

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Proposed Rulemaking

**AGENDA REQUESTED:** January 15, 2020

**DATE OF REQUEST:** December 20, 2019

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Andreea Vasile, Rule/Agenda Coordinator, (512) 239-1806

**CAPTION: Docket No. 2019-0963-RUL.** Consideration for publication of, and hearing on, proposed new Sections 328.200 - 328.204 of 30 TAC Chapter 328, Waste Minimization and Recycling.

The proposed rulemaking would implement portions of Senate Bill 1376, 86th Texas Legislature, 2019, Regular Session, which amended Texas Health and Safety Code, Section 361.425 and Section 361.426. Proposed new Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, would document the requirement for governmental entities to establish a program for the separation and collection of recyclable materials generated by the entity; establish that governmental entities shall give a preference in purchasing for products made of recyclable materials; and provide for exemptions from the requirements. (Calen Roome, Colleen Ford) (Rule Project No. 2019-125-328-AD)

Stephanie Bergeron Perdue  
**Deputy Director**

Ryan Vise  
**Division Director**

Andreea Vasile  
**Agenda Coordinator**

Copy to CCC Secretary? NO X YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 20, 2019

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** Ryan Vise, Director  
External Relations Division

**Docket No.:** 2019-0963-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 328, Waste Minimization and Recycling  
SB 1376: Governmental Entity Recycling and Preference for Recycled  
Products  
Rule Project No. 2019-125-328-AD

### **Background and reason(s) for the rulemaking:**

The proposed rulemaking implements Senate Bill (SB) 1376, 86th Texas Legislature, 2019, which amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements. THSC, §361.425 and §361.426 require that governmental entities establish a recycling program, create procedures for a recycling program, and give preference in purchasing to products made of recyclable materials if applicable criteria are met.

The proposed rulemaking would add new rules that would apply to governmental entities pertaining to recycling practices, the creation of recycling programs, and purchasing preferences for products made of recycled materials. The proposed rules would also provide an exemption available to governmental entities, if compliance with the recycling program or purchasing preferences would create a hardship for the governmental entity.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The proposed rulemaking would amend Chapter 328 to add new Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to products made of recycled materials, and to create an exemption that would apply to certain governmental entities, if compliance with these rules would create a hardship.

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

The proposed rulemaking would implement SB 1376 and the requirements of THSC, §361.425 and §361.426.

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

Although not specifically required by the legislation, it will be necessary for TCEQ to establish a program for governmental entities to request a hardship exemption.

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**Statutory authority:**

The amendments would be proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426 which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

**Effect on the:**

**A.) Regulated community:**

Fewer governmental entities would be required to implement recycling programs. The proposed rulemaking would increase the opportunity for governmental entities to become exempt from implementing recycling programs or exempt certain recyclable materials from their recycling program.

**B.) Public:**

No public impacts are anticipated.

**C.) Agency programs:**

External Relations Division would complete rulemaking and updates to publication GI-030, The Texas School Recycling Guide.

The rules would not create a group of affected governmental entities who are not already affected by statute.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

**Potential controversial concerns and legislative interest:**

There are no controversial concerns or legislative interest.

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

The rulemaking would require development of new policies.

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

SB 1376 specifically requires rulemaking to implement this policy. There are no alternatives.

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**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** January 15, 2020

**Anticipated *Texas Register* publication date:** January 31, 2020

**Anticipated public hearing date (if any):** February 27, 2020

**Anticipated public comment period:** January 31, 2020 - March 3, 2020

**Anticipated adoption date:** June 10, 2020

**Agency contacts:**

Calen Roome, Rule Project Manager, Environmental Relations Division, (512) 239-4621

Colleen Ford, Staff Attorney, (512) 239-6909

Andreea Vasile, Texas Register Rule/Agenda Coordinator, (512) 239-1806

**Attachments:**

Senate Bill 1376

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Brody Burks  
Office of General Counsel  
Calen Roome  
Andreea Vasile

