by the executive director.

(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% 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) Creation applications for Chapter 55, Texas Water Code, Water Improvement Districts within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by Texas Water Code, §55.040 signed by persons holding title to more than 50% of all land in 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;

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture,

and computation sheet for survey closure;

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

(4) a preliminary engineering report including as appropriate:

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

(B) land use plan;

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

(D) existing and projected populations;

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

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

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

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

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

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

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the 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 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; and

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

(f) Creation applications for Chapter 58, Texas Water Code, 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 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 value of all land in proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project.

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

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

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns,

principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

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

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

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including but not limited to federal, state or local entities or governments or persons;

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

(E) proposed budget including projected tax rate and/or fee schedule and rates;

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

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

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

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

(6) a certificate by the 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 or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the 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) 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 Texas Water Code, §58.072; and

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

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

(1) a petition, as required by 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 ETJ the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

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

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district;

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district;

and

(ii) endorsing resolutions from all municipal districts to be included.

(2) evidence that a copy of the petition was filed with city clerk in each city where proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or ETJ of a city is proposed, documentation of city consent or documentation of having followed the process outlined in 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) 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;

(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 Texas Water Code, §59.021 and §49.052; and

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

(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 or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

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

(B) a statement regarding the general nature of the services presently

performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

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

(E) 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 Texas Water Code, §65.001(10), to a special utility district 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 proposed district as described in the petition;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage

ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

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

(B) existing and projected populations;

(C) for proposed system expansion:

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

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

(D) water and wastewater rates;

(E) projected water and wastewater rates;

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

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality; and

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

(6) a certified copy of a certificate of convenience and necessity held by the water

supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

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

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

(B) a vote by the membership in accordance with the requirements of 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 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 §291.110 of this title (relating to Report of Sale, Merger or Consolidation) and §291.111 of this title (relating to Transfer of Certificates of Convenience and Necessity); and

(12) other information as the executive director requires.

(i) Creation applications for 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 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) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

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

(3) a preliminary engineering report including:

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

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including but not limited to federal, state or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage;

(iv) water quality;

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

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

(5) other data as the executive director may require.

(j) Creation applications for Chapter 375, Local Government Code, Municipal Management Districts 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 proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, or lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

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

(E) list 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 Chapter 375, Local Government Code including budget, statement of expenses revenues and sources of such revenues;

(3) 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 or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the 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.

(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 §375.063 of the Texas Local Government Code.

**§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 or single county Water Control and Improvement Districts requesting additional powers; 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, Storm Water Control Districts, the executive director shall notify the chief clerk that the application is administratively complete.

(b) For those applications described in subsection (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) not later than the 30th day before the date on which the commission may act on the application, the notice must be 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.

**SUBCHAPTER D: APPOINTMENT OF DIRECTORS**

**§293.32, §293.33**

**STATUTORY AUTHORITY**

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The amendments adopted in §293.32 implement TWC, §51.063, as amended by HB 846. The amendments adopted in §293.33 implement TWC, §49.105, as amended by HB 846.

**§293.32. Qualifications of Directors.**

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

(1) A director of a fresh water supply district created under Texas Water Code, Chapter 53 must be a registered voter of the district but need not own land subject to taxation in the district.

(2) A director of a regional district created for the purposes defined under Texas Water

Code, §59.004 must be at least 18 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

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

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

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

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

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

the district.

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

**§293.33. Commission Appointment of Directors to Fill Vacancies.**

(a) The commission may appoint a director or directors to fill a vacancy or vacancies on the board of:

(1) a district that is subject to commission bond review under Texas Water Code, §49.181 if the number of directors is reduced to fewer than a majority or if a vacancy continues beyond the 90th day after it occurs, as provided by Texas Water Code, §49.105(c); and

(2) other districts where specifically provided by law.

(b) Requests for Appointment due to less than a quorum of board members shall be accompanied by the following:

(1) petition signed by a landowner within the district requesting appointment of a director or directors to fill one or more vacancies on the board;

(2) evidence of each former director's failure or refusal to qualify or serve for each vacancy on the board to be filled;

(3) requests for consideration of appointment as director in the form shown in §293.34 of this title (relating to Form of Affidavit for Appointment as Director) for those persons desiring consideration as director for vacant positions;

(4) certified mail receipt verifying that notice of the application for appointment of directors was sent to the district's official address and each director as shown on the district's latest registration form;

(5) an application fee of \$100; and

(6) any other information as the executive director may require.

(c) The executive director or a landowner within the district may request appointment of a director to fill a vacancy that has not been filled by the remaining board members after the 90th day a position becomes vacant. Any request submitted by a landowner under this subsection shall include:

(1) evidence that the position has been vacant for more than 90 days;

(2) nomination of a candidate who meets the director qualifications as evidenced by completion of the form shown in §293.34 of this title (relating to Form of Affidavit for Appointment as Director); and

(3) certified mail receipt verifying that a copy of the request to fill the vacancy was sent to the district's official address and each director as shown on the district's latest registration form.

**SUBCHAPTER E: ISSUANCE OF BONDS**

**§§293.42, 293.44, 293.46 - 293.48, 293.51, 293.54, 293.59**

**STATUTORY AUTHORITY**

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. The amendments to §293.42 are also adopted under TWC, §5.235, which provides the commission authority to adopt rules to set fees for the processing of bond applications.

