TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: October 22, 2014

DATE OF REQUEST: October 3, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2013-1382-RUL. Consideration of the adoption of an amendment to Section 290.272 of 30 TAC Chapter 290, Public Drinking Water; an amendment to Section 291.87 of 30 TAC Chapter 291, Utility Regulations; and amendments to Sections 293.1, 293.12, 293.41, 293.44, 293.51, 293.54, 293.63, 293.81, 293.94, and 293.171 of 30 TAC Chapter 293, Water Districts.

The adoption would implement House Bill (HB) 738, HB 1050, HB 1461, HB 2704, and Senate Bill 902, 83rd Legislature, 2013, Regular Session, relating to customer notification of water loss by a retail public utility and the powers, duties, and administration of water districts, specifically in the areas of: creation provisions (municipal utility districts only); contracting; issuance of bonds and bond anticipation notes; audit filings; impact fees; and, recreational facilities. The adopted rulemaking would also make non-substantive changes to update citations and terminology and conform with *Texas Register* requirements. The proposed rules were published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4132) for Chapter 290, (39 TexReg 4138) for Chapter 291, and (39 TexReg 4143) for Chapter 293. (Justin Taack, Kayla Murray) (Rule Project No. 2013-054-293-OW)

L'Oreal W. Stepney, P.E.
Deputy Director

Linda Brookins
Division Director

Derek Baxter
Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** October 3, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

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

Docket No.: 2013-1382-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
Chapter 291, Utility Regulations
Chapter 293, Water Districts
HB 738, HB 1050, HB 1461, HB 2704, and SB 902: Utilities and Districts
Rule Project No. 2013-054-293-OW

Background and reason(s) for the rulemaking: In 2013, the 83rd Legislature passed House Bill (HB) 738, HB 1050, HB 1461, HB 2704, and Senate Bill (SB) 902, authored by Representative Myra Crownover, Representative Bill Callegari, Representative Jimmie Don Aycock, Representative Bill Callegari, and Senator Troy Fraser, respectively. The purpose of this adopted rulemaking is to implement the statutory changes from those bills.

HB 738, HB 1050, HB 2704, and SB 902 require amendments to Chapter 293, Water Districts, to reflect the legislative changes to the powers, duties, and administration of water districts, specifically in the areas of: municipal utility district (MUD) creation provisions; contracting; issuance of bonds and bond anticipation notes (BANs); audit filings; impact fees; and, recreational facilities.

HB 1461 requires conforming changes to Chapter 290, Public Drinking Water, and Chapter 291, Utility Regulations, to require retail public utilities notify their customers of water loss reported in the water loss audit filed with the Texas Water Development Board (TWDB) under Texas Water Code (TWC), §16.0121.

Scope of the rulemaking:
A.) Summary of what the rulemaking will do: The adopted rulemaking would amend Chapters 290 and 291 to ensure that retail public utilities notify their customers of the water loss reported in the water loss audit filed with the TWDB.

The adopted rulemaking would amend Chapter 293 to:

- redefine "recreational facility" to exclude a minor improvement or beautification project to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities;
- specify that, upon receipt of a petition to create a MUD, where all of the proposed district is to be located outside the corporate limits of a municipality, the executive

director shall notify the county commissioners court in which the proposed MUD is to be located of the petition's submission;

- clarify that the executive director's review of a district's bond issue is limited to bonds to finance a project for which the TCEQ has adopted rules requiring its review and approval;
- clarify that the district's outstanding principal debt supported by ad valorem taxes for recreational facilities must not exceed 1% of the district's taxable value of property and that this limitation also applies to bonds supported by a contract tax and is based on the taxable value of property in the district(s) making payments under the contract;
- specify that the central appraisal district's estimate of value may be used to establish the value of the district's taxable property for the issuance of recreational facility bonds;
- clarify that a MUD may issue bonds supported by ad valorem taxes to pay for street or security lighting under the MUD's authorization to acquire road facilities or as a recreational facility;
- specify that a district is not required to prorate the land costs of a water, wastewater, or drainage site (including a combined lake and detention site) between the secondary recreational facilities purpose and the primary water, wastewater, or drainage purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary purpose;
- allow BANs to be issued for any purpose for which district bonds may be issued;
- increase the amount of a contract for which a district's governing board is required to advertise the project or solicit written competitive bids;
- allow a district to issue a change order so long as the change order aggregate does not increase the original contract's amount by more than 25%;
- allow a special water authority to submit its annual audit report to the TCEQ not later than 160 days after the special water authority's fiscal year end;
- define actual costs as it relates to impact fees to permit the inclusion of non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities; and
- add storm water detention or retention facilities to the list of facilities that may be exempt from impact fees.

B.) Scope required by federal regulations or state statutes: There are no federal changes. The adopted rulemaking implements HBs 738, 1050, 1461, 2704, and SB 902.

C.) Additional staff recommendations that are not required by federal rule or state statute: The adopted rulemaking would also make non-substantive changes to update citations and terminology and conform with *Texas Register* requirements.

Re: Docket No. 2013-1382-RUL

Statutory authority: TWC, §§5.102, 5.103, 5.105, 12.081, and 13.041.

Effect on the:
A.) Regulated community:
HB 738—Creation of a proposed MUD may be delayed if comments are received from a county commissioners court.

HB 1050 and HB 2704—A district now has the authority to issue change orders up to 25% of the original contract price, which could result in a cost savings for a district since a larger change order may be issued instead of rebidding the project; however, any cost savings are unknown and expected to be minimal.

HB 1461—Retail public utilities will now be required to notify their customers of the water loss reported in the water loss audits filed with the TWDB under TWC, §16.0121. Retail public utilities could face an increased cost in adding this information to the customer bills or the utility's Consumer Confidence Report (CCR) after the water loss audit is filed; however, the financial impact is expected to be minimal.

SB 902—SB 902 increases the contract amount for which a district must advertise and publish notice and also increases the maximum amount for which a district shall solicit bids. Water districts may receive a fiscal benefit from the increase in the threshold requirements; however, the financial benefits would vary depending on current procedures and are not anticipated to be significant. SB 902 also allows districts to fund the full cost of sites acquired for developing water, wastewater, or drainage facilities that also have a recreational facility component by specifying that a district would not be required to prorate the site cost between the utilities and recreational facilities. Water districts may incur additional debt or costs associated with funding the total land costs; however, these costs are unknown and expected to be minimal.

B.) Public:
HB 738—A county commissioners court may experience some cost to respond to TCEQ's notification of a MUD creation petition; however, those costs are unknown and expected to be minimal.

HB 1050 and HB 2704—A district now has the authority to issue change orders up to 25% of the original contract price, which could result in cost savings for the district's customers since a larger change order may be issued instead of the district rebidding the project; however, any cost savings are unknown and expected to be minimal.

HB 1461—Customers of retail public utilities will now receive notice of the utility system's water loss after the water loss audit has been filed with the TWDB under TWC, §16.0121.

SB 902—The increase to bidding threshold requirements could result in cost savings for a district's customers as a larger project may be initiated without incurring bidding costs; however, any cost savings are unknown and expected to be minimal. Districts that fund the full costs of sites acquired for developing water, wastewater, or drainage facilities that also have a recreational facility component (not prorating land costs between utility and recreational functions) will incur more debt/costs associated with the land acquisition, which in turn would be passed on to the district's customers; however, those potential pass-through costs are unknown and expected to be minimal.

C.) Agency programs:

HB 738—The Water Supply Division will need to amend its procedures to include notification to the county commissioners court following the filing of a MUD creation petition.

HB 1050 and HB 2704—There are no anticipated effects on agency programs.

HB 1461—The Water Supply Division will need to reevaluate its online CCR generator tool to reflect this bill's passage.

SB 902—The Water Supply Division will need to amend RG-080, *Water District Financial Management Guide,* and RG-378, *Financial Reporting Requirements for Water Districts in Texas* to reflect this bill's passage.

Stakeholder meetings: The TCEQ did not hold a stakeholder meeting; however, a rule public hearing was held on June 26, 2014, in Austin, Texas.

Public comment: The comment period began on May 30, 2014, and closed on June 30, 2014. The commission received written and oral comments on this rulemaking.

Comments were received from the Honorable Hugh Coleman of Denton County; Allen Boone Humphries Robinson, L.L.P.; American Water Works Association - Texas Section; Austin Water Utility; City of Seguin (City); County Judges and Commissioners Association of Texas; Muller Law Group, P.L.L.C.; San Antonio Water System (SAWS); and Schwartz, Page & Harding, L.L.P.

The commenters were generally supportive of the proposed rules; however, they recommended revisions to the rule language. The comments are summarized in the Response to Comments sections of the preambles.

HB 1461—Austin Water Utility, American Water Works Association - Texas Section, and SAWS commented that the proposed changes to §290.272(h) and §291.87(e)(3) should be amended to reflect that the water loss audit results reported to customers of retail public utilities can be provided "on or with" the CCRs or customer bills. These commenters stressed that, for their customers and the public to receive the most benefit from this

reporting and also to reduce confusion, utilities might also include a narrative explaining what the water loss audit results mean. In response to these comments, the commission has amended §290.272(h) and §291.87(e)(3) by replacing the word "in" with the phrase "on or with" to more closely reflect the amended statute.

Significant changes from proposal: There are no substantive changes from proposal to adoption.

Potential controversial concerns and legislative interest: None.

Does this rulemaking affect any current policies or require development of new policies? The Water Supply Division will modify its operating procedures to ensure the county commissioners court is notified if any part of a proposed MUD is to be located outside the corporate limits of a municipality.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? Without approval, Chapters 290, 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:** May 30, 2014
Anticipated Texas Register adoption publication date: November 7, 2014
Anticipated effective date: November 13, 2014
Six-month *Texas Register* filing deadline: November 30, 2014

Agency contacts:
Justin Taack, Rule Project Manager, (512) 239-1122, Water Supply
Kayla Murray, Staff Attorney, (512) 239-4761
Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments
HBs 738, 1050, 1461, 2704, and SB 902

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Patty Burnett
Office of General Counsel
Justin Taack
Derek Baxter

AN ACT

relating to the review of the creation of certain proposed municipal utility districts by county commissioners courts.

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

SECTION 1. Section 54.0161, Water Code, is amended to read as follows:

Sec. 54.0161. REVIEW OF CREATION BY COUNTY. (a) This section applies only to a proposed district all of which is to be located outside the corporate limits of a municipality.

(a-1) Promptly after a petition is filed with the commission to create a district to which this section applies, the commission shall notify the commissioners court of any county in which the proposed district is to be located.

(a-2) The [~~If all or part of a proposed district is to be located outside the extraterritorial jurisdiction of a city, the~~] commissioners court of a [~~the~~] county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court [~~in the event a review is done~~].

(b) In the event the county commissioners court votes to submit information to the commission or to make a recommendation

regarding the creation of the proposed district [~~of a review~~], the commissioners court shall submit to the commission, at least 10 days before the date set for action [~~the hearing~~] on the petition, a written opinion stating:

(1) whether [~~or not~~] the commissioners court recommends [~~county would recommend~~] the creation of the proposed district; and

(2) [~~stating~~] any findings, conclusions, and other information that the commissioners court thinks [~~think~~] would assist the commission in making a final determination on the petition.

(c) In passing on a petition subject to [~~under~~] this section [~~subchapter~~], the commission shall consider the written opinion submitted by the county commissioners court.

SECTION 2. The changes in law made by this Act apply only to a petition for the creation of a municipal utility district that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act. A petition pending before the Texas Commission on Environmental Quality on the effective date of this Act is governed by the law in effect at the time the petition was filed, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 738 was passed by the House on May 8, 2013, by the following vote: Yeas 147, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 738 was passed by the Senate on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

AN ACT

relating to purchasing and other contracts by governmental entities.

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

SECTION 1. Section 791.011, Government Code, is amended by adding Subsection (j) to read as follows:

(j) For the purposes of this subsection, the term "purchasing cooperative" means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors. A local government may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under this chapter in an amount greater than $50,000 unless a person designated by the local government certifies in writing that:

(1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or

(2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

SECTION 2. Section 2252.002, Government Code, is amended to read as follows:

Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a

nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in:

(1) the state in which the nonresident's principal place of business is located; or

(2) a state in which the nonresident is a resident manufacturer.

SECTION 3. Section 2267.353(b), Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(b) A contract for a project under this subchapter may cover only a single integrated project. A governmental entity may not enter into a contract for aggregated projects at multiple locations. For purposes of this subsection:

(1) if a metropolitan transit authority created under Chapter 451, Transportation Code, enters into a contract for a project involving a linear transit project with multiple stops along the project route for boarding passengers, created under Chapter 451, Transportation Code, the linear transit project [~~bus rapid transit system created under Chapter 451, Transportation Code, the bus rapid transit system~~] is a single integrated project; and

(2) a water treatment plant, including a desalination plant, that includes treatment facilities, well fields, and pipelines is a single integrated project.

SECTION 4. Section 2267.354, Government Code, as added by

Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a) [~~Before September 1, 2013:~~

[~~(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this subchapter, enter into contracts for not more than three projects in any fiscal year; and~~

[~~(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:~~

[~~(A) independently enter into a contract for not more than one civil works project in any fiscal year; and~~

[~~(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:~~

[~~(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and~~

[~~(ii) the governing body of the municipality must approve the contracts.~~

[~~(b) Before September 1, 2015, a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter 54, Transportation Code, may enter into contracts under this subchapter for not more than two~~

~~projects in any fiscal year.~~

[~~(c)~~] After August 31, 2013 [~~the period described by Subsection (a) or (b)~~]:

(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts; and

(3) a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter 54, Transportation Code, may enter into contracts under this subchapter for not more than four projects in any fiscal year.

(b) [~~(d)~~] For purposes of determining the number of eligible projects under this section, a municipally owned water utility with a separate governing board appointed by the governing body of the municipality is considered part of the municipality.

SECTION 5. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Subchapter H, Chapter 2269, Government Code, is amended by adding Section 2269.3615 to read as follows:

Sec. 2269.3615. IDENTIFICATION OF PROJECT TEAM. (a) A governmental entity may require a design-build firm responding to a request for detailed proposals to identify companies that will:

(1) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) If a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

SECTION 6. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Subchapter H, Chapter 2267, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Section 2267.3615 to read as follows:

Sec. 2267.3615. IDENTIFICATION OF PROJECT TEAM. (a) A governmental entity may require a design-build firm responding to a request for detailed proposals to identify companies that will:

(1) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) If a design-build firm required to identify companies

under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

SECTION 7. Section 252.048(c-1), Local Government Code, is amended to read as follows:

(c-1) If a change order for a public works contract in a municipality with a population of 300,000 [~~500,000~~] or more involves a decrease or an increase of $100,000 or less, or a lesser amount as provided by ordinance, the governing body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

SECTION 8. Section 49.273(i), Water Code, is amended to read as follows:

(i) If changes in plans or specifications are necessary

after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes. The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less. The aggregate of the change orders may not increase the original contract price by more than 25 [~~10~~] percent. Additional change orders may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.

SECTION 9. The changes in law made by this Act to Sections 791.011 and 2252.002, Government Code, and Section 49.273(i), Water Code, apply only to a contract made on or after the effective date of this Act.

SECTION 10. The changes in law made by this Act to Sections 2267.3615 and 2269.3615, Government Code, as added by this Act, apply only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

SECTION 11. Section 2267.353(d), Government Code, is repealed.

SECTION 12. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 1050 was passed by the House on May 7, 2013, by the following vote: Yeas 144, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1050 on May 24, 2013, by the following vote: Yeas 139, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1050 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

AN ACT

relating to customer notification of water loss by a retail public utility.

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

SECTION 1. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.148 to read as follows:

Sec. 13.148. NOTIFICATION OF WATER LOSS. (a) The commission by rule shall require a retail public utility that files a water audit required by Section 16.0121 to notify each of the utility's customers of the water loss reported in the water audit.

(b) A retail public utility shall provide the notice required under Subsection (a) on or with:

(1) the utility's next annual consumer confidence report delivered after the water audit is filed; or

(2) the next bill the customer receives after the water audit is filed.

SECTION 2. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 1461 was passed by the House on May 10, 2013, by the following vote: Yeas 140, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1461 was passed by the Senate on May 20, 2013, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

AN ACT

relating to bids for construction contracts for certain conservation and reclamation districts.

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

SECTION 1. Section 49.273(i), Water Code, is amended to read as follows:

(i) If changes in plans or specifications are necessary after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes. The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less. The aggregate of the change orders may not increase the original contract price by more than 25 [~~10~~] percent. Additional change orders may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.

SECTION 2. Subchapter I, Chapter 49, Water Code, is amended by adding Section 49.2731 to read as follows:

Sec. 49.2731. PROCEDURES FOR ELECTRONIC BIDS. (a) A district may receive bids under Section 49.273 through electronic

transmission if the board of the district adopts rules to ensure the identification, security, and confidentiality of electronic bids and to ensure that the electronic bids remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is required to be sealed. A provision of this chapter that applies to a sealed bid applies to a bid received through electronic transmission in accordance with the rules adopted under Subsection (a).

SECTION 3. The change in law made by this Act applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 2704 was passed by the House on May 2, 2013, by the following vote: Yeas 147, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2704 was passed by the Senate on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

AN ACT

relating to the operation, powers, and duties of certain water districts.

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

SECTION 1. Section 388.005, Health and Safety Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) Except as provided by Subsection (h), this section does not apply to the electricity consumption of a district as defined by Section 36.001 or 49.001, Water Code, that relates to the operation and maintenance of facilities or improvements for:

(1) wastewater collection and treatment;

(2) water supply and distribution; or

(3) storm water diversion, detention, or pumping.

(h) At least once every five years, a political subdivision that is a district as defined by Section 36.001 or 49.001, Water Code, shall for district facilities described by Subsection (g):

(1) evaluate the consumption of electricity;

(2) establish goals to reduce the consumption of electricity; and

(3) identify and implement cost-effective energy efficiency measures to reduce the consumption of electricity.

SECTION 2. Section 375.161, Local Government Code, is amended to read as follows:

Sec. 375.161. CERTAIN RESIDENTIAL PROPERTY EXEMPT.

(a) Except as provided by Subsection (b), the [~~The~~] board may not impose an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication under this chapter on single-family detached residential property, duplexes, triplexes, and fourplexes [~~quadraplexes~~].

(b) This section does not apply to a tax authorized or approved by the voters of the district or a required payment for a service provided by the district, including water and sewer services.

SECTION 3. Section 552.014, Local Government Code, is amended to read as follows:

Sec. 552.014. CONTRACTS WITH WATER DISTRICTS OR NONPROFIT CORPORATIONS. (a) In this section:

(1) "Project" means a water supply or treatment system, a water distribution system, a sanitary sewage collection or treatment system, works or improvements necessary for drainage of land, recreational facilities, roads and improvements in aid of roads, or facilities to provide firefighting services.

(2) "Water district"[~~, "water district"~~] means a district created under Article XVI, Section 59, of the Texas Constitution.

(b) A municipality may enter into a contract with a water district or with a corporation organized to be operated without profit under which the district or corporation will acquire for the benefit of and convey to the municipality, either separately or together, one or more projects [~~a water supply or treatment system, a water distribution system, a sanitary sewage collection or~~

~~treatment system, or works or improvements necessary for drainage of land in the municipality~~]. In connection with the acquisition, the district or corporation shall improve, enlarge, or extend the existing municipal facilities as provided by the contract.

(c) If the contract provides that the municipality assumes ownership of the project [~~water, sewer, or drainage system~~] on completion of construction or at the time that all debt incurred by the district or corporation in the acquisition, construction, improvement, or extension of the project [~~system~~] is paid in full, the municipality may make payments to the district or corporation for project [~~water, sewer, or drainage~~] services to part or all of the residents of the municipality. The contract may provide for purchase of the project [~~system~~] by the municipality through periodic payments to the district or corporation in amounts that, together with the net income of the district or corporation, are sufficient to pay the principal of and interest on the bonds of the district or corporation as they become due. The contract may provide:

(1) that any payments due under this section are payable from and are secured by a pledge of a specified part of the revenues of the municipality, including revenues from municipal sales and use taxes [~~municipal water system, sewer system, or drainage system~~];

(2) for the levying of a tax to make payments due under this section; or

(3) that the payments due under this section be made from a combination of revenues [~~from the system~~] and taxes.

(d) The contract may provide that the district or corporation may use the streets, alleys, and other public ways and places of the municipality for project [~~water, sewer, or drainage~~] purposes for a period that ends at the time the indebtedness of the district or corporation is paid in full and the municipality acquires title to the project [~~system~~] in accordance with this section.