AN ACT

relating to eliminating certain requirements imposed on school districts and other educational entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. POWERS AND DUTIES OF STATE BOARD FOR EDUCATOR  
CERTIFICATION, SHARED SERVICES ARRANGEMENTS, AND HIGH SCHOOL  
COMPLETION AND SUCCESS INITIATIVE COUNCIL

SECTION 1.01. Section 21.040, Education Code, is amended to read as follows:

Sec. 21.040. GENERAL POWERS AND DUTIES OF BOARD. The board shall:

~~(1) [supervise the executive director's performance,~~  
~~(2) approve an operating budget for the board and~~  
~~make a request for appropriations;~~

~~(3)]~~ appoint the members of any advisory committee to the board;

(2) ~~(4)]~~ for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board;

(3) ~~(5)]~~ provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees; and

1           (4) [~~(6)~~] develop and implement policies that clearly  
2 define the respective responsibilities of the board and the board's  
3 staff[~~, and~~

4           ~~[(7) execute interagency contracts to perform routine~~  
5 ~~administrative functions].~~

6           SECTION 1.02. Section 29.006(a), Education Code, is amended  
7 to read as follows:

8           (a) The governor shall appoint a continuing advisory  
9 committee, composed of 17 members, under 20 U.S.C. Section  
10 1412(a)(21). At least one member appointed under this subsection  
11 must be a director of special education programs for a school  
12 district [~~or for a shared services arrangement of multiple school~~  
13 ~~districts as provided by Section 29.007].~~

14           SECTION 1.03. Sections 29.095(d) and (e), Education Code,  
15 are amended to read as follows:

16           (d) The commissioner shall establish application criteria  
17 for receipt of a grant under this section. The criteria must  
18 require confirmation that the appropriate campus-level planning  
19 and decision-making committee established under Subchapter F,  
20 Chapter 11, and the school district board of trustees have approved  
21 a plan that includes:

22                   (1) a description of the student club;

23                   (2) a statement of the student club's goals, intent,  
24 and activities;

25                   (3) a statement of the source of funds to be used to  
26 match the grant;

27                   (4) a budget for the student club; and

1           (5) a statement showing that the student club's  
2 finances are sustainable~~[, and~~

3           ~~[(6) any other information the council requires]~~.

4           (e) The commissioner shall establish the minimum  
5 requirements for a local grant agreement, including requiring:

6           (1) the agreement to be signed by the sponsor of a  
7 student club receiving a grant and another authorized school  
8 district officer; and

9           (2) the district and the student club to participate  
10 in an evaluation~~[, as determined by the council,]~~ of the club's  
11 program and the program's effect on student achievement and dropout  
12 rates.

13           SECTION 1.04. Section 29.096(e), Education Code, is amended  
14 to read as follows:

15           (e) The commissioner shall establish minimum standards for  
16 a local collaborative agreement, including a requirement that the  
17 agreement must be signed by an authorized school district or  
18 open-enrollment charter school officer and an authorized  
19 representative of each of the other participating entities that is  
20 a partner in the collaboration. The program must:

21           (1) limit participation in the program to students  
22 authorized to participate by a parent or other person standing in  
23 parental relationship;

24           (2) have as a primary goal graduation from high  
25 school;

26           (3) provide for local businesses or other employers to  
27 offer paid employment or internship opportunities and advanced

1 career and vocational training;

2 (4) include an outreach component and a lead  
3 educational staff member to identify and involve eligible students  
4 and public and private entities in participating in the program;

5 (5) serve a population of students of which at least 50  
6 percent are identified as students at risk of dropping out of  
7 school, as described by Section 29.081(d);

8 (6) allocate not more than 15 percent of grant funds  
9 and matching funds, as determined by the commissioner, to  
10 administrative expenses; and

11 (7) include matching funds from any of the  
12 participating entities[~~, and~~

13 [~~(8) include any other requirements as determined by~~  
14 ~~the council]~~.