The amendments adopted in §293.42 implement TWC, §5.235 and §49.181. The amendments adopted in §§293.44, 293.46 - 293.48, and 293.51 implement TWC, §49.155, as amended by HB 846, and TWC, §49.181. The amendments adopted in §293.54 implement TWC, §49.154. The amendments adopted in §293.59 implement TWC, §49.181.

**§293.42. Submitting of Documents and Order of Review.**

(a) Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

(b) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 60 calendar days following

submission of the application. In order to qualify for this expedited review, the applicant must submit a bond application that complies with §293.43 of this title (relating to Application Requirements). The district's bond counsel, engineer, and financial advisor must also sign a certificate which is worded as shown on the form provided by the executive director. The certificate must state that the district's bond counsel, engineer, and financial advisor have reviewed the bond application, that the application is accurate and complete, that the application includes specific documents identified on the form, and that the district's financial status has reached the thresholds provided in §293.59 of this title (relating to Economic Feasibility of Project) as shown by its existing assessed valuation and completion of facilities. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. A bond applicant that seeks conditional approval on the basis of receiving an acceptable credit rating or credit enhanced rating as provided in §293.47(b)(4) and (5) and (c) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) may qualify for expedited review. A bond applicant that seeks approval on the basis of a ratio of debt to certified assessed valuation of 10% or less must provide evidence of that ratio as provided in §293.47(b)(3) of this title to qualify for the expedited review.

(c) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 45 calendar days following submission of the application. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. In order to qualify for this expedited review, the applicant must submit a bond application that includes all of the items listed in §293.43 of this title and the following:

(1) a certificate signed by the district's president, engineer, financial advisor, and bond counsel, which is worded as shown on the form provided by the executive director, which states that less than 20% of the total land area in the district is undeveloped with underground facilities, that the facilities contained in the bond application are for water plant facilities, wastewater treatment plant facilities, major lines to or between such facilities, remote water wells, or for any improvement necessary to serve development in the district as described in §293.83(c)(3) of this title (relating to District Use of Surplus Funds for any Purpose and Use of Maintenance Tax Revenue for Certain Purposes), that no funds are being expended for developer facilities as described in §293.47(d) of this title and no funds are being used to reimburse a developer as described in Texas Water Code, §49.052(d), that the district expects to have a no-growth tax rate of \$0.75 or less calculated in accordance with §293.59(d) of this title after issuance of the proposed bonds, and that the district is legally authorized to issue the bonds;

(2) a debt service schedule and related cash flow schedule showing a no-growth tax rate as defined in §293.59(d) of this title of \$0.75 or less; and

(3) a certificate of assessed valuation or estimated assessed valuation as defined by §293.59(d) of this title reflecting a value sufficient to support the no-growth tax rate in paragraph (2) of this subsection.

(d) A bond application that does not qualify for an expedited review pursuant to subsection (b) or (c) of this section may not become eligible for expedited review unless the applicant requests

withdrawal of the pending application in writing and resubmits the filing fee and completed certificate in accordance with subsection (b) or (c) of this section. For the purposes of this subsection, a new receipt date will be assigned and the time requirements of subsection (b) and (c) of this section shall commence upon the date of submission of the signed certificate.

(e) If a complete bond application is pending on the effective date of this section, an applicant may qualify for expedited review under subsection (b) or (c) of this section only upon the submission of a complete response to all outstanding requests for additional information and a certificate stating that a complete application is on file in accordance with subsection (b) or (c) of this section.

**§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 service for property owned by a developer of property in the district, as defined by Water Code, §49.052(d).

(2) Except as permitted 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 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 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) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(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) When a developer changes the plan of development requiring the abandonment or

relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(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) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(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) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(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 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 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 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 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) the drainage channel construction or renovation must benefit property within the district's boundaries;

(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;

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(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 capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

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

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer 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;

(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 includes periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

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

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(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) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer which compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory

standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(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 EPA and Texas Pollutant Discharge Elimination System permits issued by the commission.

(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, 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) the unit cost is reasonable;

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

(C) the district and the providing entity have entered into a contract which will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions which could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

**§293.46. Construction Prior to Commission Approval.**

The developer may proceed with financing or construction of water, wastewater, and drainage facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions.

(1) Prior to entering into construction contracts for such facilities, the developer and district shall execute an agreement setting out the terms of reimbursement, providing for the use of the facilities by the district until reimbursement and providing that the construction contract will be awarded and administered in accordance with commission regulations and applicable statutes relating to districts. If the district has not been created at the time of the execution of the construction contracts, the developer and district shall execute an agreement as described in the preceding sentence within 60 days after confirmation of the district. The contract shall not bind the district to payment of costs above that approved by the commission. If such an agreement is not entered into within the time period specified above, and such actions of the developer are not subsequently ratified and approved by the district in a subsequent agreement with the developer, the developer shall be denied interest costs.

(2) All construction plans, specifications, and contract documents as set forth in §293.62 of this title (relating to Construction Related Documents To Be Submitted to the Commission),

change orders and supporting engineering data for construction or installation of the facilities shall be submitted to the appropriate commission field office in a timely manner, together with evidence that the materials have been filed with and approved by the district and have been noted in the district's minutes (if the district has not been created, the documents shall be filed with the district within 30 days after creation).

(3) All construction plans and specifications for proposed projects must be approved by all cities and agencies having jurisdictional responsibilities over the district prior to construction contract award by the developer. Unless all required state and local approvals were obtained prior to contract award, a developer cannot be reimbursed for any additional costs resulting from changes required by the city or agency having jurisdictional responsibility after the construction contract is awarded.

