

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: March 8, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2011-1225-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 291, Utility Regulations
Chapter 293, Water Districts
HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914 and SB 1234: Utilities and Districts
Rule Project No. 2011-055-293-OW

Background and reason(s) for the rulemaking:

In 2011, the 82nd Legislature passed: House Bill (HB) 679, filed by Representative Button; HB 1901, filed by Representative Keffer; Senate Bill (SB) 18, co-authored by Senator Estes; SB 512, filed by Senator Hegar; SB 573, co-authored by Senator Nichols; SB 914, filed by Senator Wentworth; and SB 1234, filed by Senator West.

HB 679 amended Texas Water Code (TWC), §49.273 to allow a district's board to grant a contract manager authority to approve change orders that increase or decrease the contract amount by \$50,000 or less.

HB 1901 amended TWC, §49.181(a) and (h), §49.052(f), and §49.183(d) by providing an exemption from the executive director's approval for bonds issued by a public utility agency.

SB 18 amended TWC, §54.209 to further limit the eminent domain power of a municipal utility district (MUD) outside of its boundary.

SB 512 amended TWC, §53.063, redefining the qualifications of supervisors of a fresh water supply district (FWSD).

SB 573 amended existing law on granting certificates of public convenience and necessity (CCNs) for retail utility water or sewer service. SB 573 amended TWC, §13.245, to denote that the TCEQ may grant a CCN to a retail public utility within the corporate limits of the municipality or its extraterritorial jurisdiction (ETJ) without the municipality's consent under certain conditions if the municipality does not consent to the inclusion of the CCN before the 180th day after a landowner or retail public utility has formally requested service from the municipality. SB 573 also provided additional criteria which the TCEQ shall consider before granting the CCN to the retail public utility. If the CCN is granted, the TCEQ must include a condition that facilities will be designed and constructed

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according to the municipality's standards. SB 573 added provisions to the existing TWC, §13.2452(c-4) and (c-5) to specify the counties in which the provisions of the amended TWC, §13.254 do not apply. SB 573 also amended TWC, §13.2451 to specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out of a CCN and to specify the counties in which the opt-out provision does not apply. In addition to these amendments, SB 573 amended TWC, §13.246 to stipulate that a CCN applicant that has land removed from the requested area because a landowner elected to opt-out may not be required to provide service to the removed land for any reason. Lastly, TWC, §13.254 was amended by SB 573 to: change the requirements for when the TCEQ may revoke a CCN; shorten the review period for certain types of expedited revocation requests filed under TWC, §13.254(a-1) from 90 to 60 days; and create a process allowing a landowner owning at least a 25-acre tract to request an expedited release from a CCN in certain counties. Additional provisions were also added to TWC, §13.254, establishing the criteria for requesting an expedited release of a CCN under this provision, to specify the counties in which it applies, and to add requirements for notice of utility rate changes.

SB 914 amended TWC, §49.181 to allow an exemption from executive director approval for bonds issued by a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority.

SB 1234 amended Local Government Code, §375.022 to allow a municipal management district (MMD) to include within its creation petition a descriptive name followed by the phrase "improvement district" and verifiable landmarks in its boundary description.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This adopted rulemaking implements HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914, and SB 1234. No additional actions are adopted beyond administrative changes.

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

There are no changes required by federal rule. State statutes: This rulemaking is required to implement HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914, and SB 1234.

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

Nonsubstantive administrative changes have been made to the adopted rule to conform with *Texas Register* requirements.

Statutory authority:

TWC, §5.103

Effect on the:

A.) Regulated community:

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Utility districts are affected by the enacted legislation. Specifically, the enacted legislation affects certain districts' contracting and bonding procedures, use of eminent domain powers, requirements for board supervisors, and boundary data requirements for creation petitions.

Retail public utilities and municipalities are also affected by the enacted legislation in that certain utilities' procedures for obtaining CCN service area within municipal boundaries has changed, certain municipalities' procedures for obtaining CCN service area beyond its boundaries has been altered, procedures by which landowners may remove their land from CCN service areas has been streamlined, and utilities will have new requirements for completion of water and sewer rate applications.

B.) Public:

HB 679, HB 1901, SB 914, and SB 1234 do not affect the general public nor do they create a new group of affected persons. SB 18 affects the general public and affected persons owning property outside of a MUD's boundary because this bill sets further eminent domain power limitations outside of a MUD's boundaries; however, SB 18 does not create a new group of affected persons. SB 512 also affects the general public and affected persons desiring to be a supervisor of a FWSD; however it does not create a new group of affected persons.

SB 573 affects any affected person whose property is located in the corporate boundaries or ETJ of a municipality where a retail public utility is seeking to obtain a water and/or sewer CCN. Additionally, SB 573 affects any affected person owning 50 acres or more either wholly or partially within the boundaries of an existing CCN by reducing the review period from 90 to 60 days. SB 573 creates a group of affected persons that were not affected before, comprised of affected persons owning a 25-acre tract that is wholly or partially located within the boundaries of an existing CCN in certain counties. SB 573 created a process for this group of affected persons to allow them to request an expedited release from an existing CCN. If a landowner is successful in getting his land removed from a CCN, the landowner may be required to compensate the CCN holder for losses associated with the removed area.

C.) Agency programs:

For the first five-year period the adopted rules are in effect, the agency would use currently available resources when administering or enforcing the provisions.

Stakeholder meetings:

No stakeholder meetings were held. There was a public hearing held on December 4, 2012.

Public comment:

The comment period began on November 2, 2012. The commission held a public hearing on December 4, 2012, in Austin, Texas. The comment period closed on December 10, 2012.

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The commission received oral and written comments, including suggested changes to proposed §291.113, related to the implementation of SB 573 from: Aqua Water Supply Corporation, Markout Water Supply Corporation, SouthWest Water Company, and Texas Rural Water Association. All comments expressed concern with the procedure by which compensation will be paid to a utility following removal of service area from its CCN through the expedited release process under SB 573. The commission responded that this rulemaking merely adopts and implements new statutory requirements enacted by the 82nd Legislature. The commission has no authority to substantively alter the statutory requirements or omit any of them from the commission's rules.

No comments were submitted regarding the proposed changes to Chapter 293.

Significant changes from proposal:

In response to comments, §291.113(s) was amended to remove the phrase "required by a retail public utility seeking to serve the decertified area," to be consistent with SB 573, which allows for compensation by the petitioner.

Potential controversial concerns and legislative interest:

The executive director has processed several requests for decertification of a CCN under TWC, §13.254(a-5) for a landowner owning 25 acres or more either wholly or partially within a CCN in certain counties. The regulated community, especially non-profit water supply corporations, has expressed concerns regarding whether the land can be released from a CCN without taking federal debt into consideration before the decertification.

The executive director's decision to approve a decertification application was challenged in federal court; this matter remains pending.

Does this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Without approval, Chapters 291 and 293 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date:	November 2, 2012
Anticipated Texas Register publication date:	April 12, 2013
Anticipated effective date:	April 18, 2013
Six-month Texas Register filing deadline:	May 2, 2013

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Attachments

HB 679, HB 1901, SB 18, SB 512, SB 573, SB 914, and SB 1234

cc: Chief Clerk, 2 copies
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