15 SECTION 1.05. Section 29.097(b), Education Code, is amended  
16 to read as follows:

17 (b) From funds appropriated for that purpose in an amount  
18 not to exceed \$3 million each year, the commissioner shall  
19 establish a pilot program for the commissioner to award grants to  
20 participating campuses to provide intensive technology-based  
21 supplementary instruction in English, mathematics, science, or  
22 social studies to students in grades nine through 12 identified as  
23 being at risk of dropping out of school, as described by Section  
24 29.081(d). Instruction techniques and technology used by a campus  
25 under this section must be based on the best available research[~~, as~~  
26 ~~determined by the council,~~] regarding college and workforce  
27 readiness.

1 SECTION 1.06. Section 39.235(a), Education Code, is amended  
2 to read as follows:

3 (a) From funds appropriated for that purpose, the  
4 commissioner may establish a grant program under which grants are  
5 awarded to middle, junior high, and high school campuses and school  
6 districts to support:

7 (1) the implementation of innovative improvement  
8 programs that are based on the best available research regarding  
9 middle, junior high, or high school reform, dropout prevention, and  
10 preparing students for postsecondary coursework or employment; and

11 (2) enhancing education practices that have been  
12 demonstrated by significant evidence of effectiveness[~~, and~~

13 [~~(3) the alignment of grants and programs to the~~  
14 ~~strategic plan adopted under Section 39.407]~~.

15 ARTICLE 2. SCHOOL OPERATIONS

16 SECTION 2.01. Sections 33.202(a), (c), (d), and (e),  
17 Education Code, are amended to read as follows:

18 (a) The University Interscholastic League [~~commissioner by~~  
19 ~~rule~~] shall develop and adopt an extracurricular activity safety  
20 training program as provided by this section. In developing the  
21 program, the league [~~commissioner~~] may use materials available from  
22 the American Red Cross, Emergency Medical Systems (EMS), or another  
23 appropriate entity.

24 (c) The safety training program must include:

25 (1) certification of participants by the American Red  
26 Cross, the American Heart Association, or a similar organization or  
27 by the University Interscholastic League[~~, as determined by the~~

1 ~~commissioner~~];

2 (2) current training in:

3 (A) emergency action planning;

4 (B) cardiopulmonary resuscitation if the person  
5 is not required to obtain certification under Section 33.086;

6 (C) communicating effectively with 9-1-1  
7 emergency service operators and other emergency personnel; and

8 (D) recognizing symptoms of potentially  
9 catastrophic injuries, including head and neck injuries,  
10 concussions, injuries related to second impact syndrome, asthma  
11 attacks, heatstroke, cardiac arrest, and injuries requiring use of  
12 a defibrillator; and

13 (3) at least once each school year, a safety drill that  
14 incorporates the training described by Subdivision (2) and  
15 simulates various injuries described by Subdivision (2)(D).

16 (d) The University Interscholastic League [~~A school~~  
17 ~~district~~] shall provide training to students participating in an  
18 extracurricular athletic activity related to:

19 (1) recognizing the symptoms of injuries described by  
20 Subsection (c)(2)(D); and

21 (2) the risks of using dietary supplements designed to  
22 enhance or marketed as enhancing athletic performance.

23 (e) The safety training program and the training under  
24 Subsection (d) must [~~may~~] each be conducted by the University  
25 Interscholastic League [~~a school or school district~~] or by another  
26 [~~an~~] organization described by Subsection (c)(1), as determined by  
27 the league.

1 SECTION 2.02. Section 361.425(b), Health and Safety Code,  
2 is amended to read as follows:

3 (b) The commission:

4 (1) by order shall exempt from compliance with this  
5 section:

6 (A) [~~a school district or~~] a municipality with a  
7 population of less than 5,000 [~~from compliance with this section~~]  
8 if the commission finds that compliance would work a hardship on  
9 [~~the district or~~] the municipality;

10 (B) a school district with a student enrollment  
11 of fewer than 10,000 students; and

12 (C) an entity described by Subsection (a) if:

13 (i) the entity petitions the commission for  
14 an exemption; and

15 (ii) the commission finds that compliance  
16 would work a hardship on the entity; and

17 (2) [~~The commission~~] shall adopt rules for  
18 administering this subsection.