(e) The contract may provide for the operation of the project [~~system~~] by the municipality, and, if so authorized, the municipality may operate the project [~~system~~].

(f) A contract under this section must be authorized by a majority vote of the governing body of the municipality.

(g) This section does not authorize a water district or corporation described by Subsection (b) to participate in a project that the water district or corporation is not authorized to participate in under other law.

SECTION 4. Section 49.059, Water Code, is amended to read as follows:

Sec. 49.059. [~~DISQUALIFICATION OF~~] TAX ASSESSOR AND COLLECTOR. (a) A district may employ or contract with any person to serve as its tax assessor and collector who is:

(1) an individual certified as a registered Texas assessor-collector; or

(2) a firm, organization, association, partnership, corporation, or other legal entity if an individual certified as a registered Texas assessor-collector owns an interest in or is employed by the firm, organization, association, partnership,

corporation, or other legal entity.

(b) A tax assessor and collector employed or contracted for under this section is not required to be a natural person.

(c) A firm, organization, association, partnership, corporation, or other legal entity serving as district tax assessor and collector shall give a bond as required by Section 49.057 for a natural person.

(d) No person may serve as tax assessor and collector of a district providing potable water or sewer utility services to household users if that person:

(1) is a natural person related within the third degree of affinity or consanguinity to any developer of property in the district, a member of the board, or the manager, engineer, or attorney for the district;

(2) is or was within two years immediately preceding the assumption of assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned by a developer of property within the district or any director, manager, engineer, or attorney for the district; or

(4) is directly or through a corporation developing land in the district or is a director, engineer, or attorney for the district.

(e) [~~(b)~~] Within 60 days after the board determines a

relationship or employment exists which constitutes a disqualification under Subsection (d) [~~(a)~~], it shall replace the person serving as tax assessor and collector with a person who would not be disqualified.

(f) [~~(c)~~] Any person who wilfully violates the provisions of Subsection (d) [~~(a)~~] is guilty of a misdemeanor and on conviction shall be fined not less than $100 nor more than $1,000.

(g) [~~(d)~~] As used in this section, "developer of property in the district" has the same meaning as in Section 49.052(d).

SECTION 5. Section 49.063, Water Code, is amended to read as follows:

Sec. 49.063. NOTICE OF MEETINGS. (a) Notice of meetings of the board shall be given as set forth in the open meetings law, Chapter 551, Government Code, except that if a district does not have a meeting place within the district, the district shall post notice of its meeting at a public place within the district specified by the board in a written resolution, rather than at its administrative office. The board shall specify such public place to be a bulletin board or other place within the district which is reasonably available to the public.

(b) The validity of an action taken at a board meeting is not affected by:

(1) [~~Neither~~] failure to provide notice of the meeting if the meeting is a regular meeting;

(2) [~~nor~~] an insubstantial defect in notice of the [~~any~~] meeting; or

(3) failure of a county clerk to timely or properly

post or maintain public access to a notice of the meeting if notice of the meeting is furnished to the county clerk in sufficient time for posting under Section 551.043(a) or 551.045, Government Code [~~shall affect the validity of any action taken at the meeting~~].

SECTION 6. Subsections (a), (b), (c), and (h), Section 49.102, Water Code, are amended to read as follows:

(a) Before issuing any bonds or other obligations, an election shall be held within the boundaries of the proposed district on a uniform election date provided by Section 41.001, Election Code, to determine if the proposed district shall be established and, if the directors of the district are required by law to be elected, to elect permanent directors.

(b) Notice of a confirmation or director election shall state the day and place or places for holding the election, the propositions to be voted on, and, if applicable, the number of directors to be voted on.

(c) The ballots for a confirmation election shall be printed to provide for voting "For District" and "Against District." Ballots for a directors election shall provide the names of the persons appointed by the governing body who qualified and are serving as temporary directors at the time the election is called. If the district has received an application by a write-in candidate, the [~~The~~] ballots shall also have blank places after the names of the temporary directors in which a voter may write the names of any candidates appearing on the list of write-in candidates required by Section 146.031, Election Code [~~other persons for directors~~].

(h) Unless otherwise agreed, the elected directors shall decide the initial terms of office by lot, with a simple majority of the elected directors serving until the second succeeding directors election and the remaining elected directors serving until the next directors election.

SECTION 7. Subsections (a) and (b), Section 49.103, Water Code, are amended to read as follows:

(a) Except as provided by Section 49.102, the members of the board of a district shall serve staggered [~~for~~] four-year terms.

(b) After confirmation of a district, an [~~An~~] election shall be held on the uniform election date, provided by Section 41.001, [~~established by the~~] Election Code, in May of each even-numbered year to elect the appropriate number of directors.

SECTION 8. Subchapter D, Chapter 49, Water Code, is amended by adding Section 49.1045 to read as follows:

Sec. 49.1045. CERTIFICATION OF ELECTION RESULTS IN LESS POPULOUS DISTRICTS. (a) This section applies only to a district that:

(1) has 10 or fewer registered voters; and

(2) holds an election jointly with a county in which the district is wholly or partly located.

(b) A district may provide for an inquiry into and certification of the voting results of an election under this section if:

(1) the election results indicate that the number of votes cast in the election was greater than the number of registered voters in the district;

(2) the board determines that the election results are likely to be disputed in court; and

(3) the board can determine from the official list of registered voters prepared by the county voter registrar or county elections administrator for the district election which voters were qualified to vote in the district election and can determine from the signature roster from the joint election who voted in the joint election.

(c) To certify the district votes, the board by rule shall adopt a procedure to determine for each person who signed the signature roster as a voter in the joint election:

(1) whether the person's address on the day of the election was in the district; and

(2) how the person voted in the district election.

(d) The certified votes are the official election results.

(e) Certification of the results under this section does not preclude the filing of an election contest.

SECTION 9. Subsections (c) and (d), Section 49.105, Water Code, are amended to read as follows:

(c) If the number of directors is reduced to fewer than a majority or if a vacancy continues beyond the 90th day after the date the vacancy occurs, the vacancy or vacancies may [~~shall~~] be filled by appointment by the commission if the district is required by Section 49.181 to obtain commission approval of its bonds or by the county commissioners court if the district was created by the county commissioners court, regardless of whether a petition has been presented to the board under Subsection (b). An appointed

director shall serve for the unexpired term of the director he or she is replacing.

(d) In the event of a failure to elect one or more members of the board of a district resulting from the absence of, or failure to vote by, the qualified voters in an election held by the district, the current members of the board or temporary board holding the positions not filled at such election shall be deemed to have been elected [~~reelected~~] and shall serve an additional term of office, or, in the case of a temporary board member deemed elected under this subsection, the initial term of office.

SECTION 10. Section 49.108, Water Code, is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) On or before the first day for early voting by personal appearance at an election held to authorize a contract, a substantially final form of the contract must be filed in the office of the district and must be open to inspection by the public. The contract is not required to be attached as an exhibit to the order calling the election to authorize the contract.

(h) A single contract may contain multiple purposes or provisions for multiple facilities authorized by one or more constitutional provisions. The contract may generally describe the facilities to be acquired or financed by the district without reference to specific constitutional provisions. A contract described by this subsection may be submitted for approval in a single proposition at an election.

(i) A contract between districts to provide facilities or services is not required to specify the maximum amount of bonds or

expenditures authorized under the contract if:

(1) the contract provides that the service area cannot be enlarged without the consent of at least two-thirds of the boards of directors of the districts that are:

(A) included in the service area as proposed to be enlarged; or

(B) served by the facilities or services provided in the contract;

(2) the contract provides that bonds or expenditures, payable wholly or partly from contract taxes, are issued or made:

(A) on an emergency basis; or

(B) to purchase, construct, acquire, own, operate, repair, improve, or extend services or facilities necessary to comply with changes in applicable regulatory requirements; or

(3) the contract provides that the bonds or expenditures require prior approval by any district that is obligated to pay debt service on those bonds or to pay for those expenditures wholly or partly with contract taxes.

SECTION 11. Subchapter D, Chapter 49, Water Code, is amended by adding Sections 49.109, 49.110, 49.111, 49.112, and 49.113 to read as follows:

Sec. 49.109. AGENT DURING ELECTION PERIOD. The board may appoint a person, including a district officer, employee, or consultant, to serve as the district's agent under Section 31.123, Election Code.

Sec. 49.110. ELECTION JUDGE. (a) The notice requirements

for the appointment of a presiding election judge under Section 32.009, Election Code, do not apply to an election held by a district.

(b) To serve as an election judge in an election held by a district, a person must be a registered voter of the county in which the district is wholly or partly located. To the extent of any conflict with Section 32.051, Election Code, this section controls.

Sec. 49.111. EXEMPTIONS FROM USE OF ACCESSIBLE VOTING SYSTEMS. (a) Notwithstanding Sections 61.012 and 61.013, Election Code, a district is exempt from the acquisition, lease, or use of an electronic voting system for an election if:

(1) the election is a confirmation election or an election held jointly with a confirmation election on the same date and in conjunction with the confirmation election, except for an election in which a federal office appears on the ballot;

(2) the most recently scheduled district directors' election was not held, as provided by Section 2.053(b), Election Code; or

(3) fewer than 250 voters voted at the most recently held district directors' election.

(b) A district eligible for the exemption under Subsection (a) must publish notice in a newspaper of general circulation in an area that includes the district or mail notice to each voter in the district regarding the district's intention to hold an election without providing a voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day and during the period for early voting by personal appearance. The

notice must be published or mailed not later than the later of:

(1) the 75th day before the date of the election; or

(2) the date on which the district adopts the order calling the election.

(c) The notice required by Subsection (b) must:

(1) provide that any voter in the district may request the use of a voting station that meets the accessibility requirements for voting by a person with a disability; and

(2) provide information on how to submit such a request.

(d) The district shall comply with a request for an accessible voting station if the request is received not later than the 45th day before the date of the election.

Sec. 49.112. CANCELLATION OF ELECTION; REMOVAL OF BALLOT MEASURE. Before the first day of early voting by personal appearance, the board by order or resolution may cancel an election called at the discretion of the district or may remove from the ballot a measure included at the discretion of the district. A copy of the order or resolution must be posted during the period for early voting by personal appearance and on election day at each polling place that is used or that would have been used in the election.

Sec. 49.113. NOTICE FOR FILING FOR PLACE ON BALLOT. A notice required by Section 141.040, Election Code, must be posted at the district's administrative office in the district or at the public place established by the district under Section 49.063 of this chapter not later than the 30th day before the deadline for a

candidate to file an application for a place on the ballot of a district directors' election.

SECTION 12. Subsection (c), Section 49.151, Water Code, is amended to read as follows:

(c) The board may allow disbursements of district money to be transferred by federal reserve wire system or by electronic means. The board by resolution may allow the wire or electronic transfers to accounts in the name of the district or accounts not in the name of the district.

SECTION 13. Subsections (a) and (c), Section 49.154, Water Code, are amended to read as follows:

(a) The board may declare an emergency in the matter of funds not being available to pay principal of and interest on any bonds of the district payable in whole or in part from taxes or to meet any other needs of the district and may issue [~~negotiable~~] tax anticipation notes or [~~negotiable~~] bond anticipation notes to borrow the money needed by the district without advertising or giving notice of the sale. A district's bond anticipation notes or tax anticipation notes are negotiable instruments within the meaning and purposes of the Business & Commerce Code notwithstanding any provision to the contrary in that code. Bond anticipation notes and tax anticipation notes shall mature within one year of their date.

(c) Bond anticipation notes may be issued for any purpose for which bonds of the district may be issued [~~have previously been voted~~] or [~~may be issued~~] for the purpose of refunding previously issued bond anticipation notes. A district may covenant with the

purchasers of the bond anticipation notes that the district will use the proceeds of sale of any bonds in the process of issuance for the purpose of refunding the bond anticipation notes, in which case the board will be required to use the proceeds received from sale of the bonds in the process of issuance to pay principal, interest, or redemption price on the bond anticipation notes.

SECTION 14. Subsection (a), Section 49.181, Water Code, is amended to read as follows:

(a) A district may not issue bonds to finance a project for which the commission has adopted rules requiring review and approval unless the commission determines that the project [~~to be financed by the bonds~~] is feasible and issues an order approving the issuance of the bonds. This section does not apply to:

(1) refunding bonds if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board;

(4) refunding bonds issued to refund bonds described by Subdivision (3); or

(5) bonds issued by a public utility agency created

under Chapter 572, Local Government Code, any of the public entities participating in which are districts if at least one of those districts is a district described by Subsection (h)(1)(E).

SECTION 15. Section 49.194, Water Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (h) to read as follows:

(a) Except as provided by Subsection (h), after [~~After~~] the board has approved the audit report, it shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year.

(b) Except as provided by Subsection (h), if [~~If~~] the board refuses to approve the annual audit report, the board shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year, accompanied by a statement from the board explaining the reasons for its failure to approve the report.

(c) Copies of the audit report, the annual financial dormancy affidavit, or annual financial report described in Sections 49.197 and 49.198 shall be filed annually in the office of the district.

(h) A special water authority shall submit a copy of the audit report to the executive director for filing not later than the 160th day after the date the special water authority's fiscal year ends.

SECTION 16. Section 49.212, Water Code, is amended by amending Subsection (d) and adding Subsections (d-1) and (d-2) to read as follows:

(d) Notwithstanding any provision of law to the contrary, a district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, must comply with Chapter 395, Local Government Code. A charge or fee is not an impact fee under that chapter if:

(1) the charge or fee is imposed by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, for capacity in storm water detention or retention facilities and related storm water conveyances, or for wholesale facilities that serve such water, sanitary sewer, [~~or~~] drainage, or storm water detention or retention facilities; and

(2) the charge or fee:

(A) [~~that (i)~~] does not exceed three times the actual [~~and reasonable~~] costs to the district for such tap or connection;

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

(C) is [~~(iii) if~~] made by a district for retail or wholesale service on land that at the time of platting was not being provided with water, [~~or~~] wastewater, drainage, or storm water detention or retention service by the district[~~, shall not be~~

~~deemed to be an impact fee under Chapter 395, Local Government Code~~].

(d-1) Actual costs under Subsections (d)(1) and (d)(2), as determined by the board in its reasonable discretion, may include nonconstruction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities.

(d-2) A district may pledge the revenues of the district's utility system to pay the principal of or interest on bonds issued to construct the capital improvements for which a charge or fee is [~~was~~] imposed under Subsection (d) [~~this subsection~~], and money received from the fees shall be considered revenues of the district's utility system for purposes of the district's bond covenants.

SECTION 17. Subsection (b), Section 49.2121, Water Code, is amended to read as follows:

(b) A district may:

(1) accept a credit card for the payment of any fees and charges imposed by the district;

(2) collect a fee[~~, not to exceed five percent of the amount of the fee or charge being paid,~~] that is reasonably related to the expense incurred by the district in processing the payment by credit card; and

(3) collect a service charge for the expense incurred by the district in collecting the original fee or charge if the

payment by credit card is not honored by the credit card company on which the funds are drawn.

SECTION 18. Section 49.216, Water Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) Any peace officer who is directly employed by a district, before beginning to perform any duties and at the time of appointment, must take an oath and execute a bond conditioned on faithful performance of such officer's duties in the amount of $1,000 payable to the district. The oath and the bond shall be filed in the district office.

(f) A peace officer contracted for by the district, individually or through a county, sheriff, constable, or municipality, is an independent contractor, and the district is responsible for the acts or omissions of the peace officer only to the extent provided by law for other independent contractors.

SECTION 19. Subsections (d) and (e), Section 49.273, Water Code, are amended to read as follows:

(d) For contracts over $75,000 [~~$50,000~~], the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice must [~~shall~~] be published in one or more newspapers circulated in each county in which [~~part of~~] the district is located. [~~If one newspaper meets both of these requirements, publication in such newspaper is sufficient.~~] If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. The notice must [~~shall~~] be published

once a week for two consecutive weeks before the date that the bids are opened, and the first publication must [~~shall~~] be not later than the 14th [~~21st~~] day before the date of the opening of the sealed bids.

(e) For contracts over $25,000 but not more than $75,000 [~~$50,000~~], the board shall solicit written competitive bids on uniform written specifications from at least three bidders.

SECTION 20. Section 49.351, Water Code, is amended by amending Subsections (a), (b), (c), (f), (i), and (l) and adding Subsection (m) to read as follows:

(a) A district providing potable water or sewer service to household users may, separately or jointly with another district, municipality, or other political subdivision, establish, operate, and maintain, finance with ad valorem taxes, mandatory fees, or voluntary contributions, and issue bonds for a fire department to perform all fire-fighting services within the district as provided in this subchapter and may provide for [~~issue bonds or impose a mandatory fee, with voter approval, for financing a plan approved in accordance with this section, including~~] the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

(b) After complying with the requirements of this section [~~approval of the district electors of a plan to operate, jointly operate, or jointly fund the operation of a fire department, and after complying with Subsections (g), (h), and (i)~~], the district or districts shall provide an adequate system and water supply for fire-fighting purposes, may purchase necessary land, may construct

and purchase necessary buildings, facilities, and equipment, and may employ or contract with a fire department to employ all necessary personnel including supervisory personnel to operate the fire department.

(c) For [~~Bonds for~~] financing a plan approved in accordance with this section, bonds and ad valorem taxes must [~~shall~~] be authorized and may be issued or imposed[~~, and a district shall be authorized to levy a tax to pay the principal of and interest on such bonds,~~] as provided by law for the authorization and issuance of other bonds and the authorization and imposition of other ad valorem taxes of the district.

(f) Before a district imposes an ad valorem tax or issues bonds payable wholly or partly from ad valorem taxes to finance the establishment of [~~establishes~~] a fire department, contracts to operate a joint fire department, or contracts with another person to perform fire-fighting services within the district, the district must comply with [~~the provisions of~~] Subsections (g), (h), and (i).

(i) After approval of a plan by the commission, the district shall hold an [~~submit to the electors of the district at the~~] election to approve the plan, approve bonds payable wholly or partly from ad valorem taxes, and [~~or to~~] impose ad valorem taxes [~~a mandatory fee~~] for financing the plan. The election[~~, or if no bonds or fees are to be approved, at an election called for approval of the plan, which~~] may be held in conjunction with an election required by Section 49.102[~~, the proposition of whether or not the plan should be implemented or entered into by the district~~]. [~~The ballots at the election shall be printed, as applicable, to provide~~

~~for voting for or against the proposition: "The implementation of the plan for (operation/joint operation) of a fire department"; or "The plan and contract to provide fire-fighting services for the district."~~]

(l) A [~~Notwithstanding the requirements of Subsections (a)-(j), a~~] district providing potable water or sewer service to household users may, as part of its billing process, collect from its customers a voluntary contribution on behalf of organizations providing fire-fighting services to the district. A district that chooses to collect a voluntary contribution under this subsection must give reasonable notice to its customers that the contribution is voluntary. Water and sewer service may not be terminated as a result of failure to pay the voluntary contribution.

(m) If a customer makes a partial payment of a district bill for water or sewer service and includes with the payment a voluntary contribution for fire-fighting services under Subsection (l), the district shall apply the voluntary contribution first to the bill for water or sewer service, including any interest or penalties imposed. The district shall use any amount remaining for fire-fighting services.

SECTION 21. Subdivision (1), Section 49.462, Water Code, is amended to read as follows:

(1) "Recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting. The term does not include a minor improvement or

beautification project to land acquired or to be acquired as part of a district's water, sewer, or drainage facilities.

SECTION 22. Subchapter N, Chapter 49, Water Code, is amended by adding Section 49.4641 to read as follows:

Sec. 49.4641. RECREATIONAL FACILITIES ON SITES ACQUIRED FOR WATER, SEWER, OR DRAINAGE FACILITIES. (a) A district may develop and maintain recreational facilities on a site acquired for the purpose of developing water, sewer, or drainage facilities.

(b) A district is not required to prorate the costs of a site described by Subsection (a) between the primary water, sewer, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the intended water, sewer, or drainage purpose.

(c) The engineer may consider the following factors in determining the reasonableness of the size of a water, sewer, or drainage site:

(1) the rules, regulations, and design guidelines or criteria of a municipality, county, or other entity exercising jurisdiction;

(2) sound engineering principles;

(3) the impact on adjoining property;

(4) the availability of sites that meet the requirements for the proposed use;

(5) requirements for sanitary control;

(6) the need for a buffer zone to mitigate noise or for aesthetic purposes;

(7) benefits to storm water quality; and

(8) anticipated expansions of facilities resulting from:

(A) future growth and demand for district facilities; or

(B) changes in regulatory requirements.

