

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: October 26, 2012

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

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

Docket No.: 2011-1228-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 288, Water Conservation Plans, Drought Contingency Plans,
Guidelines and Requirements
SB 181 and SB 660: Water Conservation and Usage
Rule Project No. 2011-058-288-OW

Background and reason(s) for the rulemaking:

The 82nd Legislature passed Senate Bill (SB) 181, relating to the calculation and reporting of water usage by municipalities and water utilities for state water planning and other purposes. The legislature also passed SB 660 related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the reporting of municipal water use data.

SB 181 amended Texas Water Code (TWC), Chapter 16, related to provisions generally applicable to water development. SB 660 amended TWC, Chapter 16, and TWC, Chapter 11, related to water rights.

This rulemaking will implement the amendments made by SB 181 and SB 660, §21.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

SB 181 added TWC, §16.403, and SB 660 amended TWC, §16.402 and added §16.403, to require that the TWDB and the TCEQ, in consultation with the Water Conservation Advisory Council (WCAC), develop a uniform, consistent methodology and guidance for calculating and reporting water use and conservation. For a municipality or water utility, the bill requires a method of calculating total water use, a method of calculating total water use in gallons per capita per day, a method of classifying water users within sectors, a method of calculating water use in the non-population dependent sectors, and guidelines on the use of service populations. The methodology and guidance applies to all entities required to submit water conservation plans to the TWDB or the TCEQ. Additionally, the bill requires that the TWDB, the TCEQ, and the WCAC develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

SB 181 added TWC, §16.404, and SB 660, §21, amended TWC, §16.402 and §11.1271, to require entities to report the most detailed level of water use possible, but specifies that entities cannot be required to report at a higher level than their current billing systems

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allow. The bill specifies that the rules may require that new billing systems purchased be capable of reporting water use according to the prescribed methodology.

SB 660 amended TWC, §11.1271 and §16.402, to require the TCEQ or the TCEQ and TWDB to jointly adopt rules by January 1, 2013, requiring the methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in water conservation plans or reports.

SB 181 requires development of the methodology by January 1, 2013. The rulemaking must be completed by January 1, 2013.

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

The rulemaking is required as a result of SB 181 and SB 660, §21.

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

Staff recommended that some dates that have passed be removed from the chapter.

Statutory authority:

TWC, §§5.102, 5.103, 5.105, 11.1271, 16.402, 16.403, and 16.404.

Effect on the:

A.) Regulated community:

Entities that are required to prepare and submit Water Conservation Plans to TCEQ and TWDB will have to comply with the required standardized methodology for reporting water use. There will be no fiscal impact.

B.) Public:

The public will not be affected by this rulemaking.

C.) Agency programs:

Agency Water Conservation staff will need training to learn the new methodology and will have to administer the methodology to entities that are required to develop and submit Water Conservation Plans.

Stakeholder meetings:

The WCAC of Texas has a workgroup specifically dedicated to SB 181 implementation. This workgroup has conducted several meetings in 2011 and 2012 to discuss implementation of the bill.

There agency held a public hearing for this rulemaking on August 7, 2012, in Austin, Texas.

Public comment:

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The commission received five comment letters from: the City of Dallas, Dallas Water Utilities; City of Fort Worth Water Department; Tarrant Regional Water District; Texas Water Foundation; and, one individual. Generally, the comments were either specific questions related to implementation of the rule or comments related to definitions that are outside the scope of the rulemaking. Several commenters also commented on the water use methodology that SB 181 required the commission, the TWDB, and the WCAC to develop. This rulemaking is to implement SB 181 and 660. The WCAC accepted comments on the methodology through September 14, 2012.

The Texas Water Foundation commented on the definition of "Residential gallons per capita per day" which is included within the scope of this rulemaking. The commission made a change based on this comment to clarify the definition of "residential gallons per capita per day."

Significant changes from proposal:

The commission did not make any substantive changes from proposal to adoption.

Potential controversial concerns and legislative interest:

The rulemaking implements statutory changes to agency processes and controversial concerns are not anticipated.

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

No. This rulemaking implements the statutory changes made by SB 181 and SB 660 and does not require the development of new policies.

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

If this rulemaking does not go forward, the commission's rules will be inconsistent with statute. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: July 13, 2012

Anticipated Texas Register publication date: November 30, 2012

Anticipated effective date: December 6, 2012

Six-month Texas Register filing deadline: January 13, 2013

Agency contacts:

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Ron Olson, Staff Attorney, 239-0608

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

SB 181

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SB 660

cc: Chief Clerk, 2 copies
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