19 SECTION 2.03. Section 361.426(d), Health and Safety Code,  
20 is amended to read as follows:

21 (d) The commission:

22 (1) by order shall exempt from compliance with this  
23 section:

24 (A) [~~a school district or~~] a municipality with a  
25 population of less than 5,000 [~~from compliance with this section~~]  
26 if the commission finds that compliance would work a hardship on  
27 [~~the district or~~] the municipality;

1                   (B) a school district with a student enrollment  
2 of fewer than 10,000 students; and

3                   (C) an entity described by Subsection (a) if:

4                   (i) the entity petitions the commission for  
5 an exemption; and

6                   (ii) the commission finds that compliance  
7 would work a hardship on the entity; and

8                   (2) [~~The commission~~] shall adopt rules for  
9 administering this subsection.

10                   ARTICLE 3. TEACHER QUALITY

11                   SECTION 3.01. The heading to Section 21.410, Education  
12 Code, is amended to read as follows:

13                   Sec. 21.410. MASTER [~~READING~~] TEACHER GRANT PROGRAM.

14                   SECTION 3.02. Section 21.410, Education Code, is amended by  
15 amending Subsections (a), (b), (c), (d), (f), (g), and (j) and  
16 adding Subsection (c-1) to read as follows:

17                   (a) The commissioner shall establish a master [~~reading~~]  
18 teacher grant program to encourage teachers to:

19                   (1) become certified as master [~~reading~~] teachers in  
20 reading, mathematics, technology, or science; and

21                   (2) work with other teachers and with students in  
22 order to improve student reading, mathematics, or science  
23 performance or to increase the use of technology in each classroom,  
24 as applicable.

25                   (b) From funds appropriated for the purpose, the  
26 commissioner shall make grants to school districts as provided by  
27 this section to pay stipends to selected certified master [~~reading~~]

1 teachers who teach at high-need campuses.

2 (c) The commissioner shall annually identify each high-need  
3 campus in a school district using criteria established by the  
4 commissioner by rule~~[, including performance on the reading~~  
5 ~~assessment instrument administered under Section 39.023]~~. The  
6 commissioner shall also use the criteria to rank campuses in order  
7 of greatest need.

8 (c-1) In establishing criteria under Subsection (c) to  
9 identify high-need campuses for purposes of awarding master teacher  
10 grants in reading, mathematics, or science, the commissioner must  
11 include performance on the reading, mathematics, or science  
12 assessment instrument administered under Section 39.023, as  
13 applicable.

14 (d) A school district may apply to the commissioner for  
15 grants for each high-need campus identified by the commissioner to  
16 be used to pay stipends to certified master ~~[reading]~~ teachers in  
17 accordance with this section. ~~[Unless reduced under Subsection (g)~~  
18 ~~or (i), each grant is in the amount of \$5,000.]~~ The commissioner  
19 shall approve the application if the district:

20 (1) applies within the period and in the manner  
21 required by rule adopted by the commissioner; and

22 (2) agrees to use each grant only for the purpose of  
23 paying a year-end stipend to a master ~~[reading]~~ teacher in reading,  
24 mathematics, technology, or science:

25 (A) who holds the appropriate ~~[a]~~ certificate  
26 issued under Section 21.0481, Section 21.0482, Section 21.0483, or  
27 Section 21.0484;

1 (B) who teaches in a position prescribed by the  
2 district at a high-need campus identified by the commissioner;

3 (C) whose primary duties include:

4 (i) teaching reading, mathematics, or  
5 science or integrating technology use in teaching, as applicable;  
6 and

7 (ii) serving as a reading, mathematics, or  
8 science teaching mentor or technology training mentor, as  
9 applicable, to other teachers for the amount of time and in the  
10 manner established by the district and by rule adopted by the  
11 commissioner; and

12 (D) who satisfies any other requirements  
13 established by rule adopted by the commissioner.