SECTION 23. Subsections (a) and (b), Section 49.4645, Water Code, are amended to read as follows:

(a) A district all or part of which is located in Bastrop County, Bexar County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Montgomery County, or Fort Bend County may issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities only if the bonds are authorized by a majority vote of the [~~qualified~~] voters of the district voting in an election held for that purpose. The outstanding principal amount of bonds, notes, and other obligations issued to finance parks and recreational facilities supported by ad valorem taxes [~~payable from any source~~] may not exceed an amount equal to one percent of the value of the taxable property in the district or, if supported by contract taxes under Section 49.108, may not exceed an amount equal to one percent of the value of the taxable property in the districts making payments under the contract as shown by the tax rolls of the central appraisal district at the time of the issuance of the bonds, notes, and other obligations or an amount greater than the estimated cost provided in the park plan under Subsection (b), whichever is smaller. To establish the value of the taxable

property in a district under this section, the district may use an estimate of the value provided by the central appraisal district. The district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of:

(1) indoor or outdoor swimming pools; or

(2) golf courses.

(b) On or before the 10th day before the first day for early voting by personal appearance at [~~Not later than the 10th day before~~] an election [~~is~~] held to authorize the issuance of bonds for the development and maintenance of recreational facilities, the board shall file in the district office for review by the public a park plan covering the land, improvements, facilities, and equipment to be purchased or constructed and their estimated cost, together with maps, plats, drawings, and data fully showing and explaining the park plan. The park plan is not part of the proposition to be voted on, [~~and the park plan~~] does not create a contract with the voters, and may be amended at any time after the election held to authorize the issuance of bonds for the development and maintenance of recreational facilities provided under the plan. The estimated cost stated in the amended park plan may not exceed the amount of bonds authorized at that election.

SECTION 24. Section 51.072, Water Code, is amended to read as follows:

Sec. 51.072. QUALIFICATIONS FOR DIRECTOR. (a) To be qualified for election as a director, a person must:

(1) be a resident of the state;

(2) [~~,~~] own land subject to taxation in the district or

be a qualified voter in the district; [~~,~~] and

(3) be at least 18 years of age.

(b) Section 49.052 does not apply to a district governed by this chapter whose principal purpose is providing water for irrigation.

SECTION 25. Section 51.335, Water Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The district shall not usurp functions or duplicate a service already adequately exercised or rendered by the other governmental agency except:

(1) under a valid contract with the other governmental agency; or

(2) as provided by Subsection (c).

(c) The district may finance, develop, and maintain recreational facilities under Subchapter N, Chapter 49, even if similar facilities may be provided by a political subdivision or other governmental entity included wholly or partly in the district.

SECTION 26. Section 51.523, Water Code, is amended to read as follows:

Sec. 51.523. BALLOTS. The ballot for an election under this subchapter shall be printed to provide for voting for or against substantially the proposition: "Designation of the area, issuance of bonds, [~~and~~] levy of a tax to retire the bonds, and levy of a maintenance tax."

SECTION 27. Section 51.527, Water Code, is amended by

adding Subsection (c) to read as follows:

(c) After bonds issued for the defined area or designated property are fully paid or defeased, the board may declare the defined area dissolved or may repeal the designation of the designated property. After that declaration or repeal, the board shall cease imposing any special taxes authorized under the adopted tax plan on the property located in the defined area or on the designated property.

SECTION 28. Subsection (f), Section 54.016, Water Code, is amended to read as follows:

(f) A city may provide in its written consent for the inclusion of land in a district that is initially located wholly or partly outside the corporate limits of the city that a contract ("allocation agreement") between the district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district. The allocation agreement shall contain the following provisions:

(1) a method by which the district shall continue to exist following the annexation of all territory within the district by the city, if the district is initially located outside the corporate limits of the city;

(2) an allocation of the taxes or revenues of the district or the city which will assure that, following the date of the inclusion of all the district's territory within the corporate limits of the city, the total annual ad valorem taxes collected by the city and the district from taxable property within the district does not exceed an amount greater than the city's ad valorem tax

upon such property;

(3) an allocation of governmental services to be provided by the city or the district following the date of the inclusion of all of the district's territory within the corporate limits of the city; and

(4) such other terms and conditions as may be deemed appropriate by the city.

SECTION 29. Section 54.236, Water Code, is amended to read as follows:

Sec. 54.236. STREET OR SECURITY LIGHTING. (a) Subject to the provisions of this section, a district may purchase, install, operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way or property owned by [~~within the boundaries of~~] the district.

(b) A district may not issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting, except as authorized by Section 54.234 or Subchapter N, Chapter 49.

SECTION 30. Section 54.739, Water Code, is amended to read as follows:

Sec. 54.739. SUBSTITUTING LAND OF EQUAL VALUE. After the district is organized and has obtained voter approval for the issuance of, or has sold, bonds payable wholly or partly from ad valorem taxes [~~acquires facilities with which to function for the purposes for which it was organized, and votes, issues and sells bonds for such purposes~~], land within the district boundaries subject to taxation that does not need or utilize the services of

the district may be excluded and other land not within the boundaries of the district may be included within the boundaries of the district without impairment of the security for payment of the bonds or invalidation of any prior bond election, as provided by this section and Sections 54.740 through 54.747.

SECTION 31. Section 54.744, Water Code, is amended to read as follows:

Sec. 54.744. IMPAIRMENT OF SECURITY. (a) For purposes of the board's consideration of the applications, the lands proposed for inclusion shall be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if:

(1) according to the most recent tax roll of the district or the most recently certified estimates of taxable value from the chief appraiser of the appropriate appraisal district, the taxable value of such included lands equals or exceeds the taxable value of the excluded lands; and

(2) either the estimated costs of providing district facilities and services to such included lands is equal to or less than the estimated costs of providing district facilities and services to the excluded lands or any increased estimated costs of providing district facilities and services to the included land, as determined by the district's engineer, can be amortized at prevailing bond interest rates and maturity schedules and the prevailing debt service tax rate of the district, as determined by the district's professional financial advisor, when applied to the increase in taxable value of the included land over the taxable

value of the excluded land.

(b) If the district has any[~~; and (3) the district's~~] outstanding bonds or contract obligations [~~are~~] payable in whole or in part by a pledge of net revenues from the ownership or operation of the district's facilities at the time the board considers an application, the lands proposed for inclusion shall be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if[~~, and~~] the projected net revenues to be derived from the lands to be included during the succeeding 12-month period, as determined by the district's engineer, equals or exceeds the projected net revenues that would otherwise have been derived from the lands to be excluded during the same period.

(c) In this section, the taxable value of included land means the market value of the land if, before or contemporaneously with the inclusion of the land in the district, the owner of the land waives the right to special appraisal of the land as to the district under Section 23.20, Tax Code.

SECTION 32. Subsection (g), Section 49.103, Water Code, is repealed.

SECTION 33. The legislature finds that an agreement entered into before September 1, 2013, by a municipality and a municipal utility district is an allocation agreement only if:

(1) the district is initially located wholly or partly outside the corporate limits of the municipality;

(2) the agreement strictly complies with the requirements of Subsection (f), Section 54.016, Water Code, as that section existed immediately before the effective date of this Act;

and

(3) the agreement is specifically designated by the parties to the agreement as an "allocation agreement" under Subsection (f), Section 54.016, Water Code.

SECTION 34. Not later than December 1, 2014, the Texas Commission on Environmental Quality shall adopt any rules or amendments to existing rules necessary to implement Section 49.4641, Water Code, as added by this Act.

SECTION 35. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2013.

(b) Sections 54.739 and 54.744, Water Code, as amended by this Act, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; otherwise, those sections take effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 902 passed the Senate on March 21, 2013, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 902 passed the House on May 2, 2013, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §290.272 *with change* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4132) and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In 2013, the 83rd Legislature passed House Bill (HB) 1461, which requires all retail public utilities to notify their customers of water loss reported in their water loss audits filed with the Texas Water Development Board (TWDB). The notice shall be provided through the utility's consumer confidence report (CCR) or in the customer's bill after the water loss audit is filed. The purpose of this adopted rulemaking is to amend Chapter 290 to reflect the legislative changes to Texas Water Code (TWC), §13.148, Notification of Water Loss.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 291, Utility Regulations, and 30 TAC Chapter 293, Water Districts.

Section Discussion

In addition to implementation of the state law discussed previously, the commission adopts administrative changes throughout the adopted rule to update terminology and conform with *Texas Register* requirements.

§290.272, Content of the Report

The commission adopts the amendment to §290.272(b)(2)(E) to correct the existing acronym for micrograms per liter. The commission adds §290.272(h) to implement the changes made to TWC, §13.148, in HB 1461 to remain consistent with the amended statute. The rulemaking is adopted to ensure that retail public utilities notify their customers of water loss reported in their filed water loss audits. HB 1461 specifies that the requirement to provide water loss information to customers is in conjunction with water loss audits filed pursuant to TWC, §16.0121, Water Audits (submitted to the TWDB). Adopted subsection (h) requires the retail public utility to notify its customers of water loss through its next CCR following the filing of the water loss audit, unless the retail public utility elects to notify its customers through the next bill sent to its customers; either notification method is allowed under the legislation. In response to comments, the commission has revised §290.272(h) to clarify that the water loss may be included "on or with" the next CCR filed by the utility.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas

Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended 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. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also states that the notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not 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. The cost of complying with the adopted rule is not expected to be significant with respect to the economy. Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the

notification of water loss from retail public utilities to their customers. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not 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. Finally, the rulemaking will be adopted pursuant to the commission's specific authority in TWC, Chapter 13, Subchapter E. Therefore, the rule is not adopted solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also requires that this notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed. The adopted rule would substantially advance this purpose by amending Chapter 290 to incorporate the new statutory requirement.

Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The adopted rule will primarily affect those retail public utilities that experience water loss; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of this rulemaking with the CMP.

Public Comment

The commission held a public hearing on June 26, 2014. The comment period closed on

June 30, 2014. The commission received comments on this rulemaking from the American Water Works Association - Texas Section, Austin Water Utility, the City of Seguin (City), and the San Antonio Water System (SAWS).

American Water Works Association - Texas Section, Austin Water Utility, and SAWS commented that the proposed rule should be revised to accurately reflect the intent of HB 1461. The City requested the executive director's staffs' guidance on compliance with HB 1461.

Response to Comments

Austin Water Utility, American Water Works Association - Texas Section, and SAWS commented that the proposed changes to §290.272(h) should be amended to reflect that the water loss audit results reported to customers of retail public utilities can be provided "on or with" the CCRs or customer bills; the proposed language had indicated that the audit loss results must be provided "in" the CCRs or customer bills. These commenters stressed that, for their customers and the public to receive the most benefit from this reporting and also to reduce confusion, utilities might also include a narrative explaining what the water loss audit results mean. Additionally, Austin Water Utility, American Water Works Association - Texas Section, and SAWS expressed appreciation "that the proposed rules do not specify what metrics will be used...," stating that "it is important that such details be left up to the individual utilities to determine what data

would be the most meaningful for their customers."

In response to these comments, the commission has replaced the word "in" with the phrase "on or with" to more closely reflect the amended statute.

The City requested the executive director's staffs' guidance on complying with HB 1461 during 2014. The City commented that it should have notified its customers in the billing cycle immediately following the City's submission of its water loss audit to the TWDB, which occurred during March, 2014. And, because the City's annual CCRs have already been published and were being distributed at the time of the public hearing, the City finds itself unable to comply with HB 1461's notification methods during 2014; however, the City confirmed its intent to comply with the notification options beginning in 2015.

HB 1461 took effect on September 1, 2013, and required a retail public utility that files a water loss audit with the TWDB to provide notice of said water loss to its customers. HB 1461 allows the retail public utility to provide this information to its customers in the next CCR or the next customer bill after the filing of the audit. The commission understands the City's dilemma; however, the TCEQ has not been granted legislative authority to either waive or alter the statutory notification requirement.

Therefore, no change has been made in response to this comment.

SUBCHAPTER H: CONSUMER CONFIDENCE REPORTS

§290.272

Statutory Authority

This rule is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The adopted rule implements the language set forth in House Bill 1461, which affects all retail public utilities. Therefore, the TWC authorizes a rulemaking that amends §290.272, requiring all retail public utilities to notify their customers of water loss reported in their filed water loss audits.

§290.272. Content of the Report.

(a) Information on the source of the water delivered must be included in the report.

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on the type of the water (such as surface water or groundwater) and any commonly used name and location of the body(ies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In the reports, systems should highlight significant sources of contamination in the source water area if they have readily available information.

(3) If a system has received a source water assessment from the executive director, the report must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the executive director or written by a water system official and approved by the executive director.

(b) The following explanations must be included in the annual report.

(1) Each report must contain the following definitions.

(A) Maximum contaminant level goal (MCLG)--The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(B) Maximum contaminant level (MCL)--The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to maximum contaminant level goals as feasible using the best available treatment technology.

(C) Maximum residual disinfectant level goal (MRDLG)--The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(D) Maximum residual disinfectant level (MRDL)--The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(2) The following terms and their descriptions must be included when they appear in the report:

(A) MFL--million fibers per liter (a measure of asbestos);

(B) mrem/year--millirems per year (a measure of radiation absorbed by the body);

(C) NTU--nephelometric turbidity units (a measure of turbidity);

(D) pCi/L--picocuries per liter (a measure of radioactivity);

(E) ppb--parts per billion, or micrograms per liter (µg/L) [(µ/L)];

(F) ppm--parts per million, or milligrams per liter (mg/L);

(G) ppt--parts per trillion, or nanograms per liter (ng/L); and

(H) ppq--parts per quadrillion, or picograms per liter (pg/L).

(3) A report for a community water system operating under a variance or an exemption of the Safe Drinking Water Act must include a description of the variance

or the exemption granted under §290.102(b) [(4)] of this title (relating to General Applicability).

(4) A report that contains data on a contaminant for which the United States Environmental Protection Agency (EPA) has set a treatment technique (TT) or an action level (AL) must include, depending on the contents of the report, the following definitions.

(A) TT [Treatment technique (TT)]--A required process intended to reduce the level of a contaminant in drinking water.

(B) AL [Action level (AL)]--The concentration of a contaminant which, if exceeded, triggers treatment or other requirements that a water system must follow.

(c) Information on detected contaminants.

(1) This subsection specifies the requirements for information to be included in each report for detected contaminants subject to mandatory monitoring, excluding *Cryptosporidium*. Mandatory monitoring is required for:

(A) regulated contaminants subject to an MCL, MRDL, AL, [action level,] or TT; [treatment technique;] and

(B) unregulated contaminants for which monitoring is required by 40 Code of Federal Regulations (CFR) §141.40, [relating to Unregulated Contaminants] and found in §290.275(4) of this title (relating to Appendices A - D).

(2) The data relating to these detected contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its reports must be displayed separately.

(3) The data must be derived from data collected to comply with EPA and the commission monitoring and analytical requirements during the previous calendar year, except when a system is allowed to monitor for regulated contaminants less often than once per year. In that case, the table(s) must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report is from the most recent testing done in accordance with the regulations. The report does not need to include data that is older than five years.

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) must contain:

(A) the MCLs for those contaminants expressed as a number equal to or greater than 1.0 (as provided under §290.275 of this title);

(B) the MCLGs for those contaminants expressed in the same units as the MCLs (as provided for under §290.275 of this title);

(C) if there is no MCL for a detected contaminant, the TT [treatment technique] or specific AL [action level] applicable to that contaminant; and

(D) for contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with *National Primary Drinking Water Regulations* (NPDWR) [National Primary Drinking Water Regulations] and the range of detected levels.

(i) For contaminants subject to MCLs, except turbidity and total coliforms, when sampling takes place once per year or less often, the table(s) must contain the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When sampling takes place more than once per year at each sampling point, the table(s) must contain the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) In accordance with date requirements included in the table under §290.115(a) of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5)), entitled "Date to Start Stage 2 Compliance," for the MCLs for total trihalomethanes (TTHM) and haloacetic acids (HAA5), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all sampling points that exceed the MCL.

(iv) When compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detections expressed in the same units as the MCL.

(v) When the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done after multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Surface Water Treatment), the table(s) must contain the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) When lead and copper are reported, the table(s) must contain the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the AL [action level].

(G) When total coliform is reported, the table(s) must contain either the highest monthly number of positive samples for systems collecting fewer than 40 samples per month or the highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(H) When fecal coliform is reported, the table(s) must contain the total number of positive samples.

(I) The table(s) must contain information on the likely source(s) of detected contaminants based on the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys or source water assessments and should be used when available. If the operator lacks specific information on the likely source, the report must include one or more typical sources most applicable to the system for any particular contaminant listed under §290.275 of this title.

(i) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table(s) must contain a separate column for each service area, and the report must identify each separate distribution system. Systems may produce separate reports tailored to include data for each service area.

(ii) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or TTs [treatment techniques]. The report must contain a clear and readily understandable explanation of the violation. The explanation must include the length of the violation, the potential adverse health effects, and the actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language contained under §290.275 of this title.

(5) For detected unregulated contaminants found under §290.275 of this title, for which monitoring is required (except *Cryptosporidium),* the table(s) must contain the average and range of concentrations at which the contaminant was detected. The report must include the following explanation: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted."

(d) Information on *Cryptosporidium*, radon, and other contaminants.

(1) If the system has performed any monitoring for *Cryptosporidium*, the report must include a summary of the results of any detections and an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon, which indicates that radon may be present in the finished water, the report must include the results of the monitoring and an explanation of the significance of the results.

(3) If the system has performed additional monitoring, which indicates the presence of other contaminants in the finished water, the executive director strongly encourages systems to report any results which may indicate a health concern. To determine if the results may indicate a health concern, the executive director recommends that systems find out if the EPA has proposed a standard in the NPDWR [*National Primary Drinking Water Regulations* (NPDWR)] or issued a health advisory for any particular contaminant. This information may be obtained by calling the Safe Drinking Water Hotline at (800) 426-4791. The executive director considers detections that are above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, the executive director recommends that the report include the results of the monitoring and an explanation of the significance of the results. The explanation should note the existence of a health advisory or a proposed regulation.

(e) Compliance with NPDWR. In addition to the requirements in subsection (c)(4)(I)(ii) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1) - (8) of this subsection.

(1) The report must include a clear and readily understandable explanation of each violation of monitoring and reporting of compliance data and

explain any adverse health effects and steps the system has taken to correct the violation.

(2) The report must include a clear and readily understandable explanation of each violation of filtration and disinfection prescribed by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems) and explain any adverse health effects and steps the system has taken to correct the violation. This applies both to systems that have failed to install adequate filtration, disinfection equipment, or processes, and to systems that have had a failure of such equipment or processes, each of which constitutes a violation. In either case, the report must include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(3) The report must include a clear and readily understandable explanation of each violation of the lead and copper control requirements prescribed by §290.117 of this title (relating to Regulation of Lead and Copper). For systems that fail to take one or more actions prescribed by §290.117(g), (h), and (i) of this title, the report

must include the applicable health effects language of §290.275(3) of this title for lead, copper, or both and the steps the system has taken to correct the violation.

(4) The report must include a clear and readily understandable explanation of each violation of TTs [treatment techniques] for Acrylamide and Epichlorohydrin prescribed by §290.107 of this title (relating to Organic Contaminants). If a system violates these requirements, the report must include the relevant health effects language from §290.275 of this title and the steps the system has taken to correct the violation.

(5) The report must include a clear and readily understandable explanation of each violation of recordkeeping of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(6) The report must include a clear and readily understandable explanation of each violation of special monitoring requirements for unregulated contaminants and special monitoring for sodium as prescribed by 40 CFR §141.40 and §141.41 and explain any adverse health effects and steps the system has taken to correct the violation.

(7) For systems required to conduct initial distribution sampling evaluation (IDSE) sampling in accordance with §290.115(c)(5) of this title, the system is required to include individual sample results for the IDSE when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

(8) The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) Variances and exemptions. If a system is operating under the terms of a variance or exemption issued under §290.102(b) of this title, the report must contain:

(1) an explanation of the variance or exemption;

(2) the date on which the variance or exemption was issued and on which it expires;

(3) a brief status report on the steps the system is taking, such as installing treatment processes or finding alternative sources of water, to comply with the terms and schedules of the variance or exemption; and

(4) a notice of any opportunity for public input as the review or renewal of the variance or exemption.

(g) Additional information.