(4) The appropriate commission field office shall be notified of the bid opening at least five days prior to the opening.

(5) Contract advertising and award and construction and installation of facilities shall be accomplished in the manner required by the general law for districts and in conformity with commission rules. If substantial compliance with statutory requirements is not achieved, reimbursement to a developer may be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6) The filing of the materials provided herein or construction inspections by the commission shall not constitute approval of the project in any manner. A person proceeding with construction of a project prior to its formal approval by the commission shall do so with no assurance that public funds will be authorized for acquiring the facilities. Construction which is not in the best interests of the district, and improper or ineligible expenditures, will be disallowed for district purchase.

(7) The commission will not approve payment on completion-type construction contracts unless alternate bids are received on monthly pay-type construction contracts, and then only if it is clearly indicated that it is to the district's financial advantage to assume the payment on completion-type construction contracts.

(8) Commission representatives shall have the right to inspect the facilities construction at any time and without notice while construction activities are being carried on. The appropriate commission field office shall be notified of the date and time of the final inspection for each construction contract at least five days prior to the inspection.

**§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 all districts except:

(1) a district which has a ratio of debt (including proposed debt) to certified assessed valuation of 10% or less; provided, however, that any bond issue proposed to be exempted on this basis must include funds to provide sufficient capacity in facilities exempted in subsection (d) of this section to serve all connections upon which the feasibility is based or to be financed by the bond issue;

(2) a district which obtains an acceptable credit rating on its proposed bond issue pursuant to the provisions hereof;

(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; or

(4) a district which has entered into a strategic partnership agreement, interlocal agreement, or other contract with a political subdivision or an entity created to act on behalf of a political subdivision under which the political subdivision or other entity has agreed to provide sales and use taxes or other revenues generated by a project to the district as consideration for the district's development or acquisition of water, wastewater, and drainage facilities and:

(A) water, sewer, drainage, and street and road construction are complete in accordance with §293.59(k)(6)(A) - (E) of this title (relating to Economic Feasibility of Project);

(B) the projected value of houses, buildings, and/or other improvements are complete in accordance with §293.59(k)(7) of this title;

(C) the district can demonstrate a history of revenue generated by the project;

(D) the district's projected ad valorem tax rate necessary to amortize the district's debt at the district's current assessed valuation after accounting for the contract payments pledged to the district's debt would be equal to or less than the projected ad valorem tax rate for a district with an assessed valuation sufficient to qualify under paragraph (1) of this subsection; and

(E) the district's combined no-growth tax rate does not exceed the amounts prescribed in §293.59(k)(11)(C) of this title.

(b) For purposes of this chapter, the following definitions shall apply:

(1) Developer is as defined in Water Code, §49.052(d);

(2) Debt includes all outstanding bonds of the district, all bonds approved by the commission and not yet sold (less such portions thereof for which the authority to issue such bonds has

lapsed or been voluntarily canceled), all bonds of the district approved by other entities which are exempt from commission approval and not yet sold, all proposed bonds with respect to which applications for project and bond approvals are presently on file and pending with the commission, and all outstanding bond anticipation notes which are not to be redeemed or paid with proceeds derived from such pending bond application(s). If more than one application for approval of project and bonds is pending, the ratio of debt to value shall be calculated consecutively with respect to each application in the order of filing of each application. For the purpose of this subsection, the amount of such outstanding bond anticipation notes shall be deemed to be the sum of:

(A) the principal amount of the bond anticipation notes;

(B) the accrued interest thereon; and

(C) all bond issuance costs relating to the refunding of such bond anticipation notes, including capitalized interest.

(3) Certified assessed valuation is a certificate provided by the central appraisal district in which the district is located either certifying the actual assessed valuation as of January 1, or estimating the assessed valuation as of any other date.

(4) Acceptable credit rating is a rating of Baa3 or higher from Moody's Investors Service, Inc., or BBB- or higher from Standard and Poors Corporation or BBB- or higher from Fitch

IBCA, which rating is obtained by the district independent of any municipal bond guaranty insurance, guarantee, endorsement, assurance, letter of credit, or other credit enhancement technique furnished by or obtained through any other party.

(5) Credit enhanced rating is a rating of Aa or higher from Moody's Investors Service, Inc. or AA or higher from Standard and Poors Corporation, or AA or higher from Fitch IBCA, which rating is obtained by the district by virtue of municipal bond guaranty insurance, furnished by or obtained through any other party; provided, however, that such municipal bond guaranty insurance shall be unconditional, irrevocable, and in full force and effect for the scheduled maturity of the entire bond issue; and provided, further, that payment of the premium on such municipal bond guaranty insurance shall not be made from district funds except through the establishment of the interest rate or premium or discount on such bonds.

(c) If a district anticipates receipt of a certified assessed valuation evidencing a debt ratio of 10% or less or an acceptable credit rating, or a credit enhanced rating, as provided in subsection (a) of this section, prior to the bond sale identified in the bond application being considered, the district may, at its discretion, request a conditional waiver to the developer cost participation requirements of this section as follows.

(1) At the time the district makes application for approval of its project and bonds, the district may include a written request for a conditional waiver of the 30% developer cost participation requirements of this section to be considered by the commission, which request shall specifically state

on which basis the district requests such waiver. The waiver request shall be accompanied by a written statement from the district's financial advisor stating that, in his opinion, the district can reasonably be expected to qualify for either an acceptable credit rating or a credit enhanced rating, and that the district financing is feasible without the developer contribution.