14 (f) The commissioner shall adopt rules for the distribution  
15 of grants to school districts following the year of the initial  
16 grant. A district that has been approved for a grant to pay a  
17 stipend to a certified master [~~reading~~] teacher is not required to  
18 reapply for a grant for two consecutive school years following the  
19 year of the initial [~~initial~~] grant if the district:

20 (1) continues to pay a stipend as provided by  
21 Subsection (g); and

22 (2) notifies the commissioner in writing, within the  
23 period and in the manner prescribed by the commissioner, that the  
24 circumstances on which the grant was based have not changed.

25 (g) The commissioner shall reduce payments to a school  
26 district proportionately to the extent a teacher does not meet the  
27 requirements under Subsection (d)(2) for the entire school year. A

1 district that employs more certified master [~~reading~~] teachers than  
2 the number of grants available under this section shall select the  
3 certified master [~~reading~~] teachers to whom to pay stipends based  
4 on a policy adopted by the board of trustees of the district, except  
5 that a district shall pay a stipend for two additional consecutive  
6 school years to a teacher the district has selected for and paid a  
7 stipend for a school year, who remains eligible for a stipend under  
8 Subsection (d)(2), and for whom the district receives a grant under  
9 this section for those years. A decision of the district under this  
10 subsection is final and may not be appealed. The district may not  
11 apportion among teachers a stipend paid for with a grant the  
12 district receives under this section. The district may use local  
13 money to pay additional stipends in amounts determined by the  
14 district.

15 (j) A decision of the commissioner concerning the amount of  
16 money to which a school district is entitled under this section is  
17 final and may not be appealed. Each district shall, in the manner  
18 and at the time prescribed by the commissioner, provide to the  
19 commissioner proof acceptable to the commissioner of the master  
20 [~~reading~~] teacher certification of a teacher to whom the district  
21 is paying a stipend under this section.

22 ARTICLE 4. REPEALERS

23 SECTION 4.01. (a) The following provisions of the Education  
24 Code are repealed:

- 25 (1) Section 7.102(c)(9);  
26 (2) Sections 21.411, 21.412, and 21.413;  
27 (3) Section 29.007;



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1376 passed the Senate on April 17, 2019, by the following vote: Yeas 30, Nays 0, one present not voting.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1376 passed the House on May 17, 2019, by the following vote: Yeas 146, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§328.200 - 328.204.

### **Background and Summary of the Factual Basis for the Proposed Rules**

This rulemaking is proposed to add new rules that would apply to certain governmental entities to establish recycling programs and purchasing preferences for products made of recycled materials.

Senate Bill (SB) 1376, 86th Texas Legislature, 2019, amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements, if the commission finds that compliance would create a hardship on the governmental entity. SB 1376 also requires the commission to exempt certain governmental entities from compliance with purchasing preferences for recycled materials, if the commission finds that compliance would create a hardship on the governmental entity.

The rulemaking proposes new Chapter 328, Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to products made of recycled materials, and to create an exemption that would apply to certain governmental entities, if compliance with these rules would create a hardship.

### **Section by Section Discussion**

#### *§328.200, Purpose*

The commission proposes new §328.200 which would pertain to governmental entities and establish a standard to implement a recycling program.

#### *§328.201, Definitions*

The commission proposes new §328.201 to define governmental entity, hardship, and recyclable materials within the context of the requirements.

#### *§328.202, General Requirements*

The commission proposes new §328.202 to describe the responsibilities for governmental entities to establish a recycling program. Overall, the entity must consider how to collect and store recyclable materials, maintain containers for recyclable materials, create procedures with buyers of recyclable materials, evaluate and modify the recycling program, and create measures to encourage employee participation.

#### *§328.203, Exemptions*

The commission proposes new §328.203 to provide specific exemptions that are allowed under the rule as well as opportunities for an exemption request due to a hardship.