(1) The report must contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water (including bottled water). This explanation may include the language contained within subparagraphs (A) - (C) of this paragraph, or systems may include their own comparable language. The report must include the language of subparagraphs (D) and (E) of this paragraph.

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include:

(i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(iii) pesticides and herbicides, which might have a variety of sources such as agriculture, urban storm water runoff, and residential uses;

(iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff, and septic systems; and

(v) radioactive contaminants, which can be naturally occurring or the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Contaminants may be found in drinking water that may cause taste, color, or odor problems. These types of problems are not necessarily causes for health concerns. For more information on taste, odor, or color of drinking water, please contact the system's business office.

(E) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline at (800) 426-4791.

(2) The report must include the telephone number of the owner, operator, or designee of the community water system as an additional source of information concerning the report.

(3) Each English language report must include the following statement in a prominent place on the first page: "Este reporte incluye informacion importante sobre el agua para tomar. Para asistencia en español, favor de llamar al telefono (XXX) XXX-XXXX." In addition to this statement in Spanish, for communities with a large proportion of limited English proficiency residents, as determined by the executive director, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings). Investor-owned utilities are encouraged to conduct public meetings, but must include a phone number for public input.

(5) The systems may include such additional information for public education consistent with, and not detracting from, the purposes of the report.

(6) Systems that use an interconnect or emergency source to augment the drinking water supply during the calendar year of the report must provide the source of

the water, the length of time used, an explanation of why it was used, and whom to call for the water quality information.

(7) Beginning December 1, 2009, any groundwater system that receives notice from a laboratory of a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title (relating to Microbial Contaminants) must inform its customers of any fecal indicator-positive groundwater source sample in the next report. The system must continue to inform the public annually until the executive director determines that the fecal contamination in the groundwater source is addressed under §290.116(a) of this title (relating to Groundwater Corrective Actions and Treatment Techniques). Each report must include the following elements:

(A) the source of the fecal contamination (if the source is known) and the dates of the fecal indicator-positive groundwater source samples;

(B) actions taken to address the fecal contamination in the groundwater source as directed by §290.116 of this title and the date of such action;

(C) for each fecal contamination in the groundwater source that has not been addressed under §290.116 of this title, the plan approved by the executive

director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) for a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title, the potential health effects using the health effects language of §290.275(3) of this title.

(8) Beginning December 1, 2009, any groundwater system that receives notice from the executive director of a significant deficiency must inform its customers of any significant deficiency that is uncorrected at the time of the next report. The system must continue to inform the public annually until the executive director determines that particular significant deficiency is corrected under §290.116 of this title. Each report must include the following elements:

(A) the nature of the particular significant deficiency and the date the significant deficiency was identified by the executive director;

(B) for each significant deficiency, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(C) if corrected before the next report, the nature of the significant deficiency, how the deficiency was corrected, and the date of the corrections.

(9) Every report must include the following lead-specific information - a short informational statement about lead in drinking water and its effect on children.

(A) The statement must include the information set forth in this example statement. "If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. NAME OF UTILITY is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at *http://www.epa.gov/safewater/lead.*"

(B) A system may write its own educational statement, but only in consultation with the executive director.

(h) Customer notification of water loss by a retail public utility. A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code, §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information on or with ~~in~~ the next report following the filing of the water loss audit, unless the retail public utility elects to notify its customers of its water loss reported in the water loss audit by including the water loss information on or with ~~in~~ the next bill sent to its customers following the filing of the water loss audit in accordance with §291.87 of this title (relating to Billing).

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §291.87 *with change* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4138) and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In 2013, the 83rd Legislature passed House Bill (HB) 1461, which requires all retail public utilities to notify their customers of water loss reported in their water loss audits filed with the Texas Water Development Board (TWDB). The notice shall be provided through the utility's consumer confidence report (CCR) or in the customer's bill after the water loss audit is filed. The purpose of this adopted rulemaking is to amend Chapter 291 to reflect the legislative changes to Texas Water Code (TWC), §13.148, Notification of Water Loss.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 290, Public Drinking Water, and 30 TAC Chapter 293, Water Districts.

Section Discussion

In addition to implementation of the state law discussed previously, the commission adopts administrative changes throughout the adopted rule to conform with *Texas Register* requirements.

§291.87, Billing

The commission adds §291.87(e)(3) to implement the changes made to TWC, §13.148, in HB 1461 to remain consistent with the amended statute. The rulemaking is adopted to ensure that retail public utilities notify their customers of water loss reported in their filed water loss audits. HB 1461 specifies that the requirement to provide water loss information to customers is in conjunction with water loss audits filed pursuant to TWC, §16.0121, Water Audits (submitted to the TWDB). Adopted paragraph (3) requires the retail public utility to notify its customers of water loss through the next bill sent to its customers following the filing of the water loss audit, unless the retail public utility elects to notify its customers through its next CCR; either notification method is allowed under the legislation. In response to comments, the commission has revised §291.87(e)(3) to clarify that the water loss may be included "on or with" the next bill sent to customers. The commission further renumbers existing §291.87(e)(3) to improve the rule's organizational structure.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas

Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended 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. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also states that the notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not 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. The cost of complying with the adopted rule is not expected to be significant with respect to the economy. Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the

notification of water loss from retail public utilities to their customers. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not 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. Finally, the rulemaking will be adopted pursuant to the commission's specific authority in the TWC, Chapter 13, Subchapter E. Therefore, the rule is not adopted solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also requires that this notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed. The adopted rule would substantially advance this purpose by amending Chapter 291 to incorporate the new statutory requirement.

Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The adopted rule will primarily affect those retail public utilities that experience water loss; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of this rulemaking with the CMP.

Public Comment

The commission held a public hearing on June 26, 2014. The comment period closed on June 30, 2014. The commission received comments on this rulemaking from the American Water Works Association - Texas Section, Austin Water Utility, the City of Seguin (City), and the San Antonio Water System (SAWS).

American Water Works Association - Texas Section, Austin Water Utility, and SAWS commented that the proposed rule should be revised to accurately reflect the intent of HB 1461. The City requested the executive director's staffs' guidance on compliance with HB 1461.

Response to Comments

Austin Water Utility, American Water Works Association - Texas Section, and SAWS commented that the proposed changes to §291.87(e)(3) should be amended to reflect that the water loss audit results reported to customers of retail public utilities can be provided "on or with" the CCRs or customer bills; the proposed language had indicated that the audit loss results must be provided "in" the CCRs or customer bills. These commenters stressed that, for their customers and the public to receive the most benefit from this reporting and also to reduce confusion, utilities might also include a narrative explaining what the water loss audit results mean. Additionally, Austin Water Utility, American Water Works Association - Texas Section, and SAWS expressed appreciation

"that the proposed rules do not specify what metrics will be used...," stating that "it is important that such details be left up to the individual utilities to determine what data would be the most meaningful for their customers."

In response to these comments, the commission has replaced the word "in" with the phrase "on or with" to more closely reflect the amended statute.

The City requested the executive director's staffs' guidance on complying with HB 1461 during 2014. The City commented that it should have notified its customers in the billing cycle immediately following the City's submission of its water loss audit to the TWDB, which occurred during March, 2014. And, because the City's annual CCRs have already been published and were being distributed at the time of the public hearing, the City finds itself unable to comply with HB 1461's notification methods during 2014; however, the City confirmed its intent to comply with the notification options beginning in 2015.

HB 1461 took effect on September 1, 2013, and required a retail public utility that files a water loss audit with the TWDB to provide notice of said water loss to its customers. HB 1461 allows the retail public utility to provide this information to its customers in the next CCR or the next customer bill after the filing of the audit. The commission understands the

City's dilemma; however, the TCEQ has not been granted legislative authority to either waive or alter the statutory notification requirement. Therefore, no change has been made in response to this comment.

SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION

§291.87

Statutory Authority

This rule is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The adopted rule implements the language set forth in House Bill 1461, which affects all retail public utilities. Therefore, the TWC authorizes a rulemaking that amends §291.87, requiring all retail public utilities to notify their customers of water loss reported in their filed water loss audits.

§291.87. Billing.

(a) Authorized rates. Bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date.

(1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer

Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either $5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential

customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate class or code;

(D) the total amount due for water service;

(E) the amount deducted as a credit required by a commission order;

(F) the amount due as a surcharge;

(G) the total amount due on or before the due date of the bill;

(H) the due date of the bill;

(I) the date by which customers must pay the bill in order to avoid addition of a penalty;

(J) the total amount due as penalty for nonpayment within a designated period;

(K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage; and

(O) the local telephone number or toll free number where the utility can be reached.

(3) A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code (TWC), §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information on or with ~~in~~ the next bill sent to its customers following the filing of the water loss audit, unless the retail public utility elects to notify its customers

of its water loss reported in the water loss audit by including the water loss information on or with ~~in~~ its next consumer confidence report following the filing of the water loss audit in accordance with §290.272 of this title (relating to Content of the Report).

(4) [(3)] Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the TWC [Texas Water Code] or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.

(g) Consolidated billing and collection contracts.

(1) This subsection applies to all retail public utilities.

(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

(h) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.89 of this title (relating to Meters). If the underbilling is $25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass,

or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(i) Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(j) Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows.

(1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.

(2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.

(k) Prorated charges due to utility service outages. In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(l) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by §291.88 of this title.

(2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage will be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average

monthly usage will be estimated on the basis of usage levels of similar customers under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service may not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.88 of this title.

(m) Notification of alternative payment programs or payment assistance. Any time customers contact a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customers in English and in Spanish, if requested, of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.

(n) Adjusted bills. There is a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills must be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or

(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's

prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.

(o) Equipment damage charges. A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes that the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the executive director.

(p) Fees. Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.

(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

(A) under a contract and only in accordance with the terms of the contract;

(B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director; or

(C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.

(2) Except as provided in §291.88(h)(2) of this title and §291.89(c) of this title other fees listed on a utility's approved tariff may be charged when appropriate.

Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

(q) Payment with cash. When a customer pays any portion of a bill with cash, the utility shall issue a written receipt for the payment.

(r) Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) informing the customer that a contribution is voluntary;

(D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) the utility's expenses in administering the contribution program; or

(B) 5.0% of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§293.1, 293.12, 293.41, 293.44, 293.51, 293.54, 293.63, 293.81, 293.94, and 293.171. Sections 293.1, 293.12, 293.54, 293.63, 293.81, 293.94, and 293.171 are adopted *without changes* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4143), and therefore, will not be republished. Sections 293.41, 293.44, and 293.51 are adopted *with changes* to the proposed text and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2013, the 83rd Legislature passed House Bill (HB) 738, HB 1050, HB 2704, and Senate Bill (SB) 902. The purpose of this adopted rulemaking is to amend Chapter 293 to reflect the legislative changes to Texas Water Code (TWC), §§49.154, 49.181, 49.194, 49.212, 49.273, 49.462, 49.4641, 49.4645, 54.0161, and 54.236.

HB 738 amends TWC, §54.0161, to specify that the commissioners court of a county in which a proposed municipal utility district (MUD) is located may review the petition and provide comment to the commission on the creation of a MUD located entirely outside the corporate limits of a municipality. HB 738 requires the commission to promptly notify a commissioners court of a MUD creation petition. Under prior law, a county could provide comments to the commission only if any portion of a proposed MUD was located outside the extraterritorial jurisdiction (ETJ) of a municipality. HB 738 expands the opportunity

for review and comment by the county commissioners court on a proposed MUD outside the corporate limits (within or outside the ETJ) of a municipality. As a result, the commission adopts an amendment to §293.12 to reflect the required notification process only for MUD creations.

HB 1050 and HB 2704 amend TWC, §49.273(i), to specify that a change order can be approved by a district's governing board, or by an official or employee responsible for purchasing or for administering a contract that is given authority by the district's governing board, so long as the aggregate of the change orders does not increase the original contract amount by more than 25%, instead of by 10% as allowed under prior statute. The commission adopts an amendment to §293.81 to reflect this increase.

SB 902, §13, specifies that bond anticipation notes (BANs) may be issued for any purpose for which bonds of the district may be issued. Prior statutory language stated that BANs may be issued for any purpose for which bonds of the district may have been previously voted, which is reflected in the existing Chapter 293 rules. Therefore, the commission adopts an amendment to §293.54 to reflect that a BAN may be issued for any purpose for which bonds of the district may be issued.

SB 902, §14, specifies that a district may not issue bonds to finance a project for which the commission has adopted rules requiring review and approval unless the commission

determines that the project is feasible and issues an order approving the issuance of the bonds. Prior statutory language stated that a district may not issue bonds (no distinguishing type) to finance a project for which the commission has adopted rules requiring review and approval unless the commission determines that the project is feasible and issues an order approving the issuance of the bonds, which is reflected in the existing Chapter 293 rule. Therefore, the commission adopts an amendment to §293.41 to reflect that the commission's review of a district's bond issue is limited to bonds to finance a project for which the commission has adopted rules requiring review and approval.

SB 902, §15, specifies that a special water authority shall submit a copy of an audit report to the commission not later than 160 days after the special water authority's fiscal year end. Prior statutory language allowed for an audit report from any type of water district or authority to be filed within 135 days after the close of the district's fiscal year end, which is reflected in the existing Chapter 293 rule. Therefore, the commission adopts an amendment to §293.94 to reflect that a special water authority shall submit a copy of an audit report and related filing affidavit to the commission not later than 160 days after the special water authority's fiscal year end.

Prior statutory language allowed for a determination that a fee charged by a district for certain facilities such as water, sanitary sewer, or drainage facilities was not an impact fee. SB 902, §16, added storm water detention or retention facilities and related storm water

conveyances to the list of facilities that may be exempt from the impact fee designation. SB 902, §16, also allowed for the determination of actual costs of facilities to include certain non-construction costs such as design, permitting, financing, construction, and interest. The existing Chapter 293 rule for impact fees mirrored the previous statutory language. Therefore, the commission adopts an amendment to §293.171 to reflect the addition of storm water detention or retention facilities to the list of facilities that may be exempt from the impact fee designation and the definition of actual costs.

Prior statutory language specified that a district shall advertise and publish notice for district contracts over $50,000. SB 902, §19, increased the contract amount for which a district must advertise and publish notice from $50,000 to $75,000. Additionally, prior statutory language specified that a district shall solicit bids when a district contract is over $25,000 but not more than $50,000. SB 902, §19, increased the maximum amount for which a district shall solicit bids from $50,000 to $75,000. The existing Chapter 293 rule for advertising and soliciting bids for contracts mirrored the prior statutory language. Therefore, the commission adopts an amendment to §293.63 to reflect these increases.

Prior statutory language defined a recreational facility as parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. SB 902, §21, specified that the definition of a "recreational facility" does not include a minor improvement or beautification project to land acquired

or to be acquired solely as part of a district's water, wastewater, or drainage facilities. The existing Chapter 293 rule defining recreational facilities mirrored the prior statutory language. Therefore, the commission adopts an amendment to §293.1 to reflect the revised definition of a recreational facility.

SB 902, §22, allows districts to fund the full costs of sites acquired for developing water, wastewater, or drainage facilities that also have a recreational facility component by specifying that a district would not be required to prorate the costs of the site between the utility and recreational purposes. SB 902, §22, requires a licensed professional engineer to certify that such a site is reasonably sized for the utility purpose, and gives guidance for what should be considered in order to determine if the site is reasonably sized for the utility purpose. SB 902, §22, provided guidance for the factors the engineer may consider when determining the reasonableness of the site. The existing Chapter 293 rule regarding the proration of these types of facilities does not reflect the statutory changes of SB 902. Therefore, the commission adopts amendments to §293.44 and §293.51 to reflect the district's ability to finance the full cost associated with site acquisition.

Prior statutory language set the limitation for the total amount of bonds outstanding and proposed to be issued for recreational facilities at 1% of a district's total assessed valuation. SB 902, §23, added that this 1% limitation also applied to bonds supported by a contract tax and was based on the taxable value of property in the district making payments under

the contract. SB 902, §23, further specified that an estimate of value provided by the central appraisal district may be used to establish the value of taxable property within a district for the issuance of recreational facilities bonds. The existing Chapter 293 rule for the 1% limitation and appraisal district certification mirrored the prior statutory language. Therefore, the commission adopts an amendment to §293.41 to reflect these changes.

SB 902, §29, added that a MUD may issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting under a MUD's authorization to acquire road facilities or as a recreational facility. The existing Chapter 293 rule regarding street lighting stipulates that a district may not fund these facilities. Therefore, the commission adopts an amendment to §293.41 to allow MUDs to fund street lighting facilities in compliance with SB 902.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 290, Public Drinking Water, and 30 TAC Chapter 291, Utility Regulations.

Section by Section Discussion

In addition to implementation of the state laws discussed previously, the commission adopts administrative changes throughout the adopted rules to update citations and terminology and conform with *Texas Register* requirements.

§293.1, Objective and Scope of Rules; Meaning of Certain Words

The commission adopts an amendment to §293.1(c) to specify that the definition of a recreational facility does not include a minor improvement or beautification project to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities. The adopted amendment implements TWC, §49.462(1), as amended by SB 902, §21, to remain consistent with the amended statute.

§293.12, Creation Notice Actions and Requirements

The commission adds §293.12(h) to specify that upon receipt of a petition to create a district under TWC, Chapter 54, all of which is to be located outside the corporate limits of a municipality, the executive director shall notify the commissioners court of any county in which the proposed district is to be located that the petition has been filed. The adopted addition implements TWC, §54.0161, as amended by HB 738, to remain consistent with the amended statute.

§293.41, Approval of Projects and Issuance of Bonds

The commission adds §293.41(a)(6) to specify that the commission's review of district bond issues is limited to bonds to finance a project for which the commission has adopted rules requiring review and approval. The adopted addition implements TWC, §49.181(a), as amended by SB 902, §14, to remain consistent with the amended statute. The

commission adopts an amendment to §293.41(e)(3)(H) to specify that a MUD may issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting under a MUD's authorization to acquire road facilities or as a recreational facility. The adopted amendment to §293.41(e)(3)(H) implements TWC, §54.236, as amended by SB 902, §29, to remain consistent with the amended statute. The commission further adopts an amendment to §293.41(e)(4) to specify that the district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities may not exceed 1% of the taxable value of property in the district and that the aforementioned 1% limitation also applies for bonds supported by a contract tax, and is based on the taxable value of property in the district(s) making payments under the contract. The commission adopts an amendment to §293.41(e)(4) to specify that an estimate of value provided by the central appraisal district may be used to establish the value of taxable property within the district(s) for the issuance of bonds for recreational facilities. In response to comment, the commission has revised §293.41(e)(4) by replacing the word "must" with "may" to accurately reflect the statute specifying that a district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities may not exceed 1% of the taxable value of the property in the district. The adopted amendment to §293.41(e)(4) implements TWC, §49.4645(a), as amended by SB 902, §23, to remain consistent with the amended statute.

§293.44, Special Considerations

The commission adopts an amendment to §293.44(a)(12) to specify that a district is not required to prorate the land costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose. In response to comment, the commission has removed the word "land" from the phrase "land costs" in §293.44(a)(12) to clarify that the adopted rule would apply to all eligible costs associated with sites as provided for in the amended statute. In response to comment, the commission also removed the proposed statement in §293.44(a)(12) that would have required sites to be prorated if the licensed professional engineer certified that the site was reasonably sized for the primary purpose as the amended statute did not mandate proration of these sites if said certificate was not provided. The adopted amendment implements the addition of TWC, §49.4641, as added by SB 902, §22, to remain consistent with the amended statute.

§293.51, Land and Easement Acquisition

The commission adds §293.51(j) to specify that a district is not required to prorate the land costs of a combined lake and detention site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary purpose. In response to comment, the commission removed the proposed statement in §293.51(j) that

would have required sites to be prorated if the licensed professional engineer certified that the site was reasonably sized for the primary purpose as the amended statute did not mandate proration of these sites if said certificate was not provided. The adopted amendment implements the addition of TWC, §49.4641, as added by SB 902, §22, to remain consistent with the amended statute.

§293.54, Bond Anticipation Notes (BAN)

The commission adopts an amendment to §293.54 to reflect that BANs may be issued for any purpose for which bonds of the district may be issued, in lieu of the prior statutory requirement that BANs may be issued for any purpose for which bonds of the district may have been previously voted. The adopted amendment implements TWC, §49.154(c), as amended by SB 902, §13, to remain consistent with the amended statute.

§293.63, Contract Documents for Water District Projects

The commission adopts an amendment to §293.63(8) to increase the amount of a contract for which a district's governing board of directors is required to advertise the project from $50,000 to $75,000. The commission also adopts an amendment to §293.63(8) to increase the amount of a contract for which a district's governing board is required to solicit written competitive bids on the project from $50,000 to $75,000. The adopted amendment implements TWC, §49.273(d) and (e), as amended by SB 902, §19, to remain consistent with the amended statute.