(2) Except for districts which have achieved a debt ratio of 10% or less at the time of application, the cost summary in support of any bond application proposed to be exempted by virtue of subsection (a) of this section must show the district bond issue requirement, cash flow, and tax rate with and without the developer contribution.

(3) If a conditional waiver is granted by the commission in anticipation of the district obtaining an acceptable credit rating, a credit enhanced rating, or a certified assessed valuation evidencing a ratio of debt to certified assessed valuation of 10% or less, no bonds shall be sold by the district unless such acceptable or enhanced credit rating is obtained or such debt ratio is achieved.

(4) If a bond issue is approved on the basis of obtaining an acceptable credit rating, and an acceptable credit rating is not obtained, and if the district wishes to proceed with such bond issue on the basis of an enhanced credit rating, the district shall not issue the bonds unless the district requests and obtains a commission order approving the bonds to be sold with an enhanced credit rating and finding the financing to be feasible without the developer contribution.

(5) Upon request by the district, the commission order approving a bond issue without

developer contribution may authorize an alternative amount of bonds to be issued with developer contribution in the event compliance with subsection (a) of this section is not achieved. Such order may contain other conditions otherwise applicable to a bond issue requiring developer contribution.

(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) wastewater treatment plant facilities, including site costs;
- (2) water supply, treatment and storage facilities, including site costs;
- (3) stormwater pump stations associated with levee systems, including site costs;
- (4) that portion of water and wastewater lines from the district's boundary to the interconnect, source of water supply, or wastewater treatment facility as necessary to connect the district's system to a regional, city, or another district's system;
- (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) segments of water transmission or wastewater trunk lines of districts or other authorities which are jointly shared or programmed to be jointly shared between the district and another political subdivision whether inside or outside of a participating district or authority;

(7) water and wastewater lines serving or programmed to serve 1,000 acres or more within the district;

(8) drainage channels, levees and other flood control facilities and stormwater detention facilities, or contributions thereto, meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) or §293.53 of this title (relating to District Participation in Regional Drainage Systems), and which are serving or are programmed to serve either areas of 2,000 acres or more or, at the discretion of the commission, areas of less than 2,000 acres, as the commission may deem appropriate to encourage regional drainage projects. Construction cost paid in lieu of such a contribution does not qualify as an exemption unless the facility constructed is itself exempt;

(9) land costs for levees or stormwater detention facilities; and

(10) alternate water supply interconnects between a district and one or more other entities.

(11) lease payments for central plant capacity not included in operating expenses.

(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) facilities that were completed or under construction as of December 1, 1986;

(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) districts that are providing facilities and services on behalf of, in lieu of, or in place of the city and which have contracted with the city to receive rebates of 65% or more of the city taxes actually collected on property located within the district.

(f) The developer's contribution toward construction cost shall be reduced by the amount that the developer is required by a city, state, or federal regulatory agency to pay toward costs that are otherwise eligible for district financing.

(g) The developer must enter into an agreement with the district, secured by an escrow of funds in the name of the district, a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of utility construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the letter of credit to pay the developer's share of construction costs

and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least 45 days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least 45 days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit (LOC)), must be valid for a minimum of one year from the date of issuance, and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

(h) Actual payment of funds for the district's construction project shall be made by the developer to the district within 10 days following the developer's receipt of billing. The developer's applicable share will be adjusted by the overruns or underruns on developer participation items and will be shared by the developer at the same percentage utilized in determining his initial contribution.

(i) The district (or district engineer) shall forward to the commission's executive director copies of the board approved monthly construction contract pay estimates, engineering fee statements and/or other adequate documentation reflecting payment of the developer's required contribution to construction and engineering costs.

(j) A district may submit other information and data to demonstrate that all or any part of this section should not apply and/or request that it be waived.

(k) If the bond issue includes funds owed the developer in an amount which exceeds that amount required as the developer's contribution and the estimated costs of required street and road construction, the district may request a waiver of the requirement of a letter of credit if the developer enters into an agreement with the district whereby the developer agrees to defer receipt of payment of a sufficient amount of such owed funds until the facilities for which guarantees are required have been completed and certified complete by the district's engineer. Any such agreement shall be made a part of the agreement required by subsection (g) of this section if the funds are being withheld for the developer 30% contribution of construction costs, and if appropriate, such agreement shall be made part of the street and road construction Agreement required by §293.48 of this title, if the funds are being withheld for guaranteeing street and road construction costs.

**§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 an escrow of funds in the name of the district, a letter of credit, or a deferral of reimbursement of bond funds owed, 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) The developer shall include in the street and utility construction contract a provision that places the responsibility on the contractor for repair and clean-up of broken manholes, buried valve boxes, broken wastewater pipe, and all other damage to district facilities caused by construction of streets and utilities.

(3) The district shall charge a district employee or consultant with the responsibility to frequently inspect and conduct operational tests on unused facilities and promptly report:

(A) undue facility and equipment deterioration, leaks, silting, infiltration and other problems with utility systems resulting from nonuse; and

(B) damage caused by vandalism, or road, street, commercial, industrial and/or housing construction in order to establish responsibility promptly.