*§328.204, Purchasing Preference for Recycled Materials*

The commission proposes new §328.204 to require certain governmental entities to give preference to purchase products made of recycled materials.

**Fiscal Note: Costs to State and Local Government**

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state government. Fiscal implications are not anticipated for units of local government because the proposed rulemaking includes a process to apply for an exemption in the cases of a hardship.

This rulemaking addresses recent changes to THSC, §361.425, Governmental Entity Recycling. The proposed rulemaking is required by law and needed to create a process for units of government to apply for an exemption from the requirements.

**Public Benefits and Costs**

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

### **Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

### **Rural Communities Impact Assessment**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The proposed rulemaking includes a process for an exemption if compliance with the proposed rules and the associated state law is shown to create a hardship.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking is in effect.

### **Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for

the first five years the proposed rulemaking is in effect.

### **Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; the requirement for the government recycling program existed in state law. This proposed rulemaking does create a process for a unit of government to gain an exemption from the requirement if a hardship is found. The proposed rulemaking will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create or expand the regulation of units of government or individuals; the requirement for the recycling program existed in state law. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the specific intent to protect the environment or

reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. New §§328.200 - 328.204 are proposed in accordance with SB 1376, which amended THSC, Chapter 361, Subchapter N. The proposed rules establish requirements for a governmental entity to create a recycling program and to give preference in purchasing to products made of recycled materials. The proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, the proposed rules provide an exemption for the regulated community if compliance with the proposed rules would create a hardship on the regulated entity.

In addition, a regulatory impact analysis is not required because the proposed rulemaking does not meet any of the applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only 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 authority of the commission. Proposed new §§328.200 - 328.204 do not exceed an express requirement of state law, federal law, or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a

governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 328 in accordance with the amendments to THSC, Chapter 361 as a result of SB 1376. The proposed rules would establish requirements for a governmental entity to create a recycling program and require certain governmental entities to give preference to purchase products made of recycled materials. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

This rulemaking is not applicable to the Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Effect on Sites Subject to the Federal Operating Permits Program**

This rulemaking is not subject to requirements of the Federal Operating Permit program.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on February 27, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at

(512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-125-328-AD. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Calen Roome, Public Education Unit, (512) 239-4621.

**SUBCHAPTER K: GOVERNMENTAL ENTITY RECYCLING AND PURCHASING OF  
RECYCLED MATERIALS  
§§328.200 - 328.204**

**Statutory Authority**

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new rules are also proposed under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426 which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

The new rules are proposed as part of the implementation of THSC, Chapter 361, Subchapter N, as amended by Senate Bill 1376, 86th Texas Legislature, 2019.

**§328.200. Purpose.**

The purpose of this subchapter is to establish requirements for a governmental entity to create a recycling program and provide preference for purchasing recycled materials.

**§328.201. Definitions.**

The following terms, when used in this subchapter, shall have the following meanings.

(1) Governmental entity--A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district.

(2) Hardship--A circumstance that causes unreasonable burden on the governmental entity.

(3) Recyclable material--A material generated by the entity's operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

**§328.202. General Requirements.**

A governmental entity shall:

(1) establish a program for the separation and collection of all recyclable materials generated by the entity's operations;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

**§328.203. Exemptions.**

(a) This subchapter does not apply to:

(1) a school district with a student enrollment of less than 10,000 students; and

(2) a municipality with a population of less than 5,000, if compliance with this subchapter would create a hardship.

(b) A governmental entity may exclude one or more recyclable materials from their program if the commission finds that:

(1) a recycling program for a recyclable material is not available through their solid waste provider; or

(2) the inclusion of a recyclable material would create a hardship.

(c) A governmental entity may request additional consideration from the commission if compliance with this subchapter would create a hardship.

**§328.204. Purchasing Preference for Recycled Materials.**

A state agency, state court, or judicial agency not subject to Texas Government Code, Title 10, Subtitle D, and a county, municipality, school district, junior or community college, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Preferences will be applied in accordance with state procurement

statutes and rules.