§293.81, Change Orders

The commission adopts an amendment to §293.81(1)(A) to specify that a district may issue a change order so long as the aggregate of the change orders does not increase the original contract amount by more than 25%, instead of by 10% as allowed under the existing rule. The adopted amendment implements TWC, §49.273(i), as amended by HB 1050 and HB 2704, to remain consistent with the amended statute.

§293.94, Annual Financial Reporting Requirements

The commission adopts an amendment to §293.94(h)(1)(A) to specify that a special water authority, as defined in TWC, §49.001(8), shall submit a copy of an audit report and accompanying annual filing affidavit to the commission not later than 160 days after the special water authority's fiscal year end, in lieu of the prior statutory language's 135-day time period which was applicable to all districts and authorities subject to TWC, Chapter 49. The adopted amendment implements TWC, §49.194(h), as amended by SB 902, §15, to remain consistent with the amended statute.

§293.171, Definitions of Terms

The commission adopts an amendment to §293.171 and its subdivisions to specify that actual costs, as it relates to impact fees, may include non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and

reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities. The commission also adopts an amendment to §293.171 to add storm water detention or retention facilities, or capacity in such facilities and related storm water conveyances, to the list of facilities that may be exempt from the impact fee designation. The adopted amendment implements TWC, §49.212(d), as amended by SB 902, §16, to remain consistent with the amended statute.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended 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.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to

human health from environmental exposure. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 738, HB 1050, HB 2704, and SB 902 relating to the creation, regulation, powers, and operation of water districts. The adopted rules would substantially advance this purpose by amending the existing Chapter 293 rules to incorporate the new statutory requirements.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rules will not 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. The cost of complying with the adopted rules is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the areas of contracts, projects, and authority with respect to water districts. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not 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. Finally, the adopted rulemaking will be adopted pursuant to the commission's specific authority in TWC, §12.081, which allows the commission to issue

rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 738, HB 1050, HB 2704, and SB 902 relating to the creation, regulation, powers, and operation of water districts. The adopted rules would substantially advance this purpose by amending the existing Chapter 293 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This adopted rulemaking will primarily affect districts, especially in the areas of contracts, projects, and authority; this would not be an effect on private real property. Therefore, the adopted rulemaking would not

constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the Texas CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of this rulemaking with the CMP.

Public Comment

The commission held a public hearing on June 26, 2014. The comment period closed on

June 30, 2014. Comments were received from the Honorable Hugh Coleman of Denton County; Allen Boone Humphries Robinson, L.L.P. (ABHR); County Judges and Commissioners Association of Texas; Muller Law Group, P.L.L.C. (Muller); and Schwartz, Page & Harding, L.L.P. (SPH).

ABHR and SPH offered comments to add clarification language to rules as proposed. County Commissioner Coleman provided comment detailing his understanding of the intent of HB 738. Muller requested the commission add new rule language clarifying the definition of an impact fee.

Response to Comments

County Commissioner Coleman and the County Judges and Commissioners Association of Texas recommended revised rule language for proposed §293.12(h) which would require the TCEQ's Chief Clerk's Office to: 1) send a copy of the complete petition to the commissioners court, and 2) provide the commissioners court with the criteria applicable and used by the TCEQ in its review of the petition.

The commissions' rule regarding application materials required to be filed with a petition requesting creation of a MUD is publicly available and can be found under §293.11. A county in which a proposed MUD is to be located is provided a copy of the notice of petition to create a MUD from the TCEQ. If

the county commissioners court requires additional information, TWC, §54.0161(a - 2), requires the petitioner(s) provide the information to the commissioners court by specifying that "{*p}etitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court.*" Therefore, no change has been made in response to these comments.

ABHR and SPH commented that §293.41(e)(3)(H) should read "*street lighting, except as authorized by TWC, §54.236, as amended*." Instead, the commission's proposed language was "*street lighting, except for a district operating under TWC, Chapter 54, pursuant to TWC, §54.236, as amended*."

The commission responds that the proposed language sufficiently reflects the language from SB 902, §29. No change has been made in response to these comments.

SPH commented that §293.41(e)(4) should read, "{*a} district's outstanding principal debt (bonds, notes, and other obligations) supported by ad valorem taxes for recreational facilities may not exceed 1%...*" Instead, the commission's proposed language was "{*a} district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities must not exceed 1%...*"

The commission concurs and in response has amended §293.41(e)(4) by changing to the word "must" to "may" to accurately reflect the statute.

SPH commented that commission's proposed change to §293.44(a)(12) should read "{*p}ursuant to the provisions of TWC, §49.4641, as amended, a district … is not required to prorate the costs of a site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.*" Instead, the commission's proposed language was "{*p}ursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the land costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose; however, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose.*"

The commission concurs and in response to this comment has removed the word "land" from phrase "land costs" in §293.44(a)(12). Additionally, the reference in §293.44(a)(12) to prorating a site not certified by a licensed professional engineer, beginning at "; however,..." has also been removed in response to this comment to accurately reflect the wording and intent of the

amended statute. However, the commenter's requested deletion of the phrase "combined lake and detention" has not been acted upon as the provisions of adopted §293.44(a)(12) would apply only to combined lake and detention facilities and would not apply to other facility types.

ABHR and SPH commented that §293.51(j) should read, "{*n*}*otwithstanding subsections (d) and (i), a district is not required to prorate the costs of a site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary water, wastewater, or drainage purpose pursuant to the provisions of TWC, §49.4641, as amended*." Instead, the commission's proposed language was "{*n*}*otwithstanding subsections (d) and (i), a district is not required to prorate the land costs of site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary water, wastewater, or drainage purpose pursuant to the provisions of TWC, §49.4641, as amended. However, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose*."

The commission responds that the word "land" from the phrase "land costs" and the second sentence which had required proration if a licensed

professional engineer's certification was not provided has been removed from adopted §293.51(j) in response to these comments to accurately reflect the wording and intent of the amended statute.

ABHR and SPH commented that the second sentence of §293.81(1)(A) should read "{*c}hange orders increasing the original contract price more than 25% may be issued only in response to* ..."; instead, the commission's proposed language was "{*c}hange orders above 25% may be issued only in response to* ..."

The commission responds that the proposed language sufficiently reflects the statute as written in HB 1050 and HB 2704. No change has been made in response to these comments.

ABHR and SPH commented that the second sentence of §293.94(h)(1)(A) should read, "{*a}udit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year, except that audit reports and the accompanying annual filing affidavits submitted by a special water authority, as defined in TWC, §49.001(8), shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year*." Instead, the commission's proposed language was "{*a}udit reports and the annual filing affidavits that must accompany those*

reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. A special water authority's audit report and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year."

The commission responds that the proposed language sufficiently reflects SB 902, §15. No change has been made in response to these comments.

SPH commented that the commission's proposed language to amend §293.171(1) and (1)(B) should reflect the removal of the words "*sanitary sewer, or*" and "*if*." SPH also commented that language in §293.171(1)(B) should remove of the word "*it*."

The commission responds that the rule language, as proposed, reflects the changes suggested by the commenter; therefore, no additional changes are necessary to the aforementioned section in response to this comment.

Muller requested the commission add §293.171(1)(D) to reflect that a payment made pursuant to a contract as provided in §293.44(b)(3) is not an impact fee to clarify "*long-standing confusion*" on the difference between impact fees and contractual purchase agreements imposed by one entity onto another.

The commission responds that the recommended rule language proposed by the commenter is outside the scope of this rulemaking as this rulemaking does not address contracts between entities with respect to the definition of an impact fee. No change has been made in response to this comment.

SUBCHAPTER A: GENERAL PROVISIONS

§293.1

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.1, which relates to districts.

§293.1. Objective and Scope of Rules; Meaning of Certain Words.

(a) 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 Texas Water Code (TWC). This chapter, adopted under TWC, §§5.103, 5.105, and 5.701, shall govern the creation,

supervision, and dissolution of all general and special law districts subject to and within the applicable limits of the jurisdiction of the commission.

(b) This chapter shall govern the conversion of districts into municipal utility districts as provided in TWC, §§54.030 - 54.036.

(c) The term "recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting. The term does not include a minor improvement or beautification project to land acquired or to be acquired as part of a district's water, wastewater, or drainage facilities.

SUBCHAPTER B: CREATION OF WATER DISTRICTS

§293.12

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The adopted amendment implements the language set forth in House Bill 738, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.12, which relates to districts.

§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 in accordance with Texas Water Code (TWC), Chapter 51, multi-county Water Control and [&] Improvement Districts or single-county [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, Stormwater [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) For a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, which includes transfer of the certificate of public 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.

(e) If a petition for the creation of a Special Utility District in accordance with TWC, 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).

(f) Regardless of whether a public hearing is held or not, for an application for creation of a Special Utility District [special utility district] in accordance with TWC, Chapter 65, the commission may only consider a purpose for which the district is being created that is specified in the resolution.

(g) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts In General, 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.

(h) Upon receipt of a petition to create a district under TWC, Chapter 54, all of which is to be located outside the corporate limits of a municipality, the executive director shall notify the commissioners court of any county in which the proposed district is to be located that the petition has been filed.

SUBCHAPTER E: ISSUANCE OF BONDS

§§293.41, 293.44, 293.51, 293.54

Statutory Authority

These amendments are adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The adopted amendments implement the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §§293.41, 293.44, 293.51, and 293.54, which relate to districts.

§293.41. Approval of Projects and Issuance of Bonds.

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies;

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection; [or]

(5) bonds issued by a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by subsection (d)(1)(E) of this section; or [.]

(6) bonds issued by a district to finance a project for which the commission has not adopted rules requiring review and approval.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to:

(1) a district if:

(A) the boundaries include one entire county;

(B) the district was created by a special act of the legislature; and

(i) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(ii) the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(iii) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(C) the district is a special water authority as defined by TWC, §49.001(8);

(D) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(E) the district:

(i) is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(ii) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(iii) has at least 5,000 active water connections; or

(F) the district:

(i) is a conservation and reclamation district created under the *Texas Constitution*, Article 16, §59, that includes territory in at least three counties; and

(ii) has the rights, privileges, and functions applicable to a river authority under TWC, Chapter 30; or

(2) a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by paragraph (1)(E) of this subsection.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery (except for a district all or part of which is located in Montgomery County and includes land within a planned community of at least 15,000 acres, of which a majority of the developed acreage is subject to restrictive covenants containing ad valorem assessments), Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a licensed [registered] professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting, except for a district operating under TWC, Chapter 54, pursuant to TWC, §54.236, as amended.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, [payable from any source,] for recreational facilities may ~~must~~ not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller. If supported by contract taxes under TWC, §49.108, the outstanding principal debt (bonds, notes, and other obligations) may not exceed an amount equal to 1% of the value of the taxable property in the district or districts making payments under the contract. An estimate of the value provided by the central appraisal district may be used to establish the value of the taxable property in the district or districts.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the

section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a licensed [registered] professional engineer, or any other design professional allowed by law to engage in landscape architecture.

§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 that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under 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 under §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, wastewater, 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 that 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; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(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 under §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 under §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 typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded 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. Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the ~~land~~ costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose ~~; however, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose~~.

(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; and

(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 reimbursables 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; or

(D) provided, however, that the 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 include periods during which the district is constructing its facilities or there is construction by third parties of aboveground 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 in accordance with 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, 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, wastewater, 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 that 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 storm water 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 storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(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 licensed [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, wastewater, or drainage, under contracts authorized under Local Government Code, §552.014, [§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, wastewater, 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 capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other 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 the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that 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 that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion

of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity [(CCN)], contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection and Chapter 291, Subchapter G of this title (relating to Certificates of Convenience and Necessity).

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, drainage, and recreational 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; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for streets that are used for recreational facilities, 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); or

(8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, 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, the executive director 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 a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by paragraph (1) [subsection (c)(1)] of this subsection [section] or fair

market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) 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 storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be limited to that cost that is associated only with the drainage or recreational 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, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(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 (c) 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. Districts operating under Texas Water Code (TWC), Chapter 54, except one affected by House Bill 2965, 76th Legislature, 1999, are prohibited from exercising the power of eminent domain outside the district's boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility, as defined by TWC, §49.462;

(3) an exclusive easement through a county regional park; or

(4) a site or easement for a road project.

(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, levee, or recreational facility 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 licensed [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 licensed [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.

(i) Joint recreational and drainage/detention sites without a constant level lake. If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50% to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

(j) Notwithstanding subsections (d) and (i) of this subsection, a district is not required to prorate the ~~land~~ costs of a site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary water,

wastewater, or drainage purpose pursuant to the provisions of TWC, §49.4641, as amended. ~~However, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose.~~

§293.54. Bond Anticipation Notes (BANs) [(BAN)].

A district may issue bond anticipation notes (BANs) for any purpose for which bonds of the district [have previously been voted or] may be issued or for the purpose of refunding previously issued BANs [bond anticipation notes]. All BANs [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 BAN, [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 BANs [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 its [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, BANs [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 BANs [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) BANs [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).

SUBCHAPTER F: DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES

§293.63

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.63, which relates to districts.

§293.63. Contract Documents for Water District Projects.

Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the

American Society of Civil Engineers (latest revision). The following specific requirements must apply, unless otherwise provided by a district's special law.

(1) All contract documents shall be prepared in such a manner as to promote competitive bidding and to ensure that all bids are prepared on a common basis.

(2) The instruction to bidders section of the contract documents shall give special attention to the following items.

(A) The basis of award shall be clearly defined. If alternate proposals are to be considered, the instructions to bidders shall clearly state in which order the alternates will be considered in determining the most advantageous bid. If two or more contracts are to be awarded, the instructions to bidders shall clearly indicate if combined bids, or tied bids, will be allowed, or if each contract will be awarded separately.

(B) The contract should clearly provide that alternate bids will not be considered, unless specifically allowed by instructions to bidders and requested in the proposal form.

(C) Specific notice shall be given that qualifying statements or accompanying qualifying letters will be cause for rejection of the bid.

(D) Provision shall be made for prospective bidders to request additional information, explanations, or interpretations regarding contract documents prior to the bid opening. All requests and answers to all such requests shall be given in writing. Answers will be in addendum form to all prospective bidders.

(3) The district shall require the bidder to whom the district proposes to award the contract to submit a statement of qualifications. The statement shall include such data as the district may reasonably require to determine whether the contractor is responsible and capable of completing the proposed project.

(4) For contracts over $50,000, [$50,000] the district shall require bidders to submit certified or cashier's checks or a bid bond issued by a surety legally authorized to do business in this state in an amount of at least 2.0% of the total amount of the bid. For a contract greater than $250,000, [$250,000] the district must accept a bid bond if it meets all requirements. If cashier's checks are required, the checks for all bidders except the three most qualified bidders shall be returned within three days of the bid opening.

(5) The district shall require that bidders submit, along with the bid, the name of the person, firm, or corporation that will execute payment and performance bonds.

(6) The district may establish criteria for acceptability of the surety company issuing payment and performance bonds including, but not limited to:

(A) authorization to do business in Texas; and

(B) authorization to issue payment and performance bonds in the amount required for the contract and:

(i) a rating of at least B from Best's Key Rating Guide; or

(ii) if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the United States Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such performance and payment bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation. The district shall satisfy itself that such surety company and bonds meet such criteria.

(7) The district shall satisfy itself that all persons executing the bonds are duly authorized by the laws of the State of Texas and the surety company to do so.

(8) For contracts over $75,000, [$50,000,] a district's board shall advertise the project once a week for two consecutive weeks. For contracts over $25,000 but not more than $75,000, [$50,000,] a district's board shall solicit written competitive bids on the project from at least three bidders. For contracts not more than $25,000, a district's board is not required to advertise or seek competitive bids.

(9) A board of a special law district may elect to contract in accordance with the requirements in Texas Water Code, §49.273, even if those requirements conflict with provisions in the district's special law.

(10) A district with a population of more than 100,000 may utilize the design-build procedure for limited projects as provided in Local Government Code, Chapter 271, Subchapter J.

SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

§293.81

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The adopted amendment implements the language set forth in House Bill (HB) 1050 and HB 2704, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.81, which relates to districts.

§293.81. Change Orders.

A change order is a change in plans and specifications for construction work that is under contract. For purposes of this section, a variation between estimated quantities and

actual quantities or use of supplemental items included in the bid where no change in plans and specifications has occurred is not a change order.

(1) Districts are authorized to issue change orders subject to the following conditions.

(A) Except as provided in this subparagraph, change orders, in aggregate, shall not be issued to increase the original contract price more than 25% [10%]. Change [Additional change] orders above 25% may be issued only in response to:

(i) unanticipated conditions encountered during construction;

(ii) changes in regulatory criteria; or

(iii) coordination with construction of other political subdivisions or entities.

(B) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(2) No commission approval is required if the change order is $50,000 or less. If the change order is more than $50,000, the executive director or his designated representative may approve the change order. For purposes of this section, if either the total additions or total deletions contained in the change order exceed $50,000, even though the net change in the contract price will be $50,000 or less, approval by the executive director is required.

(3) If the change order is $50,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be submitted to the executive director within ten days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e. city, county, state, other, if required.

(4) Applications for change orders requiring approval shall include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor, and a resolution or letter signed by the board president indicating concurrence <u>with</u> [in] the proposed change;

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a detailed explanation for the change;

(D) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and new contract price or cost estimate;

(E) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) filing fee in the amount of $100; and

(I) other information as the executive director or the commission may require.

(5) Copies of all changes in plans, specifications and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Commission Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application review.

SUBCHAPTER H: REPORTS

§293.94

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.94, which relates to districts.

§293.94. Annual Financial Reporting Requirements.

(a) Statutory provisions for fiscal accountability. All districts as defined in Texas Water Code (TWC), §49.001(a) are required to comply with the provisions of TWC, [Texas Water Code,] §§49.191 - 49.198 requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manual. All districts shall comply with the accounting and auditing manual adopted by the executive director. The manual shall consist of one publication, "Water District Financial Management Guide." The manual may be revised as necessary by the executive director.

(c) Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. Districts with limited or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d) Form of audit. The audit shall be performed according to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

(e) Audit report exemption.

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

(A) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(B) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of $250,000 during the fiscal period; and

(C) the district's cash and temporary investments were not in excess of $250,000 at any time during the fiscal period.

(2) The annual financial report must be accompanied by an affidavit, attesting to the accuracy and authenticity of the financial report, signed by a duly authorized representative of the district, which conforms with the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(f) Financially dormant districts.

(1) A district may elect to prepare a financial dormancy affidavit rather than an unaudited financial report, as prescribed by subsection (e) of this section, provided:

(A) the district had $500 or less of receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(B) the district had $500 or less of disbursements of funds during the calendar year;

(C) the district had no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(D) the district did not have cash or investments in excess of $5,000 at any time during the calendar year.

(2) The required financial dormancy and filing affidavit shall be prepared in a format prescribed by the executive director and shall be submitted by a duly authorized

representative of the district. Financial dormancy affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(g) Annual filing affidavit. Each district shall submit annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary. However, each district that submits an audit report must execute and submit, together with the audit, an annual filing affidavit when the audit is submitted with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the executive director.

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

(1) Submittal dates.

(A) Audits. Audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. Audit reports and the accompanying annual filing affidavits submitted by a special water authority, as defined in TWC, §49.001(8), shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year. The [district's] governing board of the district or special water authority shall approve the audit before a copy of the report is submitted to the executive director; however, the governing board's refusal to approve the audit shall not extend the submittal deadline for the audit report. If the governing board refuses to approve the audit, the board shall submit to the executive director by the prescribed submittal date the report and a statement providing the reasons for the board's refusal to approve the report.

(B) Financial reports. Financial reports and the annual filing affidavits in a format prescribed by the executive director, must be submitted to the executive director as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year.

(C) Financial dormancy affidavits. Financial dormancy affidavits shall be submitted as prescribed by paragraph (2) of this subsection by January 31 of each year. The calendar year affidavit affirms that the district met the financial dormancy

requirements stated in subsection (f) of this section during part or all of the calendar year immediately preceding the January 31 filing date.

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

(i) Review by executive director.

(1) The executive director may review the audit report of each district, and if the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes or commission rules, or if the executive director has any recommendations, he shall notify the governing board of the district.

(2) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this section, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director. The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the executive director considers necessary for the review, analysis, and approval of an audit report, financial report, or financial dormancy affidavit.