(4) In instances where a contractor for underground facilities has otherwise satisfactorily completed his contract, except for drainage inlets, manholes, and other adjustments, in accordance with plans and specifications as approved by the commission, and the district has assumed ownership of the contract, but the contractor cannot proceed to completion because of street or road construction delay, the district board of directors may delete the remaining incomplete bid items by change order, accept the construction, and close the contract, provided that the developer agrees in writing:

(A) to include the deleted items and adjustments in the street or road construction contract, when accomplished, or in a separate contract, and to pay all construction costs of these items in excess of the original contract price, or the agreed deleted price; and

(B) to pay the cost of reasonable measures necessary to initially prepare the district's underground facilities for the anticipated period of nonuse and to pay clean-up costs after nonuse.

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

(a) Water, sanitary sewer, storm sewer, and drainage 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 necessary for a drainage swale or ditch constructed generally along a street or road right of way in lieu of a storm sewer, 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) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;

(2) lift or pump station sites;

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

(4) detention/retention pond sites;

(5) levees;

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

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

(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, 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, payment to the developer shall be limited to that cost that is associated only with the drainage 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.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the

district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (b) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title.

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

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station, detention pond, drainage channel, or levee if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district

may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

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

**§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) A bond application containing all projects to be financed by the BAN and the principal of and interest on the BAN shall be on file with the commission.

(2) The financial advisor of the district renders a written opinion to the district to the effect

that, based on the projections contained in the bond application report, the district can be reasonably expected to sell its bonds, under prevailing market conditions existing at the time of the sale of the bond anticipation note, in a principal amount at least sufficient to redeem and pay the principal of, and accrued interest on, the BAN on or prior to their stated maturity date.

(3) The proceeds of the BAN may be used to pay only the district's allowable share of the costs of facilities as provided in §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer) until the commission has unconditionally determined that the district is exempt from developer participation.

(4) The interest rate on the BAN shall be limited to the maximum rate at which the district could have issued bonds on the date of issuance of the BAN pursuant to applicable statute or valid city consent.

(5) All BAN shall be sold at par.

(6) The proceedings authorizing the issuance of the BAN shall provide that the BAN shall be redeemed at not more than their par value within 30 days after receipt of proceeds from bonds issued for the purpose of redeeming the BAN.

(7) No district funds shall be used to purchase bond or BAN insurance, collateral guarantees, letters of credit, or other forms of credit enhancement.

(8) No BAN proceeds shall be used for the purpose of paying allowable developer interest, as provided in §293.50 of this title (relating to Developer Interest Reimbursement).

(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) Issuance of BAN shall not prejudice the right of the commission to refuse to approve all or any portion of a bond application or any cost or facility contained therein.

(11) BAN shall be payable solely from the proceeds of the district's bonds, as approved by the commission, and no other district funds shall be encumbered, pledged, committed or used for such purpose.

(12) Prior to the issuance of the BAN, the developer shall provide the district a letter of credit, irrevocable development loan commitment, or other guarantee for the applicable contribution of construction and engineering costs for each project to be financed with BAN proceeds as required by §293.47(h) of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer).

(13) Prior to the issuance of the BANs, the developer and district shall enter into a street and

road construction agreement as required by §293.48 of this title (relating to Street and Water, Wastewater and Drainage Utility (Street and Utility) Construction by Developer), unless exempted or inapplicable pursuant to §293.59(k)(11) of this title (relating to Economic Feasibility of Project).

**§293.59. Economic Feasibility of Project.**

(a) In addition to determining the engineering feasibility of a project, the commission shall also determine the economic feasibility of each proposed bond issue, bond amendment, and extension of time application for a bond issue. The staff of the commission shall use the following sections in making economic feasibility analysis. In its written recommendations to the commission which analyze the particular application, the staff shall always address the economic feasibility.

(b) Economic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates. Utility rates which do not exceed the rates of the largest city in the geographic area in which the district is located are conclusively deemed to be competitive. Economic feasibility is influenced by many factors and varies widely depending on economic conditions, the real estate market, the number of competing projects, and geographic location.

(c) Projected debt service tax rate is the tax rate required to meet 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-growth debt service tax rate is the tax rate required to meet projected annual debt service requirements using the current assessed value and a 100% tax collection rate. The current value is determined by either:

(1) the most recent certificate of assessed valuation from the central appraisal district;

or

(2) a certificate of estimated assessed valuation from the central appraisal district.

Projected annual debt service requirements shall include the previous and proposed debt. The no-growth debt service tax rate for any bond issue shall be shown on the cash flow table as a level or decreasing tax rate.

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

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

(2) Projected no-growth debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage 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 equivalent surcharge tax rate for water and wastewater surcharge, if any;

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

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

(6) Contract tax, if any;

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

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

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

(2) Projected debt service tax rate of all overlapping entities specifically attributable to water, wastewater, and drainage, 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 equivalent surcharge tax rate for water and wastewater surcharge, if any;

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

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

(6) Contract tax, if any;

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

(g) A surcharge is a flat charge in addition to rates imposed on residents receiving water and/or wastewater service from resources of a city or other entity and supplied through district facilities. Surcharge revenues are placed in the district's debt service fund and are intended to be used to meet the debt service requirement on the district's bonds.

