

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §50.131, Purpose and Applicability.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission has the statutory duty and responsibility to create and supervise certain water and water-related districts in accordance with the Texas Water Code (TWC). There are approximately 1,000 active water districts in Texas that are overseen by the commission. TWC, §49.351, allows any district that provides potable water or sewer service to household users to establish, operate, and maintain a fire department. A district may also operate a fire department jointly with another district or contract with any person to perform fire-fighting services within the district. In addition to complying with other statutory requirements, a district that proposes to provide fire-fighting services must have a fire department plan approved by the commission. Senate Bill (SB) 1444, 77th Legislature, 2001, amended TWC, §49.351 to delete the requirement that the commission hold a hearing before acting on an application for approval of a fire department plan. Because a hearing is no longer required for these applications, it is now possible for the commission to delegate the authority to act on applications for approval of fire department plans to the commission's executive director under TWC, §5.122.

In a related rulemaking amending Chapter 293 of this title concerning water districts, which is in this issue of the *Texas Register*, the commission is proposing to establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 36, 49, 51, 54, 55, 58, 59, and 65, as amended by SB 1444, Legislature, 2001, and certain other statutory changes enacted in 2001. In the rulemaking to amend

Chapter 293, the commission is proposing to repeal §293.121, *Approval of Fire Department Projects*. That section currently provides that the executive director is responsible only for reviewing fire department plans. With the repeal of §293.121 and the amendment to §50.131 that is proposed in this rulemaking, the executive director would still be responsible for reviewing applications for approval of fire department plans, but would also be authorized to approve those plans on behalf of the commission. In the Chapter 293 rulemaking, the commission also proposes to amend §293.11, *Information Required to Accompany Applications for Creation of Districts*, to allow fire department plans to be submitted to the commission for approval along with an application to create a district; this proposed change also implements portions of SB 1444. In addition, the commission proposes to amend §293.123, *Application Requirements for Fire Department Plan Approval*, to implement other changes to TWC, §49.351 concerning the actions a district must take in order to provide fire-fighting services.

SECTION DISCUSSION

Section 50.131, Purpose and Applicability

Existing §50.131(c) lists certain applications for which the commission has not delegated approval authority to the executive director, including in §50.131(c)(4)(E), applications under the TWC, §49.351 for approval of a fire department or fire-fighting services plan. The commission proposes to delete §50.131(c)(4)(E). This change will authorize the executive director to approve fire department and fire-fighting services plans under existing §50.131(b)(5), which generally allows the executive director to act on district matters under TWC, Chapters 49 - 66.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed amendment is in effect, no significant fiscal implication is expected for the agency or other units of state and local government due to implementation of the proposed amendment.

The proposed amendment implements certain provisions of Senate Bill (SB) 1444 (an Act relating to the general powers and authority of water districts; providing a penalty), 77th Legislature, 2001. This bill eliminated the requirement for the commission to hold a hearing on applications for approval of water district fire department (WDFD) plans. The proposed amendment only applies to the commission and the approximately 1,000 existing and any new water districts throughout the state regulated by the commission.

Elimination of the hearing requirement allows the commission to delegate the approval of plans to the executive director. The proposed amendment, which is procedural in nature, is intended to provide for this delegation and is not anticipated to result in a significant fiscal impact for any unit of state or local government, although the proposed rulemaking could result in small savings for districts because their representatives will no longer be required to appear at a commission meeting in order to have a fire department plan approved.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of implementing the proposed amendment will be that the executive director has the authority to approve of water district fire plans, resulting in a streamlining of the processing of these applications.

The proposed amendment implements certain provisions of SB 1444, 77th Legislature, 2001, which eliminated the requirement for the commission to hold a hearing on applications for approval of plans. Elimination of the hearing requirement allows the commission to delegate the approval of plans to the executive director. The proposed amendment, which is procedural in nature, is intended to provide for this delegation and is not anticipated to result in a significant fiscal impact for any individual or business.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses due to implementation of the proposed amendment, which would implement certain provisions of SB 1444 by providing the executive director with the authority to approve plans. The proposed amendment is procedural in nature and applies only to the commission and water districts; therefore it is not anticipated to result in a significant fiscal impact for small or micro-businesses.

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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute.

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, 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 proposed amendment to §50.131 does not meet the definition of a major environmental rule because the amendment is procedural in nature.

The only purpose of the proposed amendment is to delegate to the executive director the authority to act on district applications for approval of fire department and fire-fighting services plans.

Further, this rulemaking does not meet the applicability criteria of a “major environmental rule” because the proposed amendment does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Specifically, the proposed amendment does not exceed a standard set by federal law, nor exceed a requirement of a federal delegation agreement or contract, because no federal law or federal delegation agreement or

contract applies to the proposed rulemaking. The proposed amendment is not proposed solely under the general rulemaking authority of the commission but also under TWC, §5.122, which provides that the commission may adopt rules to delegate to the executive director the authority to act on uncontested matters, and §49.351, as amended by SB 1444, which requires the commission to adopt rules under which fire plans will be considered for approval; the proposed amendment does not exceed the express requirements of those state statutes. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendment and performed a preliminary assessment of whether the amendment constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendment is to delegate to the executive director the authority to act on district applications for approval of fire department and fire-fighting services plans. Promulgation and enforcement of the proposed amendment will constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking as the proposed rule is procedural in nature and neither relates to nor has any impact on the use or enjoyment of private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program nor does it affect any action or authorization

identified in §505.11. The only effect of the rulemaking would be to authorize the executive director to approve district fire department plans. Therefore, the rulemaking is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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 2001-054-293-WT. Comments must be received by 5:00 p.m., May 13, 2002. For further information or questions concerning this proposal, please contact Auburn Mitchell, Policy and Regulations Division, at (512) 239-1873.

SUBCHAPTER G: ACTION BY EXECUTIVE DIRECTOR

§50.131

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state, and also TWC, §5.122, which provides that the commission may adopt rules to delegate to the executive director the authority to act on uncontested matters, and §49.351, as amended by SB 1444, which requires the commission to adopt rules under which fire plans will be considered for approval.

The amendment implements TWC, §5.122 and SB 1444, 77th Legislature, 2001, which amended TWC, §49.351 to eliminate the requirement for a commission hearing on district fire department plans.

§50.131. Purpose and Applicability.

(a) - (b) (No change.)

(c) In addition to those things excluded from coverage under this chapter in §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) - (3) (No change.)

(4) district matters under Texas Water Code, Chapters 49-66, as follows:

(A) - (D) (No change.)

[(E) an application under Texas Water Code §49.351 for approval of a fire department or fire-fighting services plan; or]

(E) [(F)] an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(5) - (8) (No change.)

(d) (No change.)