(j) Penalties for Noncompliance.

(1) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

(2) A district that fails to comply with the filing provisions of TWC, [Texas Water Code,] Chapter 49, may be subject to a civil penalty of up to $100 per day for each day the district willfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

SUBCHAPTER N: PETITION FOR APPROVAL OF IMPACT FEES

§293.171

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.171, which relates to districts.

§293.171. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Actual costs under paragraph (1)(A) and (B) of this section, as determined by the district's governing board of directors,

may include non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities.

(1) Impact fee--A charge or assessment imposed by a district against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, wastewater, or drainage facilities, including all necessary service lines and meters, for capacity in storm water detention or retention facilities and related storm water conveyances, or for wholesale facilities that serve such water, wastewater, [sanitary sewer, or] drainage, or storm water detention or retention facilities, shall not be deemed to be an impact fee under Local Government Code, Chapter 395 if the charge or fee [if]:

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

(B) [it] is made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are

necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district; or

(C) [it] is made by a district for retail or wholesale service on land that at the time of platting was not being provided with water, [water or] wastewater, drainage, or storm water detention or retention service by the district.

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

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

(4) Connection--Connection means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards. Connections shall be described in terms of single family equivalent connections, living unit equivalents, or other generally accepted unit typically attributable to a single family household. The assumed population equivalent per service unit shall be indicated.

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

submitted at: *http://www5.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 2013-042-116-AI. The comment period closes June 30, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Becky Southard, Operational Support Section, Air Permits Division, at (512) 239-1638.

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05155, concerning Expedited Processing of Application, which authorizes the commission to develop a process for expediting applications and charging a surcharge; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules, and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed rulemaking implements Senate Bill 1756 (83rd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.051, 382.05155, and 382.056; and Texas Government Code, §2001.004 and §2001.006.

§101.600. Applicability.

(a) An owner or operator may request the expedited processing of an application filed under Chapter 106, 116, or 122 of this title (relating to Permits by Rule; Control of Air Pollution by Permits for New Construction or Modification; and Federal Operating Permits Program, respectively) if the applicant demonstrates that the purpose of the application will benefit the economy of Texas.

(b) Subject to the availability of commission resources for expediting permit applications, the executive director may expedite the processing of an application filed under Chapter 106, 116 or 122 of this title if the executive director determines that expediting it will benefit the economy of Texas.

§101.601. Surcharge.

(a) The executive director may add a surcharge for an expedited application filed under Chapter 106, 116, or 122 of this title (relating to Permits by Rule; Control of Air Pollution by Permits for New Construction or Modification; and Federal Operating Permits Program, respectively) in an amount sufficient to cover the expenses incurred by expediting it, including overtime, contract labor, and other costs.

(b) Any surcharge will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or TCEQ and delivered with the application to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. Applications filed under Chapter 106, 116, or 122 of this title as described in this subchapter will not be considered for expedited processing until the surcharge is received.

(c) If the cost of processing an expedited application under this subchapter exceeds the collected surcharge amount, the executive director may assess and collect additional surcharge(s) from the applicant to cover the additional costs of expediting the permit. The executive director will not grant final approval under Chapter 106, 116, or 122 of this title if an outstanding surcharge amount is due.

(d) The executive director may refund any unused portion of the surcharge.

§101.602. Public Notice.

When existing public notice requirements must be met and the applicant pays a surcharge as described in §101.601 of this title (relating to Surcharge), the applicable public notice must indicate that the application is being processed in an expedited manner.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2014.

TRD-201402284
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 29, 2014
For further information, please call: (512) 239-2613

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CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS
30 TAC §290.272

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §290.272.

Background and Summary of the Factual Basis for the Proposed Rule

In 2013, the 83rd Legislature passed House Bill (HB) 1461, which requires all retail public utilities to notify their customers of water loss reported in their water loss audits filed with the Texas Water Development Board (TWDB). The notice shall be provided through the utility's consumer confidence report (CCR) or in the customer's bill after the water loss audit is filed. The purpose of this proposed rulemaking is to amend Chapter 290 to reflect the legislative changes to Texas Water Code (TWC), §13.148, Notification of Water Loss.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also proposes revisions to 30 TAC Chapter 291, Utility Regulations, and 30 TAC Chapter 293, Water Districts.

Section Discussion

In addition to implementation of the state law discussed previously, the commission proposes administrative changes throughout the proposed rule to update terminology and conform with *Texas Register* requirements.

§290.272, Content of the Report

The commission proposes an amendment to §290.272(b)(2)(E) to correct the existing acronym for micrograms per liter. The commission proposes to add §290.272(h) to implement the changes made to TWC, §13.148, in HB 1461 to remain consistent with the amended statute. The rulemaking is proposed to ensure that retail public utilities notify their customers of water loss reported in their filed water loss audits. HB 1461 specifies that the requirement to provide water loss information to customers is in conjunction with water loss audits filed pursuant to TWC, §16.0121, Water Audits (submitted to the TWDB). Proposed subsection (h) requires the retail public utility to notify its customers of water loss through its next CCR following the filing of the water loss audit, unless the retail public utility elects to notify its customers through the next bill sent to its customers; either notification method is allowed under the legislation.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement the provisions of HB 1461, which amends the TWC to require all retail public utilities to notify their customers of water losses that they reported in their water loss audits that are filed with the TWDB. The proposed rule requires that the notice be provided with the utility's next annual CCR delivered or with the next bill the customer receives after the water loss audit is filed.

The proposed rulemaking would ensure that retail public utilities notify their customers of the water loss that the utilities reported in the water loss audits submitted to the TWDB. No fiscal implications are anticipated for the TCEQ as a result of the implementation of the proposed rule. Because these utilities are currently required to produce and submit these water loss audits, no fiscal implications are anticipated for the TWDB as a result of the proposed rule change.

The proposed rule will affect retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporations, districts, and municipalities. There are an estimated 3,202 active retail public utilities that the proposed rule may affect. It is assumed that most of these utilities already perform routine water loss calculations; however, agency staff are not able to determine the number of utilities (if any) that currently provide the results of their water loss findings to their customers.

The affected utilities will need to provide the information in their annual CCR delivered to their customers or they may need to modify their billing systems in order to include the required information on customers' billing statements. The fiscal implications, if any, would depend on the operating environment and management decisions of each retail public utility, but are not expected to be significant. The proposed rule may encourage retail public utilities to reduce water losses (such as those that might occur as a result of line leaks, line flushes, and inaccurate meters).

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be more efficient operation of retail public utilities through the conservation of water resources. The public will be notified of the amount of water resources lost through their utility's operations, thereby indicating the efficiency of the utility's operations as well as the possible need for capital infrastructure improvements.

The proposed rule is not expected to have significant fiscal implications for businesses or individuals. The proposed rule will affect retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporations, districts, and municipalities. There are an estimated 3,202 active retail public utilities that the proposed rule may affect. It is assumed that most of these utilities already perform routine water loss calculations; however, agency staff are not able to determine the number of utilities (if any) that currently provide the results of their water loss findings to their customers.

The affected utilities will need to provide the information in their annual CCR delivered to their customers or they may need to modify their billing systems in order to include the required information on customer billing statements. The fiscal implications, if any, would depend on the operating environment and management decisions of each retail public utility, but are not expected to be significant. The proposed rule may encourage retail public utilities to reduce water losses (such as those that might occur as a result of line leaks, line flushes, and inaccurate meters).

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 rule for the first five-year period the proposed rule is in effect. The proposed rule will affect retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporations, districts, and municipalities. It is not known how many affected retail public utilities may be small or micro-businesses, but for those that are, they will need to provide the information in their annual CCR delivered to their customers, or they may need to modify their billing systems in order to include the required information on customer billing statements. The fiscal implications, if any, rule would depend on the operating environment and management decisions of each retail public utility, but are not expected to be significant.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to implement state law and therefore is consistent with the health, safety, or environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended 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. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. The bill also states that the notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rule will not 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. The cost of complying with the proposed rule is not expected to be significant with respect to the economy. Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the notification of water loss from retail public utilities to their customers. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not 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. Finally, the proposed rulemaking will be adopted pursuant to the commission's specific authority in TWC, Chapter 13, Subchapter E. Therefore, the rule is not proposed solely under the commission's general powers.

The commission invites public comment of the draft regulatory impact analysis determination. 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 rule and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. The bill also requires that this notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed. The proposed rule would substantially advance this purpose by amending Chapter 290 to incorporate the new statutory requirement.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The proposed rule will primarily affect those retail public utilities that experience water loss; this would not be an effect on real property. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas 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.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 26, 2014, 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. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, 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: *http://www5.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 2013-054-293-OW. The comment period closes June 30, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Justin Taack, Water Supply Division, (512) 239-1122.

Statutory Authority

This rule is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission

shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed rule implements the language set forth in House Bill (HB) 1461, which will affect all retail public utilities. Therefore, the TWC authorizes rulemaking that proposes and amends §290.272, which will require all retail public utilities to notify their customers of water loss reported in their filed water loss audits.

§290.272. Content of the Report.

(a) Information on the source of the water delivered must be included in the report.

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on the type of the water (such as surface water or groundwater) and any commonly used name and location of the body(ies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In the reports, systems should highlight significant sources of contamination in the source water area if they have readily available information.

(3) If a system has received a source water assessment from the executive director, the report must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the executive director or written by a water system official and approved by the executive director.

(b) The following explanations must be included in the annual report.

(1) Each report must contain the following definitions.

(A) Maximum contaminant level goal (MCLG)--The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(B) Maximum contaminant level (MCL)--The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to maximum contaminant level goals as feasible using the best available treatment technology.

(C) Maximum residual disinfectant level goal (MRDLG)--The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(D) Maximum residual disinfectant level (MRDL)--The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(2) The following terms and their descriptions must be included when they appear in the report:

(A) MFL--million fibers per liter (a measure of asbestos);

(B) mrem/year--millirems per year (a measure of radiation absorbed by the body);

(C) NTU--nephelometric turbidity units (a measure of turbidity);

(D) pCi/L--picocuries per liter (a measure of radioactivity);

(E) ppb--parts per billion, or micrograms per liter (µg/L) [~~(µ/L)~~];

(F) ppm--parts per million, or milligrams per liter (mg/L);

(G) ppt--parts per trillion, or nanograms per liter (ng/L); and

(H) ppq--parts per quadrillion, or picograms per liter (pg/L).

(3) A report for a community water system operating under a variance or an exemption of the Safe Drinking Water Act must include a description of the variance or the exemption granted under §290.102(b)[~~(4)~~] of this title (relating to General Applicability).

(4) A report that contains data on a contaminant for which the United States Environmental Protection Agency (EPA) has set a treatment technique (TT) or an action level (AL) must include, depending on the contents of the report, the following definitions.

(A) TT [~~Treatment technique (TT)~~]--A required process intended to reduce the level of a contaminant in drinking water.

(B) AL [~~Action level (AL)~~]--The concentration of a contaminant which, if exceeded, triggers treatment or other requirements that a water system must follow.

(c) Information on detected contaminants.

(1) This subsection specifies the requirements for information to be included in each report for detected contaminants subject to mandatory monitoring, excluding *Cryptosporidium.* Mandatory monitoring is required for:

(A) regulated contaminants subject to an MCL, MRDL, AL, [~~action level,~~] or TT; [~~treatment technique;~~] and

(B) unregulated contaminants for which monitoring is required by 40 Code of Federal Regulations (CFR) §141.40, [~~relating to Unregulated Contaminants~~] and found in §290.275(4) of this title (relating to Appendices A - D).

(2) The data relating to these detected contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its reports must be displayed separately.

(3) The data must be derived from data collected to comply with EPA and the commission monitoring and analytical requirements during the previous calendar year, except when a system is allowed to monitor for regulated contaminants less often than once per year. In that case, the table(s) must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report is from the most recent testing done in accordance with the regulations. The report does not need to include data that is older than five years.

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) must contain:

(A) the MCLs for those contaminants expressed as a number equal to or greater than 1.0 (as provided under §290.275 of this title);

(B) the MCLGs for those contaminants expressed in the same units as the MCLs (as provided for under §290.275 of this title);

(C) if there is no MCL for a detected contaminant, the TT [~~treatment technique~~] or specific AL [~~action level~~] applicable to that contaminant; and

(D) for contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with National Primary Drinking Water Regula-

tions (NPDWR) [~~National Primary Drinking Water Regulations~~] and the range of detected levels.

(i) For contaminants subject to MCLs, except turbidity and total coliforms, when sampling takes place once per year or less often, the table(s) must contain the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When sampling takes place more than once per year at each sampling point, the table(s) must contain the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) In accordance with date requirements included in the table under §290.115(a) of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5)), entitled "Date to Start Stage 2 Compliance," for the MCLs for total trihalomethanes (TTHM) and haloacetic acids (HAA5), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all sampling points that exceed the MCL.

(iv) When compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detections expressed in the same units as the MCL.

(v) When the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done after multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Surface Water Treatment), the table(s) must contain the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) When lead and copper are reported, the table(s) must contain the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the AL [~~action level~~].

(G) When total coliform is reported, the table(s) must contain either the highest monthly number of positive samples for systems collecting fewer than 40 samples per month or the highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(H) When fecal coliform is reported, the table(s) must contain the total number of positive samples.

(I) The table(s) must contain information on the likely source(s) of detected contaminants based on the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys or source water assessments and should be used when available. If the operator lacks specific information on the likely source, the report must include one or more typical sources most applicable to the system for any particular contaminant listed under §290.275 of this title.

(i) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table(s) must contain a separate column for each service area, and the report must identify each separate distribution system. Systems may produce separate reports tailored to include data for each service area.

(ii) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or TTs [~~treatment techniques~~]. The report must contain a clear and readily understandable explanation of the violation. The explanation must include the length of the violation, the potential adverse health effects, and the actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language contained under §290.275 of this title.

(5) For detected unregulated contaminants found under §290.275 of this title, for which monitoring is required (except *Cryptosporidium),* the table(s) must contain the average and range of concentrations at which the contaminant was detected. The report must include the following explanation: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted."

(d) Information on *Cryptosporidium,* radon, and other contaminants.

(1) If the system has performed any monitoring for *Cryptosporidium,* the report must include a summary of the results of any detections and an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon, which indicates that radon may be present in the finished water, the report must include the results of the monitoring and an explanation of the significance of the results.

(3) If the system has performed additional monitoring, which indicates the presence of other contaminants in the finished water, the executive director strongly encourages systems to report any results which may indicate a health concern. To determine if the results may indicate a health concern, the executive director recommends that systems find out if the EPA has proposed a standard in the NPDWR [~~*National Primary Drinking Water Regulations* (NPDWR)~~] or issued a health advisory for any particular contaminant. This information may be obtained by calling the Safe Drinking Water Hotline at (800) 426-4791. The executive director considers detections that are above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, the executive director recommends that the report include the results of the monitoring and an explanation of the significance of the results. The explanation should note the existence of a health advisory or a proposed regulation.

(e) Compliance with NPDWR. In addition to the requirements in subsection (c)(4)(I)(ii) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1) - (8) of this subsection.

(1) The report must include a clear and readily understandable explanation of each violation of monitoring and reporting of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(2) The report must include a clear and readily understandable explanation of each violation of filtration and disinfection prescribed by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems) and explain any adverse health effects and steps the system has taken to correct the violation. This applies both to systems that have failed to install adequate filtration, disinfection equipment, or processes, and to systems that have had a failure of such equipment or processes, each of which constitutes a violation.

In either case, the report must include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(3) The report must include a clear and readily understandable explanation of each violation of the lead and copper control requirements prescribed by §290.117 of this title (relating to Regulation of Lead and Copper). For systems that fail to take one or more actions prescribed by §290.117(g), (h), and (i) of this title, the report must include the applicable health effects language of §290.275(3) of this title for lead, copper, or both and the steps the system has taken to correct the violation.

(4) The report must include a clear and readily understandable explanation of each violation of TTs [~~treatment techniques~~] for Acrylamide and Epichlorohydrin prescribed by §290.107 of this title (relating to Organic Contaminants). If a system violates these requirements, the report must include the relevant health effects language from §290.275 of this title and the steps the system has taken to correct the violation.

(5) The report must include a clear and readily understandable explanation of each violation of recordkeeping of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(6) The report must include a clear and readily understandable explanation of each violation of special monitoring requirements for unregulated contaminants and special monitoring for sodium as prescribed by 40 CFR §141.40 and §141.41 and explain any adverse health effects and steps the system has taken to correct the violation.

(7) For systems required to conduct initial distribution sampling evaluation (IDSE) sampling in accordance with §290.115(c)(5) of this title, the system is required to include individual sample results for the IDSE when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

(8) The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) Variances and exemptions. If a system is operating under the terms of a variance or exemption issued under §290.102(b) of this title, the report must contain:

(1) an explanation of the variance or exemption;

(2) the date on which the variance or exemption was issued and on which it expires;

(3) a brief status report on the steps the system is taking, such as installing treatment processes or finding alternative sources of water, to comply with the terms and schedules of the variance or exemption; and

(4) a notice of any opportunity for public input as the review or renewal of the variance or exemption.

(g) Additional information.

(1) The report must contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water (including bottled water). This explanation may include the language contained within subparagraphs (A) - (C) of this paragraph, or systems may include their own comparable language. The report must include the language of subparagraphs (D) and (E) of this paragraph.

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include:

(i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(iii) pesticides and herbicides, which might have a variety of sources such as agriculture, urban storm water runoff, and residential uses;

(iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff, and septic systems; and

(v) radioactive contaminants, which can be naturally occurring or the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Contaminants may be found in drinking water that may cause taste, color, or odor problems. These types of problems are not necessarily causes for health concerns. For more information on taste, odor, or color of drinking water, please contact the system's business office.

(E) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline at (800) 426-4791.

(2) The report must include the telephone number of the owner, operator, or designee of the community water system as an additional source of information concerning the report.

(3) Each English language report must include the following statement in a prominent place on the first page: "Este reporte incluye informacion importante sobre el agua para tomar. Para asistencia en español, favor de llamar al telefono (XXX) XXX-XXXX." In addition to this statement in Spanish, for communities with a large proportion of limited English proficiency residents, as determined by the executive director, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings).

Investor-owned utilities are encouraged to conduct public meetings, but must include a phone number for public input.

(5) The systems may include such additional information for public education consistent with, and not detracting from, the purposes of the report.

(6) Systems that use an interconnect or emergency source to augment the drinking water supply during the calendar year of the report must provide the source of the water, the length of time used, an explanation of why it was used, and whom to call for the water quality information.

(7) Beginning December 1, 2009, any groundwater system that receives notice from a laboratory of a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title (relating to Microbial Contaminants) must inform its customers of any fecal indicator-positive groundwater source sample in the next report. The system must continue to inform the public annually until the executive director determines that the fecal contamination in the groundwater source is addressed under §290.116(a) of this title (relating to Groundwater Corrective Actions and Treatment Techniques). Each report must include the following elements:

(A) the source of the fecal contamination (if the source is known) and the dates of the fecal indicator-positive groundwater source samples;

(B) actions taken to address the fecal contamination in the groundwater source as directed by §290.116 of this title and the date of such action;

(C) for each fecal contamination in the groundwater source that has not been addressed under §290.116 of this title, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) for a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title, the potential health effects using the health effects language of §290.275(3) of this title.

(8) Beginning December 1, 2009, any groundwater system that receives notice from the executive director of a significant deficiency must inform its customers of any significant deficiency that is uncorrected at the time of the next report. The system must continue to inform the public annually until the executive director determines that particular significant deficiency is corrected under §290.116 of this title. Each report must include the following elements:

(A) the nature of the particular significant deficiency and the date the significant deficiency was identified by the executive director;

(B) for each significant deficiency, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(C) if corrected before the next report, the nature of the significant deficiency, how the deficiency was corrected, and the date of the corrections.

(9) Every report must include the following lead-specific information - a short informational statement about lead in drinking water and its effect on children.

(A) The statement must include the information set forth in this example statement. "If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. NAME OF UTILITY is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at *http://www.epa.gov/safewater/lead."*

(B) A system may write its own educational statement, but only in consultation with the executive director.

(h) Customer notification of water loss by a retail public utility. A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code, §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information in the next report following the filing of the water loss audit, unless the retail public utility elects to notify its customers of its water loss reported in the water loss audit by including the water loss information in the next bill sent to its customers following the filing of the water loss audit in accordance with §291.87 of this title (relating to Billing).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2014.