(h) For districts collecting surcharge revenues, the equivalent surcharge tax rate shall be calculated as follows:

(1) For residential development with similar house prices:

Figure: 30 TAC §293.59(h)(1)

$$\text{equivalent tax rate} = \frac{\text{monthly surcharge} \times 12 \times 100}{\text{average house price}}$$

(2) For mixed-use development and diverse house prices:

Figure: 30 TAC §293.59(h)(2)

$$\text{equivalent tax rate} = \frac{\text{total annual surcharge revenues at projected build out} \times 100}{\text{total assessed value of district at buildout}}$$

(3) For purposes of this calculation, no adjustments shall be made for projected collection rate of the surcharge, interest earnings on the surcharge account, or other factors.

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

Figure: 30 TAC §293.59(i)

$$\frac{(\text{total amount rebated by entity to district}) \times 100}{\text{certified assessed value of district}}$$

(j) The assessed value is the appraised value after considering exemptions and special valuations and is the amount to which the tax rate is applied to determine the total tax levy.

(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

the Texas Water Code, §49.052(d).

(1) The 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) Each ending debt service balance in the cash flow analysis will be not less than 25% of the following year's debt service requirement.

(B) Interest income will only be shown on the ending debt service balance for the first two years.

(C) A 90% tax collection rate shall be used in all the projected tax rate calculations and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(D) The projected tax rate shall be level or decreasing for the life of the bonds.

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

(A) \$1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria  
Counties;

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

(C) \$1.00 in all other counties.

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

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

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

(C) \$2.00 for all other counties.

(5) The following applies to the tax assessor's certificate:

(A) If the valuations contained in the certificate of certified assessed valuation  
are at least 25% higher than those contained in the previous year's certified valuation, a written

explanation from the district of such increase and a detailed calculation demonstrating how the value was derived shall be provided.

(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 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 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 the estimated taxable valuation results in an exemption from §293.47 of this title (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 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) all underground water, wastewater, and drainage facilities 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, shall be at least 95% complete as certified by the district's engineer;

(B) all groundwater, surface water, waste discharge permits or other permits needed to secure capacity to support the projected buildout shall have been obtained;

(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 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 shall be existing or funds for that capacity 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, 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 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) For bonds supported by taxes, a written agreement must be executed between the district and the developer and any other landowner and their respective lenders receiving proceeds of the bonds which permanently waives the right to claim agricultural, open-space, timberland, or inventory valuation for any land, homes, or buildings which they own in the district with respect to taxation by the district. The agreement shall be binding for 30 years on such developer, other landowners, their respective lenders, any related or affiliated entities, and their successors and assignees, unless such exemptions were in effect at the time of the commission's approval of the bond issue and such exemptions were shown in the projected tax rate calculations. Such developer, landowners, and lenders shall record covenants running with the land to such effect, which shall not be

modified or released without written authorization of the commission, and shall provide recorded copies to the commission at the time of filing a bond application. If written agreements by owners of developable property who are not receiving bond proceeds are not voluntarily provided, and the ratio of the assessed valuation of their property to the district's total certified assessed valuation exceeds 10% for any individual or 20% for all combined, the feasibility analysis of the bond issue will be based on a reduced value for such property if not already on the tax rolls at a minimal value.

(9) One or more of the foregoing requirements 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 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) (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, 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) \$1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

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

(iii) \$1.00 in all other counties.

(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 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 pursuant to §293.48 of this title (relating to Street and Utilities Construction by Developer);

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

(l) 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 paragraphs (2), (3), (4), and (5) of this subsection only apply to districts that have a developer as defined by Water Code, §49.052(d) or to districts which fail to meet the criteria set out in subsection (k)(11) of this section.

(1) A 90% tax collection rate shall be used in the projected tax rate calculations unless the district demonstrates that its historical collection rate is higher, and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(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) Sufficient lift station, water plant, and sewage treatment plant capacity to serve the connections shown in the tax rate calculations submitted in prior bond issues shall be at least 95% complete as certified by the district's engineer, unless the district is a participant in a regional surface water or wastewater plant, a permit sufficient for the expansion has been issued, and either:

(A) funds are available to finance such capacity and any additional capacity necessary for a feasible expansion;

(B) sufficient capacity is contractually available to serve all such prior

connections; or

(C) the plant is under construction with sufficient capacity to serve all such prior connections.

(4) Houses and/or buildings equal to 75% of the projected buildout used in the projected tax rate calculations contained in all prior bond issues shall be completed and may be located on either:

(A) the area developed from the proceeds of the prior bond issues; or

(B) a combination of the area developed from the proceeds of prior bond issues, the proposed bond issue, and future bond issues.

(5) The requirements of subsection (k)(10) of this section shall apply, unless the district requests and the commission, in its discretion waives such requirement for one of the following reasons:

(A) disregarding those areas which had growth projected and were financed in previous bond issues, at least 50% of the value of the houses and/or buildings shown in the buildout schedule and used in the projected tax rate calculations supporting the subject bond issue must be existing;

(B) the district anticipates receiving an acceptable credit rating as defined in §293.47(b)(4) of this title or a credit enhanced rating as defined in §293.47(b)(5) of this title, and such rating must be obtained prior to the sale of bonds; or

(C) the district has ratio of debt to assessed valuation as provided in §293.47(a)(1) of this title.

(m) Bond issues supported only by revenue from a defined area 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 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) the degree of variation from the guidelines;
- (2) the past history of the district with respect to its projections versus actual buildout and compliance with commission rules;
- (3) the past history of the developer and related or affiliated entities with respect to its projections versus actual buildout and its compliance with commission rules and agreements with the district and other districts in which it developed land;
- (4) other factors peculiar to the district, such as the area in which situated, economic factors, the adjoining competitive developments, and their status;
- (5) the financial resources of the developer and its lender and any special commitments, obligations, or expenditures for the project;
- (6) past history of the market area in which the project is located; and
- (7) other factors which may affect the feasibility of the project.

**SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION**

**CONSIDERATION FOR APPROVAL**

**§293.88**

**STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

**§293.88. Petition for Authorization to Proceed in Federal Bankruptcy.**

(a) A district desiring to proceed under the Federal Bankruptcy Code, Chapter 9 (11 United States Code, §§901 - 946) or any other federal bankruptcy law shall submit an application requesting authorization pursuant to Water Code, §49.456. The application shall consist of the following:

(b) The chief clerk shall mail written notice to all creditors shown in the district's application, all developers and their lien-holders and the top ten taxpayers shown in the district status report, the city in whose corporate limits or extraterritorial jurisdiction the district is located, if any, and the county in which the district is located. The chief clerk shall publish notice of the application at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the district is located. The chief clerk shall also publish notice of the application once in the Texas Bond Reporter of Austin, The Daily Bond Buyer, The Weekly Bond Buyer, or The Wall Street Journal.

Such notices shall be mailed or published within 30 days of the date an administratively complete application is received by the executive director. The commission shall not act on the application before 30 days after such notices are given, mailed, or published.

(c) If, after consideration of all evidence, the commission determines that the district cannot, through the full exercise of its rights and powers under the law of this state, reasonably expect to meet its debts and other obligations as they mature, the commission may authorize the district to proceed in bankruptcy.

(d) If the commission determines that the district can, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debt and other obligations as they mature, the commission shall deny the district's application and shall order the district to adopt specific measures to generate sufficient revenues to meet its obligations. The commission shall also require the district to submit periodic reports on the implementation of the measures required by the commission and its current financial condition.

(e) The commission may assess additional fees adequate to cover its cost in administering this section.

## **SUBCHAPTER H: REPORTS**

### **§293.96**

#### **STATUTORY AUTHORITY**

The repeal is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

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

## **SUBCHAPTER H: REPORTS**

### **§293.97**

#### **STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

#### **§293.97. Adoption of Fiscal Year and Operating Budget.**

(a) Fiscal year. Within 30 days after a district becomes financially active, the governing board of that district shall adopt a fiscal year by a formal board resolution and so note it in the district's minutes. The president or chairman of the governing board, a member of the board designated by the presiding officer, or the attorney representing the district shall notify the executive director of the adopted fiscal year within 30 days after adoption. The fiscal year adopted and used for reporting the district's annual financial report shall be used to account for all the district's financial per annum statutory limitations.

(b) Operating budget. Prior to the start of a fiscal year, the governing board of each active district shall adopt an operating budget for the upcoming fiscal year. The adopted budget and any subsequent amendments shall be passed and approved by a resolution of the governing board and shall be made a part of the governing board minutes. Budget amendments may be made from time to time in

the discretion of the governing board. The adopted budget is not a spending limitation imposed by the commission. However, the governing board may adopt rules to limit the spending authority of the district officers in relation to the budget. A comparison of the actual operating results to the adopted budget, as amended, shall be presented in the annual report of each district. The budgetary comparison statement shall be included either within the audited financial statements or within a supplementary section.

## **SUBCHAPTER L: DISSOLUTION OF DISTRICTS**

### **§293.131**

#### **STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

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

(a) Texas Water Code, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in Texas Water Code, §36.001(1), a groundwater conservation district, which is not operational as determined under Texas Water Code, §36.302 and has no outstanding bonded indebtedness.

(1) A groundwater conservation district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved.

(2) The procedures set out in §293.137 of this title (relating to Commission Action for Failure of a Groundwater Conservation District to Submit a Management Plan or to Implement a Certified Plan through its Operations) shall apply to these actions.

(3) Upon the dissolution of a groundwater conservation district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(b) Texas Water Code, Chapter 49, Subchapters I and K, §§49.321 - 49.327 authorize the commission to dissolve any district as defined in Texas Water Code, §49.001(1), which is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

(1) 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 filed with 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.

(2) If the dissolution is initiated by a party other than the executive director, the application must include:

(A) a petition on the part of the party requesting dissolution including a statement of the reasons that a dissolution is desirable or necessary;

(B) a statement that the district has been financially dormant for the preceding

five-year period for water districts and has performed no functions for the five preceding years and has no outstanding bonded indebtedness;

(C) certified copies of dormancy affidavits submitted pursuant to Texas Water Code, §49.197, for five years for water districts preceding the year in which the application is submitted;

(D) evidence that the district has no outstanding bonded indebtedness may be filed as prepared testimony with the application and may consist of statements or testimony from the district's attorney, engineer, or officer and shall include an affidavit of the state comptroller of public accounts certifying that the district has never registered any bonds with the comptroller;

(E) list of assets and liabilities of the district;

(F) evidence that all landowners who have not signed the petition have been notified by mail of the dissolution request. A certified tax roll for the district and certificate of mailing executed by the postmaster would be sufficient evidence;

(G) a filing fee in the amount of \$100; and

(H) additional data and information as the executive director or commission may deem necessary or pertinent to the application.

(3) The executive director may initiate procedures to dissolve a district without financial dormancy affidavits on file if:

(A) the district has failed to comply with the reporting requirements of this chapter for the previous five-year period;

(B) attempts to contact directors, interested parties, or anyone with knowledge of district's financial activity have failed; and

(C) the state comptroller of public accounts has submitted a certificate certifying that the district has never registered any bonds with the comptroller.

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

**§293.143**

**STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

**§293.143. Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund.**

(a) In calculating standby fees to be used to supplement the operation and maintenance fund, the following definitions apply.

(1) Connection, as used in this section, 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 used to calculate the standby fee. Connections may be described in terms of single family equivalent connections, living unit of equivalents, or any other generally accepted unit of consumption typically attributable to a single family household. The assumed population equivalent per connection should be indicated.

(2) Active connection, as used in this section, means a lot or tract with vertical

improvements and a meter in service for which water and/or wastewater usage is billed.

(3) Inactive connection, as used in this section, means a lot or tract with existing vertical improvements, and where water and/or wastewater connections were made but such service is not being provided nor billed.

(4) Undeveloped property (expressed in terms of connections), as used in this section, means a tract, lot or reserve in the district to which no water or wastewater connections or drainage services exist and for which:

(A) water, wastewater, or drainage facilities and services are available;

(B) water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve any portion of the property is available; or

(C) major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve any portion of the property are available.

(b) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenue to supplement the operation and maintenance fund:

(1) all capitalized funds or reserves for operating purposes which were derived from all

prior bond issues (except an amount not to exceed a three-month reserve) have been depleted or are projected to be depleted within the three years in which the standby fees are to be levied; and

(2) the operation and maintenance fund is operating at a deficit or is projected to operate at a deficit within the three years in which the standby fees are to be levied with:

(A) rates for the first 10,000 gallons of water and wastewater usage for residential users (or equal or greater amounts for other users) which exceed \$40; or

(B) rates for the first 10,000 gallons of usage for residential users (or equal or greater amounts for other users) which exceed \$27 if the district is a provider of only water or wastewater service.

(c) In determining the revenue to be generated from water and wastewater rates if such rates do not equal or exceed the rates stated in subsection (b)(2) of this section, an amount will be added to the minimum charge such that the total bill for 10,000 gallons of usage will equal the rates stated in subsection (b)(2) of this section.

(d) Standby fee amounts shall be determined so that all of the following are true:

(1) The total revenue projected to be generated from the fee is not more than that necessary to balance the projected operation and maintenance budget assuming:

(A) a 90% collection rate of the proposed fee;

(B) maintenance tax revenue based on a 90% collection rate is applied toward the budget;

(C) all of the water, wastewater, or drainage revenue projected for the coming year is applied toward the budget, with rates or revenues established or assumed at an amount equal to or higher than those in the preceding subsection (b)(2) of this section; and

(D) an operating reserve not to exceed three months included in the first year's budget if that reserve is not already existing.

(2) The fee amount shall not exceed the rate charged to active connections for 10,000 gallons actual water and wastewater usage;

(3) The fee amount equitably distributes the fixed costs of operating and maintaining the district's water, wastewater, or drainage facilities among active connections, inactive connections, and undeveloped property owners. In the absence of an allocation of a district's budget to fixed and variable expenses in an application, the staff shall make its own determination based on a predetermined fixed and variable allocation, a copy of which shall be made available from the executive director. A district may submit, with supporting and substantiating documentation, an allocation specific to that district.

(e) In determining whether a district which meets the foregoing requirements be allowed to impose standby fees for operation and maintenance revenue and the amount of the standby fee levy against the various categories of development authorized to be imposed, the following factors may be considered:

(1) the amount of the operating deficit;

(2) the amounts charged or proposed to be charged for water and/or wastewater services usage;

(3) the efficiency and prudence of utilization of operating funds;

(4) the capacity of the various components of the system;

(5) the projected buildout compared to actual buildout;

(6) the amounts charged by districts with comparable land uses; and

(7) maintenance tax levy, if any.

(f) Applications shall include the following:

- (1) an application fee of \$100;
- (2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee and the intervals or periods of billing for such standby fees (either monthly, quarterly or annually);
- (3) a proposal for the standby fee amount including substantiating calculations to show how the standby fee was derived;
- (4) a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information is not available within agency files, the executive director may require that water, wastewater, or drainage facilities serving those properties be identified. An accounting of water supply, wastewater treatment facilities, or drainage facilities and capacity available in those facilities may also be required.
- (5) a table indicating the ultimate number of connections according to section for which the district has water, wastewater, or drainage facilities. Indicate active connections, inactive connections, and the number of connections attributable to undeveloped property;
- (6) a copy of the district's operating budget for the past two years and the proposed budget for the coming year. Indicate those fixed costs required to operate and maintain the water,

wastewater, or drainage facilities, including a proportionate share of consultant and organizational fees attributable to operating and maintaining the water, wastewater, or drainage facilities and those expenses not related to operating and maintaining the district's water, wastewater, or drainage facilities, such as operating a recreational facility;

(7) an indication of revenues available for operation and maintenance costs and the sources of those revenues. Include water consumption records, wastewater flow records, or drainage maintenance records (if used in determining charge for service) for the previous two years and projected for the coming year as reflected in the proposed budget;

(8) a certified copy of the district's most current order establishing the water and/or wastewater rates or drainage charges, as applicable;

(9) any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein;

(10) in the event that a district provides the executive director with written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (3), (5) and (6) of this subsection except that the district shall provide a copy of the district's operating

budget for the past two years and the coming year.