

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §1.12.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of this rulemaking is to implement legislation relating to public notice requirements.

House Bill (HB) 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Legislature, 2001, §1.12, amended Texas Water Code (TWC), Chapter 5, Subchapter D, by adding, among other sections, §5.129, Summary for Public Notices. Proposed new §1.12 addresses the requirements of new TWC, §5.129, which sets forth content of public notice requirements.

SECTION DISCUSSION

The commission proposes new §1.12, Summary for Public Notices, to address the requirement of TWC, §5.129, as added by HB 2912, which provides that the commission, by rule, shall require that public notices include a succinct beginning statement of the subject of the notice. Generally, new §1.12 is proposed to mirror the statutory provisions. Since the provisions of this new statute are applicable to all public notices relating to any matter under the commission's jurisdiction for which public notice is required, this provision is proposed to be added to Chapter 1 of the commission rules due to the broad applicability of this chapter.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed rule is in effect, there will be no significant fiscal

implications for the agency or any other unit of state or local government due to administration or enforcement of the proposed rule.

This rulemaking is intended to implement certain provisions of HB 2912, which requires each public notice published by the commission or by a person regulated by the commission to include at the beginning of the notice, a succinct statement of the subject of the notice. This requirement would be applicable to all public notices relating to any matter under the commission's jurisdiction for which public notice is required. The proposed rule would add rule language to existing commission regulations to comply with the provisions of HB 2912. This rulemaking is procedural in nature and does not add regulatory requirements that are anticipated to result in significant fiscal implications for any unit of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of implementing the proposed rule will be potentially improved public notification by providing clearer descriptions of the subject of notices.

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regulations to comply with the provisions of HB 2912. This rulemaking is procedural in nature and does not add regulatory requirements that are anticipated to result in significant fiscal implications for any individual or business.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of administration or enforcement of the proposed rule, which is intended to implement provisions of HB 2912, which requires each public notice published by the commission or by a person regulated by the commission to include at the beginning of the notice, a succinct statement of the subject of the notice. This requirement would be applicable to all public notices relating to any matter under the commission's jurisdiction for which public notice is required. The proposed rule would add rule language to existing commission regulations to comply with the provisions of HB 2912. This rulemaking is procedural in nature and does not add regulatory requirements that are anticipated to result in significant fiscal implications for any small or micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

A “major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning public notice, the rulemaking does not meet the definition of a “major environmental rule.”

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal state agency procedures; as well as the other statutory authorities cited in the STATUTORY AUTHORITY

section of this preamble. In addition, the proposal is in direct response to HB 2912 and does not exceed the requirements of this bill. This proposal 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. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state laws (i.e., Texas Government Code, §2001.004 and TWC, §5.129). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rule is subject to Texas Government Code, Chapter 2007. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for public notice. As added by HB 2912, TWC, §5.129 requires that public notices include a succinct beginning statement of the subject of the notice. The proposed rule will substantially advance this stated purpose by providing specific procedural requirements in response to legislative changes. Promulgation and enforcement of the rule will not burden private real property. The proposed rule does not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. The proposed actions concern only the procedural rules of the commission, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40 *et seq.*).

Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin at 2:00 p.m. on May 21, 2002 at the Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-028-039-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information contact Ray Henry Austin at (512) 239-6814.

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §5.129, which requires that public notices include a succinct beginning statement of the subject of the notice.

The proposed new section implements TWC, §§5.103, 5.105, and 5.129 and Texas Government Code, §2001.004.

CHAPTER 1

PURPOSE OF RULES, GENERAL PROVISIONS

§1.12

§1.12. Summary for Public Notices.

Each public notice required by law or rule to be issued or published by the commission, or by a person under the jurisdiction of the commission, shall include at the beginning of the notice a succinct summary statement of the subject of the notice. The summary statement shall be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice. The summary statement may not be grounds for challenging the validity of the proposed action for which notice was given.