TRD-201402286
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 29, 2014
For further information, please call: (512) 239-2613

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CHAPTER 291. UTILITY REGULATIONS
SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

30 TAC §291.87

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §291.87.

Background and Summary of the Factual Basis for the Proposed Rule

In 2013, the 83rd Legislature passed House Bill (HB) 1461, which requires all retail public utilities to notify their customers of water loss reported in their water loss audits filed with the Texas Water Development Board (TWDB). The notice shall be provided through the utility's consumer confidence report (CCR) or in the customer's bill after the water loss audit is filed. The purpose of this proposed rulemaking is to amend Chapter 291 to reflect the legislative changes to Texas Water Code (TWC), §13.148, Notification of Water Loss.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also proposes revisions to 30 TAC Chapter 290, Public Drinking Water, and 30 TAC Chapter 293, Water Districts.

Section Discussion

In addition to implementation of the state law discussed previously, the commission proposes administrative changes throughout the proposed rule to conform with *Texas Register* requirements.

§291.87, Billing

The commission proposes to add §291.87(e)(3) to implement the changes made to TWC, §13.148, in HB 1461 to remain consistent with the amended statute. The rulemaking is proposed to ensure that retail public utilities notify their customers of water loss reported in their filed water loss audits. HB 1461 specifies that the requirement to provide water loss information to customers is in conjunction with water loss audits filed pursuant to TWC, §16.0121, Water Audits (submitted to the TWDB). Proposed paragraph (3) requires the retail public utility to notify its customers of water loss through the next bill sent to its customers following the filing of the water loss audit, unless the retail public utility elects to notify its customers through its next CCR; either notification method is allowed under the legislation. The commission further proposes to renumber existing §291.87(e)(3) to improve the rule's organizational structure.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement the provisions of HB 1461, which amends the TWC to require all retail public utilities to notify their customers of water losses that they reported in their water loss audits that are filed with the TWDB. The proposed rule requires that the notice be provided with the utility's next annual CCR delivered or with the next bill the customer receives after the water loss audit is filed.

The proposed rulemaking would ensure that retail public utilities notify their customers of the water loss that the utilities reported in the water loss audits submitted to the TWDB. No fiscal implications are anticipated for the TCEQ as a result of the implementation of the proposed rule. Because these utilities are currently required to produce and submit these water loss audits, no fiscal implications are anticipated for the TWDB as a result of the proposed rule change.

The proposed rule will affect retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporations, districts, and municipalities. There are an estimated 3,202 active retail public utilities that the proposed rule may affect. It is assumed that most of these utilities already perform routine water loss calculations; however, agency staff are not able to determine the number of utilities (if any) that currently provide the results of their water loss findings to their customers.

The affected utilities will need to provide the information in their annual CCR delivered to their customers or they may need to modify their billing systems in order to include the required information on customer billing statements. The fiscal implications, if any, would depend on the operating environment and management decisions of each retail public utility, but are not expected to be significant. The proposed rule may encourage retail public utilities to reduce water losses (such as those that might occur as a result of line leaks, line flushes, and inaccurate meters).

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be more efficient operation of retail public utilities through the conservation of water resources. The public will be notified of the amount of water resources lost through their utility's operations, thereby indicating the efficiency of the utility's operations as well as the possible need for capital infrastructure improvements.

The proposed rule is not expected to have significant fiscal implications for businesses or individuals. The proposed rule will affect retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporations, districts, and municipalities. There are an estimated 3,202 active retail public utilities that the proposed rule may affect. It is assumed that most of these utilities already perform routine water loss calculations; however, agency staff are not able to determine the number of utilities (if any) that currently provide the results of their water loss findings to their customers.

The affected utilities will need to provide the information in their annual CCR delivered to their customers or they may need to modify their billing systems in order to include the required information on customer billing statements. The fiscal implications, if any, depend on the operating environment and management decisions of each retail public utility, but are not expected to be significant. The proposed rule may encourage retail public utilities to reduce water losses (such as those that might occur as a result of line leaks, line flushes, and inaccurate meters).

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 rule for the first five-year period the proposed rule is in effect. The proposed rule will affect retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporations, districts, and municipalities. It is not known how many affected retail public utilities may be small or micro-businesses, but for those that are, they will need to provide the information in their annual CCR delivered to their customers, or they may need to modify their billing systems in order to include the required information on customer billing statements. The fiscal implications, if any, would depend on the operating environment and management decisions of each retail public utility, but are not expected to be significant.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to implement state law and therefore is consistent with the health, safety, or environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

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

to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended 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.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. The bill also states that the notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rule will not 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. The cost of complying with the proposed rule is not expected to be significant with respect to the economy. Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the notification of water loss from retail public utilities to their customers. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not 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. Finally, the proposed rulemaking will be adopted pursuant to the commission's specific authority in the TWC, Chapter 13, Subchapter E. Therefore, the rules are not proposed solely under the commission's general powers.

The commission invites public comment of the draft regulatory impact analysis determination. 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 rule and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. The bill also requires that this notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed. The proposed rule would substantially advance this purpose by amending Chapter 291 to incorporate the new statutory requirement.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The proposed rule appeal will primarily affect those retail public utilities that experience water loss; this would not be an effect on real property. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas 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.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 26, 2014, 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. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, 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: *http://www5.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 2013-054-293-OW. The comment period closes June 30, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Justin Taack, Water Supply Division, (512) 239-1122.

Statutory Authority

This rule is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed rule implements the language set forth in House Bill 1461, which will affect all retail public utilities. Therefore, the TWC authorizes rulemaking that proposes and amends §291.87, which will require all retail public utilities to notify their customers of water loss reported in their filed water loss audits.

§291.87. Billing.

(a) Authorized rates. Bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date.

(1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either $5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate class or code;

(D) the total amount due for water service;

(E) the amount deducted as a credit required by a commission order;

(F) the amount due as a surcharge;

(G) the total amount due on or before the due date of the bill;

(H) the due date of the bill;

(I) the date by which customers must pay the bill in order to avoid addition of a penalty;

(J) the total amount due as penalty for nonpayment within a designated period;

(K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage; and

(O) the local telephone number or toll free number where the utility can be reached.

(3) A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code (TWC), §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information in the next bill sent to its customers following the filing of the water loss audit, unless the retail public utility elects to notify its customers of its water loss reported in the water loss audit by including the water loss information in its next consumer confidence report following the filing of the water loss audit in accordance with §290.272 of this title (relating to Content of the Report).

(4) [~~(3)~~] Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the TWC [~~Texas Water Code~~] or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the

customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.

(g) Consolidated billing and collection contracts.

(1) This subsection applies to all retail public utilities.

(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

(h) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.89 of this title (relating to Meters). If the underbilling is $25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(i) Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(j) Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows.

(1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.

(2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.

(k) Prorated charges due to utility service outages. In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(l) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by §291.88 of this title.

(2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage will be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage will be estimated on the basis of usage levels of similar customers under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service may not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.88 of this title.

(m) Notification of alternative payment programs or payment assistance. Any time customers contact a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customers in English and in Spanish, if requested, of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.

(n) Adjusted bills. There is a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills must be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or

(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.

(o) Equipment damage charges. A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes that the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the executive director.

(p) Fees. Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.

(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

(A) under a contract and only in accordance with the terms of the contract;

(B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director; or

(C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.

(2) Except as provided in §291.88(h)(2) of this title and §291.89(c) of this title other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

(q) Payment with cash. When a customer pays any portion of a bill with cash, the utility shall issue a written receipt for the payment.

(r) Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) informing the customer that a contribution is voluntary;

(D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) the utility's expenses in administering the contribution program; or

(B) 5.0% of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2014.

TRD-201402287
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 29, 2014
For further information, please call: (512) 239-2613

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§293.1, 293.12, 293.41, 293.44, 293.51, 293.54, 293.63, 293.81, 293.94, and 293.171.

Background and Summary of the Factual Basis for the Proposed Rules

In 2013, the 83rd Legislature passed House Bill (HB) 738, HB 1050, HB 2704, and Senate Bill (SB) 902. The purpose of this proposed rulemaking is to amend Chapter 293 to reflect the legislative changes to Texas Water Code (TWC), §§49.154, 49.181,

49.194, 49.212, 49.273, 49.462, 49.4641, 49.4645, 54.0161, and 54.236.

HB 738 amends TWC, §54.0161, to specify that the commissioners court of a county in which a proposed municipal utility district (MUD) is located may review the petition and provide comment to the commission on the creation of a MUD located entirely outside the corporate limits of a municipality. HB 738 requires the commission to promptly notify a commissioners court of a MUD creation petition. Under prior law, a county could provide comments to the commission only if any portion of a proposed MUD was located outside the extraterritorial jurisdiction (ETJ) of a municipality. HB 738 expands the opportunity for review and comment by the county commissioners court on a proposed MUD outside the corporate limits (within or outside the ETJ) of a municipality. As a result, the commission proposes to amend §293.12 to reflect the required notification process only for MUD creations.

HB 1050 and HB 2704 amend TWC, §49.273(i), to specify that a change order can be approved by a district's governing board, or by an official or employee responsible for purchasing or for administering a contract that is given authority by the district's governing board, so long as the aggregate of the change orders does not increase the original contract amount by more than 25%, instead of by 10% as allowed under prior statute. The commission proposes to amend §293.81 to reflect this increase.

SB 902, §13, specifies that bond anticipation notes (BANs) may be issued for any purpose for which bonds of the district may be issued. Prior statutory language stated that BANs may be issued for any purpose for which bonds of the district may have been previously voted, which is reflected in the existing Chapter 293 rules. Therefore, the commission proposes to amend §293.54 to reflect that a BAN may be issued for any purpose for which bonds of the district may be issued.

SB 902, §14, specifies that a district may not issue bonds to finance a project for which the commission has adopted rules requiring review and approval unless the commission determines that the project is feasible and issues an order approving the issuance of the bonds. Prior statutory language stated that a district may not issue bonds (no distinguishing type) to finance a project for which the commission has adopted rules requiring review and approval unless the commission determines that the project is feasible and issues an order approving the issuance of the bonds, which is reflected in the existing Chapter 293 rule. Therefore, the commission proposes to amend §293.41 to reflect that the commission's review of a district's bond issue is limited to bonds to finance a project for which the commission has adopted rules requiring review and approval.

SB 902, §15, specifies that a special water authority shall submit a copy of an audit report to the commission not later than 160 days after the special water authority's fiscal year end. Prior statutory language allowed for an audit report from any type of water district or authority to be filed within 135 days after the close of the district's fiscal year end, which is reflected in the existing Chapter 293 rule. Therefore, the commission proposes to amend §293.94 to reflect that a special water authority shall submit a copy of an audit report and related filing affidavit to the commission not later than 160 days after the special water authority's fiscal year end.

Prior statutory language allowed for a determination that a fee charged by a district for certain facilities such as water, sanitary sewer, or drainage facilities was not an impact fee. SB 902, §16, added storm water detention or retention facilities and related storm water conveyances to the list of facilities that may be exempt from the impact fee designation. SB 902, §16, also allowed for the determination of actual costs of facilities to include certain non-construction costs such as design, permitting, financing, construction, and interest. The existing Chapter 293 rule for impact fees mirrored the previous statutory language. Therefore, the commission proposes to amend §293.171 to reflect the addition of storm water detention or retention facilities to the list of facilities that may be exempt from the impact fee designation and the definition of actual costs.

Prior statutory language specified that a district shall advertise and publish notice for district contracts over $50,000. SB 902, §19, increased the contract amount for which a district must advertise and publish notice from $50,000 to $75,000. Additionally, prior statutory language specified that a district shall solicit bids when a district contract is over $25,000 but not more than $50,000. SB 902, §19, increased the maximum amount for which a district shall solicit bids from $50,000 to $75,000. The existing Chapter 293 rule for advertising and soliciting bids for contracts mirrored the prior statutory language. Therefore, the commission proposes to amend §293.63 to reflect these increases.

Prior statutory language defined a recreational facility as parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. SB 902, §21, specified that the definition of a "recreational facility" does not include a minor improvement or beautification project to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities. The existing Chapter 293 rule defining recreational facilities mirrored the prior statutory language. Therefore, the commission proposes to amend §293.1 to reflect the revised definition of a recreational facility.

SB 902, §22, allows districts to fund the full costs of sites acquired for developing water, wastewater, or drainage facilities that also have a recreational facility component by specifying that a district would not be required to prorate the costs of the site between the utility and recreational purposes. SB 902, §22, requires a licensed professional engineer to certify that such a site is reasonably sized for the utility purpose, and gives guidance for what should be considered in order to determine if the site is reasonably sized for the utility purpose. SB 902, §22, provided guidance for the factors the engineer may consider when determining the reasonableness of the site. If a licensed professional engineer does not certify that such a site is reasonably sized for the utility purpose, the district would be required to prorate the costs of the site between the utility and recreational purposes. The existing Chapter 293 rule regarding the proration of these types of facilities does not reflect the statutory changes of SB 902. Therefore, the commission proposes to amend §293.44 and §293.51 to reflect the district's ability to finance the full cost associated with site acquisition.

Prior statutory language set the limitation for the total amount of bonds outstanding and proposed to be issued for recreational facilities at 1% of a district's total assessed valuation. SB 902, §23, added that this 1% limitation also applied to bonds supported by a contract tax and was based on the taxable value of property in the district making payments under the contract. SB 902, §23, further specified that an estimate of value provided by the central appraisal district may be used to establish the value of taxable property within a district for the issuance of recreational facili-

ties bonds. The existing Chapter 293 rule for the 1% limitation and appraisal district certification mirrored the prior statutory language. Therefore, the commission proposes to amend §293.41 to reflect these changes.

SB 902, §29, added that a MUD may issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting under a MUD's authorization to acquire road facilities or as a recreational facility. The existing Chapter 293 rule regarding street lighting stipulates that a district may not fund these facilities. Therefore, the commission proposes to amend §293.41 to allow MUDs to fund street lighting facilities in compliance with SB 902.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also proposes revisions to 30 TAC Chapter 290, Public Drinking Water, and 30 TAC Chapter 291, Utility Regulations.

Section by Section Discussion

In addition to implementation of the state laws discussed previously, the commission proposes administrative changes throughout the proposed rules to update citations and terminology and conform with *Texas Register* requirements.

§293.1, Objective and Scope of Rules; Meaning of Certain Words

The commission proposes to amend §293.1(c) to specify that the definition of a recreational facility does not include a minor improvement or beautification project to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities. The proposed amendment is to implement TWC, §49.462(1), as amended by §21 of SB 902, to remain consistent with the amended statute.

§293.12, Creation Notice Actions and Requirements

The commission proposes to add §293.12(h) to specify that upon receipt of a petition to create a district under TWC, Chapter 54, all of which is to be located outside the corporate limits of a municipality, the executive director shall notify the commissioners court of any county in which the proposed district is to be located that the petition has been filed. The proposed addition is to implement TWC, §54.0161, as amended by HB 738, to remain consistent with the amended statute.

§293.41, Approval of Projects and Issuance of Bonds

The commission proposes to add §293.41(a)(6) to specify that the commission's review of district bond issues is limited to bonds to finance a project for which the commission has adopted rules requiring review and approval. The proposed addition is to implement TWC, §49.181(a), as amended by §14 of SB 902, to remain consistent with the amended statute. The commission proposes to amend §293.41(e)(3)(H) to specify that a MUD may issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting under a MUD's authorization to acquire road facilities or as a recreational facility. The proposed amendment to §293.41(e)(3)(H) is to implement TWC, §54.236, as amended by §29 of SB 902, to remain consistent with the amended statute. The commission further proposes to amend §293.41(e)(4) to specify that the district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities must not exceed 1% of the taxable value of property in the district and that the aforementioned 1% limitation also applies for bonds supported by a contract tax, and is based on the taxable value of property in the district(s) making payments under the contract. The commission proposes to amend §293.41(e)(4) to specify that an estimate of value provided by the central appraisal district may be used to establish the value of taxable property within the district(s) for the issuance of bonds for recreational facilities. The proposed amendment to §293.41(e)(4) is to implement TWC, §49.4645(a), as amended by §23 of SB 902, to remain consistent with the amended statute.

§293.44, Special Considerations

The commission proposes to amend §293.44(a)(12) to specify that a district is not required to prorate the land costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose; however, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose. The proposed amendment is to implement the addition of TWC, §49.4641, as added by §22 of SB 902, to remain consistent with the amended statute.

§293.51, Land and Easement Acquisition

The commission proposes to add §293.51(j) to specify that a district is not required to prorate the land costs of a combined lake and detention site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary purpose; however, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose. The proposed amendment is to implement the addition of TWC, §49.4641, as added by §22 of SB 902, to remain consistent with the amended statute.

§293.54, Bond Anticipation Notes (BAN)

The commission proposes to amend §293.54 to reflect that BANs may be issued for any purpose for which bonds of the district may be issued, in lieu of the prior statutory requirement that BANs may be issued for any purpose for which bonds of the district may have been previously voted. The proposed amendment is to implement TWC, §49.154(c), as amended by §13 of SB 902, to remain consistent with the amended statute.

§293.63, Contract Documents for Water District Projects

The commission proposes to amend §293.63(8) to increase the amount of a contract for which a district's governing board of directors is required to advertise the project from $50,000 to $75,000. The commission also proposes to amend §293.63(8) to increase the amount of a contract for which a district's governing board is required to solicit written competitive bids on the project from $50,000 to $75,000. The proposed amendments are to implement TWC, §49.273(d) and (e), as amended by §19 of SB 902, to remain consistent with the amended statute.

§293.81, Change Orders

The commission proposes to amend §293.81(1)(A) to specify that a district may issue a change order so long as the aggregate of the change orders does not increase the original contract amount by more than 25%, instead of by 10% as allowed under the existing rule. The proposed amendment is to implement TWC, §49.273(i), as amended by HB 1050 and HB 2704, to remain consistent with the amended statute.

§293.94, Annual Financial Reporting Requirements

The commission proposes to amend §293.94(h)(1)(A) to specify that a special water authority, as defined in TWC, §49.001(8), shall submit a copy of an audit report and accompanying annual filing affidavit to the commission not later than 160 days after the special water authority's fiscal year end, in lieu of the prior statutory language's 135-day time period which was applicable to all districts and authorities subject to TWC, Chapter 49. The proposed amendment is to implement TWC, §49.194(h), as amended by §15 of SB 902, to remain consistent with the amended statute.

§293.171, Definitions of Terms

The commission proposes to amend §293.171 and its subdivisions to specify that actual costs, as it relates to impact fees, may include non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities. The commission also proposes to amend §293.171 to add storm water detention or retention facilities, or capacity in such facilities and related storm water conveyances, to the list of facilities that may be exempt from the impact fee designation. These amendments are proposed to implement TWC, §49.212(d), as amended by §16 of SB 902, to remain consistent with the amended statute.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement the following bills passed by the 83rd Legislature, 2013: HB 738, HB 1050, HB 2704, and SB 902.

HB 738

The proposed rules would specify that the commissioners court of a county in which a proposed MUD is to be located may review the creation petition and provide comment to the commission for the creation of a MUD located entirely outside the corporate limits of a municipality. HB 738 requires the commission to promptly notify a commissioners court when there is a MUD creation petition. Under the existing Chapter 293 rules, a county may provide comments to the commission only when any portion of a proposed MUD is located outside the ETJ of a municipality. The proposed rules expand the opportunity for review and comment to include proposed MUDs that are totally outside the corporate limits (within or outside the ETJ) of a municipality. The proposed changes apply only to MUD creation petitions submitted to the commission on or after September 1, 2013.

HB 1050 and HB 2704

The proposed rule specifies that a change order can be approved by a water district's governing board, or by an official or employee of the board, so long as the change order, or the aggregate of change orders issued, does not increase the original contract amount by more than 25%. The existing Chapter 293 rule allows for change orders as long as they do not increase the original contract by more than 10%. Water districts may benefit from a cost savings under the proposed rule changes. Previously, a water district may have needed to rebid a contract that included change orders, in aggregate, that increased the contract price more than 10%. With the change from 10% to 25%, a water district may not be required to incur costs associated with rebidding a project. Although water districts may receive a benefit by the proposed rule change, any actions taken by the districts under the proposed rule would be voluntary. If there are any cost savings to districts under the proposed rule, these savings are not anticipated to be significant.

SB 902

The proposed rules would allow a special water authority to submit a copy of an audit report to the commission not later than 160 days after the district's fiscal year end. Under the previous statutory language, a district's audit report shall be filed within 135 days after the close of the district's fiscal year end.

The existing Chapter 293 rules allow fees charged by a district for certain facilities such as water, sanitary sewer, or drainage facilities to not be considered an impact fee. The proposed rules add storm water detention or retention facilities to the list of facilities exempt from the impact fee designation. The bill also allows for the determination of actual costs of facilities to include certain non-construction costs such as design, permitting, financing, construction, and interest.

The existing Chapter 293 rule requires districts to advertise and publish notice for district contracts over $50,000. The proposed rule increases the threshold to $75,000. The existing Chapter 293 rule also requires districts to solicit bids when a district contract is over $25,000 but not more than $50,000. The proposed rule also increases this maximum amount to $75,000. Under previous statutory language, a water district is required to advertise and publish notice for a contract over $50,000. With the increase to $75,000, a water district would not be required to incur costs associated with advertising and publishing these contracts. Although water districts may receive a benefit by the proposed rule changes, any actions taken by the districts under the proposed rule would be voluntary. If there are any cost savings to districts under the proposed rule, these savings are anticipated to be insignificant.

Previous statute defined a recreational facility as a park, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. SB 902 and the proposed rule modifies this definition to exclude minor improvements or beautification projects to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities.

The proposed rules allow districts to fund the full cost of sites acquired for developing water, wastewater, or drainage facilities that also have a recreational facility component by not requiring districts to prorate the costs of the site between utilities and recreational facilities. The proposed rules also require an engineer certify that such a site is reasonably sized for the utility's function and give guidance for what factors should be considered in order to determine if the site is reasonably sized for the utility's function.

Previous statutory language set the limitation for the total amount of bonds outstanding and proposed to be issued for recreational facilities at 1% of the district's total assessed valuation. The proposed rules add that the 1% limitation also applies to bonds supported by a contract tax, and is based on the taxable value of property in the district(s) making payments under the contract. The proposed rules also provide that an estimate of value pro-

vided by the central appraisal district may be used to establish the value of taxable property within the district(s) for the issuance of bonds for recreational facilities.

The proposed rules remove the existing limitation that street lighting projects purchased, installed, operated, and maintained by a district be located within the boundaries of a MUD. The proposed rules also add that the street lighting project can be located on land owned by a MUD.

The proposed rules will affect counties, municipal utility districts, and water districts (HB 1050, HB 2704, and SB 902). The proposed rule changes are not expected to result in significant changes to agency operations, policies, or procedures, and therefore the changes are not expected to result in significant fiscal implications for the agency.

There are an estimated 2,027 active and inactive water districts throughout the state that could be affected by the proposed rules. The proposed rules may have fiscal implications for water districts, counties, and municipalities, but any fiscal implications would be voluntary and would depend upon those unique circumstances for that local unit of government.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rules are not expected to have fiscal implications for businesses or individuals. The proposed rules do not increase or decrease regulatory or administrative requirements for business or individuals and affect water districts, counties, and municipalities.

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 rules are in effect. The proposed rules would affect water districts, counties, and municipalities but are not expected to directly affect small or micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect small or micro-businesses and are required to implement state law and therefore are consistent with the health, safety, or environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended 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.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by HB 738, HB 1050, HB 2704, and SB 902 relating to the creation, regulation, powers, and operation of water districts. The proposed rules would substantially advance this purpose by amending the existing Chapter 293 rules to incorporate the new statutory requirements.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rules will not 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. The cost of complying with the proposed rules is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the areas of contracts, projects, and authority with respect to water districts. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not 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. Finally, the proposed rulemaking will be adopted pursuant to the commission's specific authority in TWC, §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not proposed solely under the commission's general powers.

The commission invites public comment of the draft regulatory impact analysis determination. 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 rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by HB 738, HB 1050, HB 2704, and SB 902 relating to the creation, regulation, powers, and operation of water districts. The proposed rules would substantially advance this purpose by amending the existing Chapter 293 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This proposed rulemaking will primarily affect districts, especially in the areas of contracts, projects, and authority; this would not be an effect on private real property. Therefore, the proposed rulemak-

ing would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the Texas CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 26, 2014, 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. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, 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: *http://www5.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 2013-054-293-OW. The comment period closes June 30, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Justin Taack, Water Supply Division, (512) 239-1122.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.1

Statutory Authority

The amendment is proposed under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution.*

The proposed amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.1, which relates to districts.

§293.1. Objective and Scope of Rules; Meaning of Certain Words.

(a) 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 Texas Water Code (TWC). This chapter, adopted under TWC, §§5.103, 5.105, and 5.701, shall govern the creation, supervision, and dissolution of all general and special law districts subject to and within the applicable limits of the jurisdiction of the commission.

(b) This chapter shall govern the conversion of districts into municipal utility districts as provided in TWC, §§54.030 - 54.036.

(c) The term "recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting. The term does not include a minor improvement or beautification project to land acquired or to be acquired as part of a district's water, wastewater, or drainage facilities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2014.

TRD-201402288
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 29, 2014
For further information, please call: (512) 239-2613

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SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.12

Statutory Authority

The amendment is proposed under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution.*

The proposed amendment implements the language set forth in House Bill 738, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.12, which relates to districts.

§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 in accordance with Texas Water Code (TWC), Chapter 51,

multi-county Water Control and [~~&~~] Improvement Districts or single-county [~~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, Stormwater [~~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) For a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, which includes transfer of the certificate of public 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.

(e) If a petition for the creation of a Special Utility District in accordance with TWC, 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).

(f) Regardless of whether a public hearing is held or not, for an application for creation of a Special Utility District [~~special utility district~~] in accordance with TWC, Chapter 65, the commission may only consider a purpose for which the district is being created that is specified in the resolution.

(g) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts In General, 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.

(h) Upon receipt of a petition to create a district under TWC, Chapter 54, all of which is to be located outside the corporate limits of a municipality, the executive director shall notify the commissioners court of any county in which the proposed district is to be located that the petition has been filed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §§293.41, 293.44, 293.51, 293.54

Statutory Authority

These amendments are proposed under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution.*

The proposed amendments implement the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §§293.41, 293.44, 293.51, and 293.54, which relate to districts.

§293.41. Approval of Projects and Issuance of Bonds.

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies;

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection; [~~or~~]

(5) bonds issued by a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by subsection (d)(1)(E) of this section; or[~~.~~]

(6) bonds issued by a district to finance a project for which the commission has not adopted rules requiring review and approval.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to:

(1) a district if:

(A) the boundaries include one entire county;

(B) the district was created by a special act of the legislature; and

(i) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(ii) the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(iii) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(C) the district is a special water authority as defined by TWC, §49.001(8);

(D) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(E) the district:

(i) is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(ii) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(iii) has at least 5,000 active water connections; or

(F) the district:

(i) is a conservation and reclamation district created under the *Texas Constitution,* Article 16, §59, that includes territory in at least three counties; and

(ii) has the rights, privileges, and functions applicable to a river authority under TWC, Chapter 30; or

(2) a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by paragraph (1)(E) of this subsection.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery (except for a district all or part of which is located in Montgomery County and includes land within a planned community of at least 15,000 acres, of which a majority of the developed acreage is subject to restrictive covenants containing ad valorem assessments), Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a licensed [~~registered~~] professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air

pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting, except for a district operating under TWC, Chapter 54, pursuant to TWC, §54.236, as amended.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, [~~payable from any source,~~] for recreational facilities must not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller. If supported by contract taxes under TWC, §49.108, the outstanding principal debt (bonds, notes, and other obligations) may not exceed an amount equal to 1% of the value of the taxable property in the district or districts making payments under the contract. An estimate of the value provided by the central appraisal district may be used to establish the value of the taxable property in the district or districts.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a licensed [~~registered~~] professional engineer, or any other design professional allowed by law to engage in landscape architecture.

§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 that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under 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 under §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, wastewater, 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 that 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; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(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 under §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 under §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 typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded 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. Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the land costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose; however, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose.

(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; and

(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 reimbursables 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; or

(D) provided, however, that the 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 include periods during which the district is constructing its facilities or there is construction by third parties of aboveground 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 in accordance with 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, 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, wastewater, 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 that 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 storm water 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 storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(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 licensed [~~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, wastewater, or drainage, under contracts authorized under Local Government Code, §552.014, [~~§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, wastewater, 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 capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other 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 the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that 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 that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity [~~(CCN)~~], contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection and Chapter 291, Subchapter G of this title (relating to Certificates of Convenience and Necessity).

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, drainage, and recreational 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; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for streets that are used for recreational facilities, 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); or

(8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, 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, the executive director 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 a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by paragraph (1) [~~subsection (c)(1)~~] of this subsection [~~section~~] or fair market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) 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 storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be limited to that cost that is associated only with the drainage or recreational 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, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(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 (c) 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. Districts operating under Texas Water Code (TWC), Chapter 54, except one affected by House Bill 2965, 76th Legislature, 1999, are prohibited from exercising the power of eminent domain outside the district's boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility, as defined by TWC, §49.462;

(3) an exclusive easement through a county regional park; or

(4) a site or easement for a road project.

(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, levee, or recreational facility 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 licensed [~~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 licensed [~~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.

(i) Joint recreational and drainage/detention sites without a constant level lake. If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50% to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

(j) Notwithstanding subsections (d) and (i) of this subsection, a district is not required to prorate the land costs of site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary water, wastewater, or drainage purpose pursuant to the provisions of TWC, §49.4641, as amended. However, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose.

§293.54. Bond Anticipation Notes (BANs) [~~(BAN)~~].

A district may issue bond anticipation notes (BANs) for any purpose for which bonds of the district [~~have previously been voted or~~] may be issued or for the purpose of refunding previously issued BANs [~~bond anticipation notes~~]. All BANs [~~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 BAN, [~~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 BANs [~~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 its [~~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, BANs [~~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 BANs [~~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) BANs [~~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).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
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SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES

30 TAC §293.63

Statutory Authority

The amendment is proposed under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The proposed amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.63, which relates to districts.

§293.63. Contract Documents for Water District Projects.

Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). The following specific requirements must apply, unless otherwise provided by a district's special law.

(1) All contract documents shall be prepared in such a manner as to promote competitive bidding and to ensure that all bids are prepared on a common basis.

(2) The instruction to bidders section of the contract documents shall give special attention to the following items.

(A) The basis of award shall be clearly defined. If alternate proposals are to be considered, the instructions to bidders shall clearly state in which order the alternates will be considered in determining the most advantageous bid. If two or more contracts are to be awarded, the instructions to bidders shall clearly indicate if combined bids, or tied bids, will be allowed, or if each contract will be awarded separately.

(B) The contract should clearly provide that alternate bids will not be considered, unless specifically allowed by instructions to bidders and requested in the proposal form.

(C) Specific notice shall be given that qualifying statements or accompanying qualifying letters will be cause for rejection of the bid.

(D) Provision shall be made for prospective bidders to request additional information, explanations, or interpretations regarding contract documents prior to the bid opening. All requests and answers to all such requests shall be given in writing. Answers will be in addendum form to all prospective bidders.

(3) The district shall require the bidder to whom the district proposes to award the contract to submit a statement of qualifications.

The statement shall include such data as the district may reasonably require to determine whether the contractor is responsible and capable of completing the proposed project.

(4) For contracts over $50,000, [~~$50,000~~] the district shall require bidders to submit certified or cashier's checks or a bid bond issued by a surety legally authorized to do business in this state in an amount of at least 2.0% of the total amount of the bid. For a contract greater than $250,000, [~~$250,000~~] the district must accept a bid bond if it meets all requirements. If cashier's checks are required, the checks for all bidders except the three most qualified bidders shall be returned within three days of the bid opening.

(5) The district shall require that bidders submit, along with the bid, the name of the person, firm, or corporation that will execute payment and performance bonds.

(6) The district may establish criteria for acceptability of the surety company issuing payment and performance bonds including, but not limited to:

(A) authorization to do business in Texas; and

(B) authorization to issue payment and performance bonds in the amount required for the contract and:

(i) a rating of at least B from Best's Key Rating Guide; or

(ii) if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the United States Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such performance and payment bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation. The district shall satisfy itself that such surety company and bonds meet such criteria.

(7) The district shall satisfy itself that all persons executing the bonds are duly authorized by the laws of the State of Texas and the surety company to do so.

(8) For contracts over $75,000, [~~$50,000,~~] a district's board shall advertise the project once a week for two consecutive weeks. For contracts over $25,000 but not more than $75,000, [~~$50,000,~~] a district's board shall solicit written competitive bids on the project from at least three bidders. For contracts not more than $25,000, a district's board is not required to advertise or seek competitive bids.

(9) A board of a special law district may elect to contract in accordance with the requirements in Texas Water Code, §49.273, even if those requirements conflict with provisions in the district's special law.

(10) A district with a population of more than 100,000 may utilize the design-build procedure for limited projects as provided in Local Government Code, Chapter 271, Subchapter J.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
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SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.81

Statutory Authority

The amendment is proposed under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution.*

The proposed amendment implements the language set forth in House Bill (HB) 1050 and HB 2704, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.81, which relates to districts.

§293.81. Change Orders.

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

(1) Districts are authorized to issue change orders subject to the following conditions.

(A) Except as provided in this subparagraph, change orders, in aggregate, shall not be issued to increase the original contract price more than 25% [~~10%~~]. Change [~~Additional change~~] orders above 25% may be issued only in response to:

(i) unanticipated conditions encountered during construction;

(ii) changes in regulatory criteria; or

(iii) coordination with construction of other political subdivisions or entities.

(B) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(2) No commission approval is required if the change order is $50,000 or less. If the change order is more than $50,000, the executive director or his designated representative may approve the change order. For purposes of this section, if either the total additions or total deletions contained in the change order exceed $50,000, even though the net change in the contract price will be $50,000 or less, approval by the executive director is required.

(3) If the change order is $50,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be submitted to the executive director within ten days of the execution date of the change order, together with any revised construction plans and specifications approved by all agen-

cies and entities having jurisdictional responsibilities, i.e. city, county, state, other, if required.

(4) Applications for change orders requiring approval shall include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor, and a resolution or letter signed by the board president indicating concurrence with [~~in~~] the proposed change;

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a detailed explanation for the change;

(D) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and new contract price or cost estimate;

(E) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) filing fee in the amount of $100; and

(I) other information as the executive director or the commission may require.

(5) Copies of all changes in plans, specifications and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Commission Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application review.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
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SUBCHAPTER H. REPORTS

30 TAC §293.94

Statutory Authority

The amendment is proposed under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution*.

The proposed amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.94, which relates to districts.

§293.94. Annual Financial Reporting Requirements.

(a) Statutory provisions for fiscal accountability. All districts as defined in Texas Water Code (TWC), §49.001(a) are required to comply with the provisions of TWC, [~~Texas Water Code,~~] §§49.191 - 49.198 requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manual. All districts shall comply with the accounting and auditing manual adopted by the executive director. The manual shall consist of one publication, "Water District Financial Management Guide." The manual may be revised as necessary by the executive director.

(c) Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. Districts with limited or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d) Form of audit. The audit shall be performed according to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

(e) Audit report exemption.

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

(A) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(B) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of $250,000 during the fiscal period; and

(C) the district's cash and temporary investments were not in excess of $250,000 at any time during the fiscal period.

(2) The annual financial report must be accompanied by an affidavit, attesting to the accuracy and authenticity of the financial report, signed by a duly authorized representative of the district, which conforms with the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(f) Financially dormant districts.

(1) A district may elect to prepare a financial dormancy affidavit rather than an unaudited financial report, as prescribed by subsection (e) of this section, provided:

(A) the district had $500 or less of receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(B) the district had $500 or less of disbursements of funds during the calendar year;

(C) the district had no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(D) the district did not have cash or investments in excess of $5,000 at any time during the calendar year.

(2) The required financial dormancy and filing affidavit shall be prepared in a format prescribed by the executive director and shall be submitted by a duly authorized representative of the district. Financial dormancy affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(g) Annual filing affidavit. Each district shall submit annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary. However, each district that submits an audit report must execute and submit, together with the audit, an annual filing affidavit when the audit is submitted with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the executive director.

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

(1) Submittal dates.

(A) Audits. Audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. Audit reports and the accompanying annual filing affidavits submitted by a special water authority, as defined in TWC, §49.001(8), shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year. The [~~district's~~] governing board of the district or special water authority shall approve the audit before a copy of the report is submitted to the executive director; however, the governing board's refusal to approve the audit shall not extend the submittal deadline for the audit report. If the governing board refuses to approve the audit, the board shall submit to the executive director by the prescribed submittal date the report and a statement providing the reasons for the board's refusal to approve the report.

(B) Financial reports. Financial reports and the annual filing affidavits in a format prescribed by the executive director, must be submitted to the executive director as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year.

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

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

(i) Review by executive director.

(1) The executive director may review the audit report of each district, and if the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes or commission rules, or if the executive director has any recommendations, he shall notify the governing board of the district.

(2) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this section, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director. The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the executive director considers necessary for the review, analysis, and approval of an audit report, financial report, or financial dormancy affidavit.

(j) Penalties for Noncompliance.

(1) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

(2) A district that fails to comply with the filing provisions of TWC, [~~Texas Water Code,~~] Chapter 49, may be subject to a civil penalty of up to $100 per day for each day the district willfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
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SUBCHAPTER N. PETITION FOR APPROVAL OF IMPACT FEES

30 TAC §293.171

Statutory Authority

The amendment is proposed under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and

authorities created under Article 3, §52, and Article 16, §59, of the *Texas Constitution.*

The proposed amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.171, which relates to districts.

§293.171. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Actual costs under paragraph (1)(A) and (B) of this section, as determined by the district's governing board of directors, may include non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities.

(1) Impact fee--A charge or assessment imposed by a district against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, wastewater, or drainage facilities, including all necessary service lines and meters, for capacity in storm water detention or retention facilities and related storm water conveyances, or for wholesale facilities that serve such water, wastewater, [~~sanitary sewer, or~~] drainage, or storm water detention or retention facilities, shall not be deemed to be an impact fee under Local Government Code, Chapter 395 if the charge or fee [~~if~~]:

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

(B) [~~it~~] is made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district; or

(C) [~~it~~] is made by a district for retail or wholesale service on land that at the time of platting was not being provided with water, [~~water or~~] wastewater, drainage, or storm water detention or retention service by the district.

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

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

(4) Connection--Connection means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards. Connections shall be described in terms of single family equivalent connections, living unit equivalents, or other generally accepted unit typically attributable to a single family household. The assumed population equivalent per service unit shall be indicated.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes to amend §305.49 and §305.154.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed changes to this chapter are necessary to implement passage of House Bill (HB) 1079, 83rd Legislature, 2013. HB 1079 amended Texas Water Code (TWC), §27.0513 to establish a requirement for new, amended, or renewed Class III Underground Injection Control (UIC) permits to include a table of high and low values for each groundwater quality parameter that is used to determine aquifer restoration, herein referred to as the permit range table, to modify the conditions that determine when certain types of production area authorization (PAA) applications are subject to an opportunity for a contested case hearing; and, to require that restoration table values of a new or amended PAA must fall within the range table that is established in the corresponding permit.

The proposed amendments to §305.49 and §305.154 address the requirement for inclusion of a permit range table in all new, amended, or renewed Class III UIC area permits for *in situ* mining of uranium.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also proposes to amend 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearing; Public Comments, and Chapter 331, Underground Injection Control.

Section by Section Discussion

§305.49, Additional Contents of Application for an Injection Well Permit

The proposed amendment to §305.49(a)(10) would address the requirements of amended TWC, §27.0513(a), as amended by HB 1079. Under this proposed rule, an application for a new, amended, or renewed Class III UIC area permit for *in situ* mining of uranium must include a table of pre-mining low and high values for each groundwater quality parameter used to measure groundwater restoration, herein referred to as a permit range table. These values must be established from analysis of ground-

Texas Commission on Environmental Quality

ORDER ADOPTING AMENDED RULES

Docket No. 2013-1382-RUL

Rule Project No. 2013-054-293-OW

On October 22, 2014, the Texas Commission on Environmental Quality (Commission) adopted amended §290.272 in 30 TAC Chapter 290, concerning Public Drinking Water; amended §291.87 in 30 TAC Chapter 291, concerning Utility Regulations; and amended §§293.1, 293.12, 293.41, 293.44, 293.51, 293.54, 293.63, 293.81, 293.94, and 293.171 in 30 TAC Chapter 293, concerning Water Districts. The proposed rules were published for comment in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4132) for Chapter 290, (39 TexReg 4138) for Chapter 291, and (39 TexReg 4143) for Chapter 293.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman