

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to Subchapter A, *General Provisions*, §293.1; Subchapter B, *Creation of Water Districts*, §293.11; Subchapter E, *Issuance of Bonds*, §§293.42, 293.44, 293.46, 293.47, 293.51, 293.56, and 293.59; Subchapter G, *Other Actions Requiring Commission Consideration for Approval*, §293.81 and §293.89; Subchapter I, *District Name Changes and Posting Signs*, §293.103; Subchapter K, *Fire Department Projects*, §293.123; Subchapter N, *Petition for Approval of Impact Fees*, §293.171; and Subchapter P, *Acquisition of Road Utility District Powers by Municipal Utility District*, §293.201 and §293.202. The commission also adopts in Subchapter G, the readoption of §293.87, in Subchapter J, *Utility System Rules and Regulations*, new §293.113, and in Subchapter K the repeal of §293.121.

Sections 293.42, 293.44, 293.47, 293.56, 293.81, 293.103, and 293.201 are adopted *with changes* to the proposed text as published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 2984).

Sections 293.1, 293.11, 293.46, 293.51, 293.59, 293.87, 293.89, 293.113, 293.123, 293.171, and 293.202, and the repeal of §293.121 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

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). There are approximately 1,000 active water districts in Texas which are overseen by the commission. Chapter 293 governs the creation, supervision, and dissolution of all general and special law districts and the conversion of districts into municipal utility districts. Further, Chapter 293 provides the rules which govern the review of bonds for engineering

standards and economic feasibility of applications in order to assure that construction projects are designed and completed with the proper approvals, thereby ensuring quality service. The chapter is also important because it ensures that bond funds are used for the benefit of the residents of the districts and that proceeds from bond issues are used to promote a district's intended purpose. The commission also has certain jurisdiction over approximately 55 water supply or sewer service corporations operating under TWC, Chapter 67, that provide sewer service.

The adopted rulemaking will establish new or revised 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 Senate Bill (SB) 1444; House Bill (HB) 2994; HB 2912, §20.02 and §18.01; and a portion of SB 2, 77th Legislature, 2001. SB 1444 amends provisions in TWC, Chapter 49 relating to the administration, management, operation, and authority of water districts and authorities, and in Chapter 54, concerning municipal utility districts. HB 2994 and SB 1444 both amend TWC, §49.108 to exempt from commission review district contract tax obligations for bonds issued by a municipality. HB 2912, §20.02, and SB 2, §2.58, also address contract taxes by amending TWC, §51.149. The adopted rules also implement HB 2912, §18.01, which changes the name of the commission to the Texas Commission on Environmental Quality, to be effective September 1, 2002.

Specifically, the adopted rules will allow a fire plan to be approved at the time of district creation; require certificates of land ownership and value to be provided by a central appraisal district (CAD) in lieu of the county tax assessor; add provisions to allow districts to fund costs related to recreational facilities; modify provisions for allowable change orders; provide additional exemptions from having to

obtain commission approval of contract tax obligations and impact fees; add provisions regarding districts and water supply corporations' (WSCs') requiring connection to their wastewater collection systems; delete the requirement that a district provide evidence that it has held a hearing when seeking approval of a fire plan; readopt requirements for applications for extension of time to sell bonds; repeal or delete unnecessary rules; and correct and clarify the rules.

Further, because this rulemaking is the lead rulemaking to amend §293.11 (concerning information required to accompany applications for creation of districts), it accommodates a separate rulemaking involving groundwater conservation districts (GCDs) under SB 2, Rule Log Number 2001-094-294-WT (SB 2, Article 2, §§2.22 - 2.57: Groundwater Conservation Districts), by amending §293.11 to exclude GCDs from the scope of §293.11. The separate rulemaking proposes to consolidate virtually all aspects of Chapter 293 affecting GCDs into Subchapter C and rename that subchapter as "Special Requirements for Groundwater Conservation Districts." The proposal for that rulemaking was published in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3939).

SECTION BY SECTION DISCUSSION

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

Adopted §293.1 reflects the agency name change from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 293.11, Information Required to Accompany Applications for Creation of Districts

Adopted §293.11 is amended for those districts that provide potable water or sewer service to household users to specify that a petition for creation may include a request for approval of a fire plan, in accordance with SB 1444, Article 23, which amends TWC, §49.351, and to specify associated additional application requirements. Section 293.11 is also amended to reflect that a certificate indicating the owners and tax valuation of land within a proposed district is to be provided by the CAD and not the county tax assessor to reflect the actual practice that this information is provided by the CAD. Section 293.11 is also amended to exclude GCDs from its scope. In separate rulemaking published in the May 10, 2002 *Texas Register* (27 TexReg 3939), the commission proposes to consolidate virtually all aspects of Chapter 293 affecting GCDs into Subchapter C and rename that subchapter as “Special Requirements for Groundwater Conservation Districts.” The proposed new name for Subchapter C is used when referring to this subchapter in this rulemaking. Section 293.11(h)(11) is also amended to correct cross-references. Other changes to §293.11 conform it to Texas Register style requirements.

Section 293.42, Submitting of Documents and Order of Review

Adopted §293.42(e) was proposed to be amended to delete the reference to bond applications on file at the time of the effective date of the rules, as sufficient time has passed for all such bond applications to have been processed, and to limit availability of the expedited bond application review process to a district’s second and subsequent issues. Commenters objected to the latter proposed revision on the grounds that the high-quality threshold set for applications to qualify for expedited review results in reduced staff processing time and is therefore more efficient. The commission agrees that submittal of

complete applications reduces staff review time and should be encouraged. Accordingly, the commission will not adopt the proposed amendment to §293.42(e). However, because the existing text of §293.42(e) is no longer needed, the commission has deleted that subsection.

Section 293.44, Special Considerations; §293.46, Construction Prior to Commission Approval; and §293.47, Thirty Percent of District Construction Costs to be Paid by Developer

The adopted amendment to §293.44(a)(1) conforms a statutory reference to Texas Register style requirements. Sections 293.44(b) and 293.47(d) are adopted with changes to the proposed text in response to comments. Sections 293.46 and 293.47(a) are adopted without changes to the proposed text. Adopted §293.44(b) and §293.47(d) distinguish between developer and non-developer projects regarding district funding of 70% or 100% of the costs of recreational facilities. The amendments implement SB 1444, Article 24, which establishes in TWC, Chapter 49, new Subchapter N, which allows all districts subject to Chapter 49 to fund recreational facilities. Adopted §293.47(g) is amended to clarify the financial guarantee requirement to be consistent with the different types and applicability of financial guarantees.

Section 293.51, Land and Easement Acquisition

Adopted §293.51(e) is amended to correct a reference to the applicable subsection that was changed in a previous rule revision.

Section 293.56, Requirements for Letters of Credit (LOC)

The figure in adopted §293.56(e) is amended to reflect the agency name change from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 293.59, Economic Feasibility of Project

Adopted §293.59(k) is amended to reflect that a certificate indicating the valuation of land within a proposed district is to be provided by the CAD and not the tax assessor. The amendment reflects actual current practice that the certificates are provided by the CAD. Section 293.59(l), concerning feasibility requirements for second and subsequent bond issues, is clarified for ease of interpretation without changing the intent.

Section 293.81, Change Orders

Adopted §293.81(1)(A) is amended to allow change orders to construction projects to be issued, in aggregate, up to 10% of the original contract amount. The amendment implements SB 1444, Article 17, which amends TWC, §49.273, to allow districts greater flexibility in issuance of change orders. In response to a comment, the commission has also revised the text of the rule from the proposal to make it more consistent with TWC, §49.273(i).

Section 293.87, Application for Extension of Time to Sell Bonds

The commission readopts §293.87, which establishes the requirements for an application to extend the effective period of the commission's approval of a bond issue. Under §293.45(a), a district must sell

bonds within one year of the effective date of the commission's order approving the bonds, unless the executive director (ED) grants an extension of the time to sell bonds. The commission originally adopted §293.87 in 1993. Due to an oversight, however, the text of the rule was not filed with the Secretary of State. To correct that omission, the commission readopts the rule with substantially the same text as was adopted by the commission in 1993.

Section 293.89, Contract Tax Obligations

Adopted §293.89(a) is amended to reflect that a district is not required to obtain commission approval of contract taxes levied by a district to pay for its share of bonds issued by a municipality. The amendment implements HB 2994 and SB 1444, Article 7, which amends TWC, §49.108, and HB 2912, §20.02 and SB 2, §2.58, which amend TWC, §51.149, to allow for certain contract tax obligations to be exempt from commission review. Additional amendments to subsections (a) and (b) conform the rules to Texas Register style requirements. Subsection (c), relating to contract tax obligations, is amended to clarify the applicability of the commission's feasibility rules in §293.59.

Section 293.103, Form of Notice for Name Change

The figure in adopted §293.103 is amended to reflect the agency name change from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality. The effective date of district's name change in the example in the figure was also changed.

Section 293.113, District and Water Supply Corporations Authority Over Wastewater Facilities

Adopted new §293.113 is added to describe when a district or WSC can prohibit on-site wastewater

facilities, what a district or WSC is required to do if it prohibits such facilities, and to establish requirements concerning reimbursement of wastewater collection facility costs to connect to a district or WSC's system. The new section implements SB 1444, Article 15, which amends TWC, §49.234 to grant districts and WSCs authority over installation of private on-site wastewater facilities and requires districts and WSCs to reimburse certain centralized wastewater collection system costs if private on-site facilities are prohibited.

Section 293.121, Approval of Fire Department Projects

Section 293.121 is repealed. In a concurrent rulemaking that appears in this issue of the *Texas Register*, the commission is adopting an amendment to §50.131 to delegate to the ED authority to approve fire plans on behalf of the commission. That amendment is adopted to implement SB 1444, Article 8, which amended TWC, §49.351 to delete the requirement that the commission hold a hearing on an application for approval of a fire plan. An effect of eliminating the hearing requirement in TWC, §49.351 is to enable the commission to delegate approval of fire department plans to the ED. As a result of the amendment to §50.131, the provisions in §293.121 concerning the responsibilities of the commission and the ED with respect to fire plans are no longer needed.

Section 293.123, Application Requirements for Fire Department Plan Approval

Adopted §293.123 is amended by deletion of the requirement that a district provide evidence of a hearing, in which any person residing in a district could present testimony for or against the proposed fire plan and/or any associated contract, with other application materials. The amendment implements SB 1444, Article 8, which amended TWC, §49.351 to delete the requirement to hold a hearing.

Section 293.171, Definitions of Terms

Adopted §293.171 is amended by adding paragraph (1)(C) to reflect that a district is not required to obtain commission approval of charges or fees for retail or wholesale service on land that at the time of platting was not being provided with water or wastewater service by the district. The amendment implements SB 1444, Article 12, which amends TWC, §49.212 to exempt certain fees charged by a district from commission review. Other changes to §293.171 clarify the rule.

Section 293.201, District Acquisition of Road Utility District Powers

Adopted §293.201(a) is amended to change the name of the agency from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 293.202, Application Requirements for Commission Approval

Adopted §293.202 is amended to change the name of the agency from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed the 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 the Texas Government Code. "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 adopted rules concern commission administration and oversight of water districts and WSCs and their allowable activities, including requirements applicable to financial instruments such as bonds. The rules incorporate new legislative requirements and provide for regulatory consistency. The rules will not 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. Further, this rulemaking does not meet the applicability criteria of a “major environmental rule” because the adopted rules do 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 adopted rules do 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 rulemaking. The rules are not adopted solely under the general rulemaking authority of the commission but also under TWC, §§5.122, 49.234, 49.351, and Texas Local Government Code, §395.080, and were specifically developed also to implement TWC, §§36.011, 36.013, 36.015, 49.108, 49.181, 49.212, 49.273, Chapter 49, Subchapter N, §51.149, §54.014, and HB 2912, §18.01, 77th Legislature, 2001, and the adopted rules do not exceed the express requirements of those state statutes.

TAKINGS IMPACT ASSESSMENT

The commission performed a assessment of the adopted rulemaking pursuant to Texas Government Code, §2007.043. The specific purpose of the rulemaking is to implement applicable requirements of

SB 2, SB 1444, HB 2994, and HB 2912, 77th Legislature, 2001, concerning commission administration and oversight of water districts, and correct and clarify the rules. The adopted rulemaking would advance this specific purpose by allowing a fire plan to be approved at the time of district creation; requiring certificates of land ownership and value to be provided by a CAD in lieu of the county tax assessor; adding provisions to allow districts to fund costs related to recreational facilities; modifying provisions for allowable change orders; readopting requirements for applications for extension of time to sell bonds; providing additional exemptions from having to obtain commission approval of contract tax obligations and impact fees; adding provisions regarding districts and WSCs' requiring connection to their wastewater collection systems; deleting the requirement that a district provide evidence that it has held a hearing when seeking approval of a fire plan; repealing or deleting unnecessary rules; and clarifying certain rules. Promulgation and enforcement of these rules will not burden private real property because the actions that are required by the rulemaking relate primarily to administration of water districts by the commission including requirements applicable to financial instruments such as bonds. Private real property is not subject to these rules. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and found that the rulemaking identified in the Act's Implementation Rules, 31 TAC §505.11(b), relating to Actions and Rules Subject to the Coastal Management Program, or may affect an action/authorization

identified in §505.11(a)(6), and, therefore, requires that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission determined that the adopted rules are included under 31 TAC §505.22 and found that the adopted rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the adopted rules include the goal to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. While these adopted rules do not specifically regulate location or type of development allowed, Chapter 293 provides requirements for developers and for water districts. Section §505.11 provides the actions and rules that are subject to the CMP. Among the list is the creation of a special purpose district or approval of bonds to construct infrastructure on coastal barriers. As the adopted rules will be effective throughout the state, the CMP policy is applicable. CMP policies applicable to the adopted rules include the administrative policy requiring applicants to provide information necessary for an agency to make an informed decision on a proposed action listed in §505.11 and the standards related to the development of infrastructure on coastal barriers set out in 31 TAC §505.14(m).

The adopted rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The specific purpose of the adopted rules is to adopt new 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, particularly as amended by SB 2, SB 1444, HB 2994, and HB 2912, 77th Legislature, 2001. The rules will substantially advance this specific purpose. Specifically, the adopted rules would allow a fire plan to be approved at the time of

district creation; require certificates of land ownership and value to be provided by a CAD in lieu of the county tax assessor; add provisions to allow districts to fund costs related to recreational facilities; readopt requirements for applications for extension of time to sell bonds; modify provisions for allowable change orders; provide additional exemptions from having to obtain commission approval of contract tax obligations and impact fees; add provisions regarding districts and WSCs' requiring connection to their wastewater collection systems; delete the requirement that a district provide evidence that it has held a hearing when seeking approval of a fire plan; repeal or delete unnecessary rules; and correct and clarify the rules.

Promulgation and enforcement of these adopted rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules do not alter the allowable location, standards, or stringency of the requirements for infrastructure on coastal barriers.

PUBLIC COMMENT

A public hearing was not held on this rulemaking. The commission received written comments from the following five organizations: Akin, Gump, Strauss, Hauer & Feld, L.L.P. (Akin-Gump); Vinson & Elkins (V & E); Houston Real Estate Council (HREC); Pate Engineers (Pate); and Association of Water Board Directors-Texas (AWBD-Texas).

RESPONSE TO COMMENTS

Section 293.42 - Submitting of Documents and Order of Review

V & E commented that the expedited review process for bond applications is beneficial and should be retained in its current form because it results in higher quality applications and reduces commission staff time in reviewing a bond application. V & E also argued that first bond issues are the best candidates for expedited review because the feasibility analysis is simpler. V & E urged, therefore, that the proposed revision to exclude first bond issues from the expedited process be deleted. HREC concurred with V & E's comments and, in addition, commented that the expedited review process has provided efficiencies and should not be limited. Pate Engineers and AWBD-Texas commented that the expedited review process for bond applications requires a district to spend more time preparing an application, saves commission staff time in reviewing an application, and provides other benefits and that the proposed revision to exclude first bond issues from the expedited process should therefore be deleted.

The commission concurs that first bond issues should be retained as part of the expedited review process. Accordingly, first bond issue applications will not be excluded as originally proposed. Commission staff will continue to work with the regulated community to insure that high quality expedited review applications are submitted. Because the existing text in §293.42(e) is no longer needed, the commission is deleting that subsection.

Section 293.44 - Special Considerations; specifically as regards Recreational Facilities; §293.46 - Construction Prior to Commission Approval; §293.47 - Thirty Percent of District Construction Costs To Be Paid by Developers

Akin-Gump commented that recreational facilities should not be subject to a 30% developer contribution requirement, and that the rules should be modified to allow 100% funding to encourage construction of recreational facilities. V & E commented that in practice recreational facilities are not developer projects, that the funding of recreational facilities is initiated by district residents in completely, or nearly completely, built-out districts, and that no changes to §§293.44, 293.46, and 293.47 should be made regarding recreational facilities because these facilities are not generally financed with bonds. HREC commented that the vast majority of recreational facilities projects in the Houston area are resident-driven, and expressed opposition to any effort to require developers to contribute toward recreational facilities. Pate Engineers and AWBD-Texas commented that proposed §293.47(d)(12) should be deleted because developers may not benefit from improvements and because developed districts can already receive an exemption to the 30% developer participation requirement under a ten to one debt to assessed valuation ratio.

The commission disagrees with the comment that no changes should be made to the bond rules with respect to recreational facilities. The applicable statutes allow districts to finance recreational facilities with revenue bonds, which are generally subject to commission review. The commission does agree that the bond rules concerning recreational facilities should clearly distinguish between developer and non-developer projects. The commission recognizes that in certain parts of the state the existing situation may be that well established districts initiate recreational facilities, without the involvement of a developer. However, the commission also

anticipates that even though in the past developers were not reimbursed for recreational facilities, the revisions to the TWC may encourage developers to seek reimbursement from districts for recreational facilities. Commission staff has received inquiries about districts reimbursing developers for recreational facilities, and a bond application has been filed, which includes funding of recreational facilities. Further, districts will have the option to reimburse 100% of the costs if requirements under §293.47 are met, similar to what is available for water, wastewater, and drainage facilities. Sections 293.44 and 293.47 have been revised to distinguish between developer reimbursement and district initiated projects.

Section 293.81 - Change Orders

V & E commented that the wording of the rule regarding eligibility of change orders should be modified to reflect TWC, §49.273, and that modifications should be made to the change order rules regarding when commission approval is needed. HERC concurred in these comments.

The commission agrees with the proposed change to §293.81(1) to reflect a reference to the original contract price, which is consistent with TWC, §49.273(i). However, 293.81(1) is not modified to delete the word “only” because the word “only” reflects wording in TWC, §49.273(i). Revisions to §293.81(2) or (3) are beyond the scope of the current rulemaking and are more appropriately addressed in a future rulemaking.

Section 293.89 - Contract Tax Obligations

Pate and AWBD-Texas commented that contract tax applications should only be subject to the combined

projected and combined no-growth tax rate limits in the commission's feasibility rules (§293.59) because some portions of the feasibility rules are appropriate for bonds, but not for contract taxes and could put a district in a "catch 22" situation by requiring, for example, a district to have installed central water capacity prior to seeking commission approval in a circumstance where a contract tax to fund such installation cannot be executed until approved by the commission.

The commission has made no change to the proposed text in response to these comments. The current rule addresses the varied contract tax applications that could be submitted and the proposed revision gives an applicant the option to request a waiver of feasibility rules provisions for good cause.

Other Comments

V & E, HERC, and Pate commented that an expedited process for district creation applications should be established.

This proposal is beyond the scope of this rulemaking. However, the commission agrees that an expedited review process for district creation applications merits study and may be an appropriate subject for a future rulemaking.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this

state. The amendments to §293.11 and §293.123 and the repeal of §293.121 are also adopted under TWC, §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval. New §293.113 is also adopted under TWC, §49.234, as added by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules concerning the reimbursement of the costs to connect to a district's or WSC's wastewater system under certain circumstances where the district or corporation has prohibited the installation of private on-site wastewater facilities. The repeal of §293.121 is also adopted under TWC, §5.122, which provides that the commission may adopt rules to delegate to the ED the authority to act on uncontested matters. The amendment to §293.171 is also adopted under Texas Local Government Code, §395.080(b), which requires the commission to adopt rules for reviewing petitions for approval of district impact fees.

SUBCHAPTER A: GENERAL PROVISIONS

§293.1

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§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. This chapter, adopted pursuant to §§5.103, 5.105, and 5.235 of the Texas Water Code, 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 the Water Code, §§54.030 through 54.036.

SUBCHAPTER B: CREATION OF WATER DISTRICTS

§293.11

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval and allows a fire plan to be considered at the same time as an application for district creation.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) \$700 non refundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, pursuant to Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show

that the provisions of Local Government Code, §42.042 have been followed.

(3) if city consent was obtained pursuant to paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code, §54.016(e);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting creation petition and report to appropriate agency regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement as appropriate to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) other related information as required by the executive director.

(b) Creation application requirements and procedures for Texas Water Code, Chapter 36, Groundwater Conservation Districts are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for Texas Water Code, Chapter 51, Water Control and Improvement Districts within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by Texas Water Code, §51.013, requesting creation signed by majority of persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them.

The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail;

(F) statement of estimated cost of project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district and will further the public welfare.

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §51.072 and §49.052;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for Texas Water Code, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by Texas Water Code, §54.014 and §54.015 signed by persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by tax rolls of the central appraisal district, if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed;

(E) statement of estimated cost of project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district pursuant to Texas Water Code, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that provisions of Texas Water Code, §54.016 have been followed;

(8) the petitioners for districts proposed to be created within the corporate boundaries of a municipality should show that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in the Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with Texas Water Code, §54.102 and §49.052; [and]

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(11) other data and information as the executive director may require.

(e) Creation applications for Texas Water Code, Chapter 55, Water Improvement Districts within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by Texas Water Code, §55.040 signed by persons holding title to more than 50% of all land in proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for Texas Water Code, Chapter 58, Irrigation Districts within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by the Texas Water Code, §58.013 and §58.014 signed by persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition

shall include the following:

- (A) name of district;
 - (B) area and boundaries;
 - (C) provision of the Texas Constitution under which district will be organized;
 - (D) purpose(s) of district;
 - (E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and
 - (F) statement of the estimated costs of the project.
- (2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;
- (3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including but not limited to federal, state or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for Texas Water Code, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by Texas Water Code, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or ETJ the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district;

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district;

and

(ii) endorsing resolutions from all municipal districts to be included.

(2) evidence that a copy of the petition was filed with city clerk in each city where proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or ETJ of a city is proposed, documentation of city consent or documentation of having followed the process outlined in Texas Water Code, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by Texas Water Code, §59.021 and §49.052;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for Texas Water Code, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by Texas Water Code, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district.

The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board.

(E) if the proposed district also seeks approval of an impact fee, the resolution should also include a request for approval of an impact fee and state the amount of the requested fee.

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in Texas Water Code, §65.001(10), to a special utility district shall conform to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the

corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of proposed district as described in the petition;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating pursuant to Texas Water Code, Chapter 65;

(B) a vote by the membership in accordance with the requirements of Texas Water Code, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution.

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §65.102 and §49.052 where applicable;

(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.109 of this title relating to Report of Sale, Merger, or Consolidation and §291.112 of this title relating to Transfer of Certificate of Convenience and Necessity;

(12) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(13) other information as the executive director requires.

(i) Creation applications for Chapter 66, Texas Water Code, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by Texas Water Code, §§66.014, 66.015 and 66.016 requesting creation of a stormwater control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including but not limited to federal, state or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage;

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities;

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §66.102 and §49.052 where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, or lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) include name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District";

(E) list proposed initial directors and experience and term of each; and,

(F) include a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Chapter 375, Local Government Code including budget, statement of expenses revenues and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with §375.063 of the Texas Local Government Code; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee.

SUBCHAPTER E: ISSUANCE OF BONDS

§§293.42, 293.44, 293.46, 293.47, 293.51, 293.56, 293.59

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§293.42. Submitting of Documents and Order of Review.

(a) Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

(b) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 60 calendar days following submission of the application. In order to qualify for this expedited review, the applicant must submit a bond application that complies with §293.43 of this title (relating to Application Requirements). The district's bond counsel, engineer, and financial advisor must also sign a certificate which is worded as shown on the form provided by the executive director. The certificate must state that the district's bond counsel, engineer, and financial advisor have reviewed the bond application, that the application is accurate and complete, that the application includes specific documents identified on the form, and that

the district's financial status has reached the thresholds provided in §293.59 of this title (relating to Economic Feasibility of Project) as shown by its existing assessed valuation and completion of facilities. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. A bond applicant that seeks conditional approval on the basis of receiving an acceptable credit rating or credit enhanced rating as provided in §293.47(b)(4) and (5) and (c) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) may qualify for expedited review. A bond applicant that seeks approval on the basis of a ratio of debt to certified assessed valuation of 10% or less must provide evidence of that ratio as provided in §293.47(b)(3) of this title to qualify for the expedited review.

(c) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 45 calendar days following submission of the application. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. In order to qualify for this expedited review, the applicant must submit a bond application that includes all of the items listed in §293.43 of this title and the following:

(1) a certificate signed by the district's president, engineer, financial advisor, and bond counsel, which is worded as shown on the form provided by the executive director, which states that less than 20% of the total land area in the district is undeveloped with underground facilities, that the facilities contained in the bond application are for water plant facilities, wastewater treatment plant facilities, major lines to or between such facilities, remote water wells, or for any improvement

necessary to serve development in the district as described in §293.83(c)(3) of this title (relating to District Use of Surplus Funds for any Purpose and Use of Maintenance Tax Revenue for Certain Purposes), that no funds are being expended for developer facilities as described in §293.47(d) of this title and no funds are being used to reimburse a developer as described in Texas Water Code, §49.052(d), that the district expects to have a no-growth tax rate of \$0.75 or less calculated in accordance with §293.59(d) of this title after issuance of the proposed bonds, and that the district is legally authorized to issue the bonds;

(2) a debt service schedule and related cash flow schedule showing a no-growth tax rate as defined in §293.59(d) of this title of \$0.75 or less; and

(3) a certificate of assessed valuation or estimated assessed valuation as defined by §293.59(d) of this title reflecting a value sufficient to support the no-growth tax rate in paragraph (2) of this subsection.

(d) A bond application that does not qualify for an expedited review pursuant to subsection (b) or (c) of this section may not become eligible for expedited review unless the applicant requests withdrawal of the pending application in writing and resubmits the filing fee and completed certificate in accordance with subsection (b) or (c) of this section. For the purposes of this subsection, a new receipt date will be assigned and the time requirements of subsection (b) and (c) of this section shall commence upon the date of submission of the signed certificate.

§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 which provides water, wastewater or drainage 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 pursuant to 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 pursuant to §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, sewer 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 which 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.

(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 pursuant to §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 pursuant to §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 be paid 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.

(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;

(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 reimbursable 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;

(D) provided, however, that the foregoing 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 includes periods during which the district is constructing its facilities or

there is construction by third parties of above ground 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 pursuant to 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 and 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, sewage, 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 which 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 stormwater 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 stormwater permit" means a permit for stormwater discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by EPA and Texas Pollutant Discharge Elimination System permits issued by the commission.

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

(C) the district and the providing entity have entered into a contract which 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 which 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 TWC, §49.462, for all affected districts and as also defined in TWC, §54.772, for municipal utility districts, that benefit persons within the district. If financing involves reimbursement to a developer of property in the district, as defined by TWC, §49.052(d), the district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. Otherwise, a district's financing of costs associated with recreational facilities shall not be subject to the developer's 30% contribution as may be required by §293.47 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).

§293.46. Construction Prior to Commission Approval.

The developer may proceed with financing or construction of water, wastewater, drainage, and recreational facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions.

(1) Prior to entering into construction contracts for such facilities, the developer and district shall execute an agreement setting out the terms of reimbursement, providing for the use of the facilities by the district until reimbursement and providing that the construction contract will be awarded and administered in accordance with commission regulations and applicable statutes relating to districts. If the district has not been created at the time of the execution of the construction contracts,

the developer and district shall execute an agreement as described in the preceding sentence within 60 days after confirmation of the district. The contract shall not bind the district to payment of costs above that approved by the Commission. If such an agreement is not entered into within the time period specified above, and such actions of the developer are not subsequently ratified and approved by the district in a subsequent agreement with the developer, the developer shall be denied interest costs.

(2) All construction plans, specifications, and contract documents as set forth in §293.62 of this title (relating to Construction Related Documents To Be Submitted to the Commission), change orders and supporting engineering data for construction or installation of the facilities shall be submitted to the appropriate commission field office in a timely manner, together with evidence that the materials have been filed with and approved by the district and have been noted in the district's minutes (if the district has not been created, the documents shall be filed with the district within 30 days after creation).

(3) All construction plans and specifications for proposed projects must be approved by all cities and agencies having jurisdictional responsibilities over the district prior to construction contract award by the developer. Unless all required state and local approvals were obtained prior to contract award, a developer cannot be reimbursed for any additional costs resulting from changes required by the city or agency having jurisdictional responsibility after the construction contract is awarded.

(4) The appropriate commission field office shall be notified of the bid opening at least five days prior to the opening.

(5) Contract advertising and award and construction and installation of facilities shall be accomplished in the manner required by the general law for districts and in conformity with commission rules. If substantial compliance with statutory requirements is not achieved, reimbursement to a developer may be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6) The filing of the materials provided herein or construction inspections by the commission shall not constitute approval of the project in any manner. A person proceeding with construction of a project prior to its formal approval by the commission shall do so with no assurance that public funds will be authorized for acquiring the facilities. Construction which is not in the best interests of the district, and improper or ineligible expenditures, will be disallowed for district purchase.

(7) The commission will not approve payment on completion-type construction contracts unless alternate bids are received on monthly pay-type construction contracts, and then only if it is clearly indicated that it is to the district's financial advantage to assume the payment on completion-type construction contracts.

(8) Commission representatives shall have the right to inspect the facilities construction at any time and without notice while construction activities are being carried on. The appropriate commission field office shall be notified of the date and time of the final inspection for each construction contract at least five days prior to the inspection.

§293.47. Thirty Percent of District Construction Costs to be Paid by Developer.

(a) It has been determined by experience that some portion of the cost of district water, wastewater, drainage, and recreational facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to all districts except:

(1) a district which has a ratio of debt (including proposed debt) to certified assessed valuation of 10% or less; provided, however, that any bond issue proposed to be exempted on this basis must include funds to provide sufficient capacity in facilities exempted in subsection (d) of this section to serve all connections upon which the feasibility is based or to be financed by the bond issue;

(2) a district which obtains an acceptable credit rating on its proposed bond issue pursuant to the provisions hereof;

(3) a district which obtains a credit enhanced rating on its proposed bond issue and which the executive director, in his discretion, finds to be feasible and justified, based upon satisfactory evidence submitted by the district, without such developer contribution; or

(4) a district which has entered into a strategic partnership agreement, interlocal agreement, or other contract with a political subdivision or an entity created to act on behalf of a political subdivision under which the political subdivision or other entity has agreed to provide sales and use taxes or other revenues generated by a project to the district as consideration for the district's development or acquisition of water, wastewater, and drainage facilities and:

(A) water, sewer, drainage, and street and road construction are complete in accordance with §293.59(k)(6)(A) - (E) of this title (relating to Economic Feasibility of Project);

(B) the projected value of houses, buildings, and/or other improvements are complete in accordance with §293.59(k)(7) of this title;

(C) the district can demonstrate a history of revenue generated by the project;

(D) the district's projected ad valorem tax rate necessary to amortize the district's debt at the district's current assessed valuation after accounting for the contract payments pledged to the district's debt would be equal to or less than the projected ad valorem tax rate for a district with an assessed valuation sufficient to qualify under paragraph (1) of this subsection; and

(E) the district's combined no-growth tax rate does not exceed the amounts prescribed in §293.59(k)(11)(C) of this title.

(b) For purposes of this chapter, the following definitions shall apply:

(1) Developer is as defined in Texas Water Code (TWC), §49.052(d);

(2) Debt includes all outstanding bonds of the district, all bonds approved by the commission and not yet sold (less such portions thereof for which the authority to issue such bonds has lapsed or been voluntarily canceled), all bonds of the district approved by other entities which are exempt from commission approval and not yet sold, all proposed bonds with respect to which applications for project and bond approvals are presently on file and pending with the commission, and all outstanding bond anticipation notes which are not to be redeemed or paid with proceeds derived from such pending bond application(s). If more than one application for approval of project and bonds is pending, the ratio of debt to value shall be calculated consecutively with respect to each application in the order of filing of each application. For the purpose of this subsection, the amount of such outstanding bond anticipation notes shall be deemed to be the sum of:

(A) the principal amount of the bond anticipation notes;

(B) the accrued interest thereon; and

(C) all bond issuance costs relating to the refunding of such bond anticipation notes, including capitalized interest.

(3) Certified assessed valuation is a certificate provided by the central appraisal district in which the district is located either certifying the actual assessed valuation as of January 1, or estimating the assessed valuation as of any other date.

(4) Acceptable credit rating is a rating of Baa3 or higher from Moody's Investors Service, Inc., or BBB- or higher from Standard and Poors Corporation or BBB- or higher from Fitch IBCA, which rating is obtained by the district independent of any municipal bond guaranty insurance, guarantee, endorsement, assurance, letter of credit, or other credit enhancement technique furnished by or obtained through any other party.

(5) Credit enhanced rating is a rating of Aa or higher from Moody's Investors Service, Inc. or AA or higher from Standard and Poors Corporation, or AA or higher from Fitch IBCA, which rating is obtained by the district by virtue of municipal bond guaranty insurance, furnished by or obtained through any other party; provided, however, that such municipal bond guaranty insurance shall be unconditional, irrevocable, and in full force and effect for the scheduled maturity of the entire bond issue; and provided, further, that payment of the premium on such municipal bond guaranty insurance shall not be made from district funds except through the establishment of the interest rate or premium or discount on such bonds.

(c) If a district anticipates receipt of a certified assessed valuation evidencing a debt ratio of 10% or less or an acceptable credit rating, or a credit enhanced rating, as provided in subsection (a) of this section, prior to the bond sale identified in the bond application being considered, the district may, at its discretion, request a conditional waiver to the developer cost participation requirements of this section as follows.

(1) At the time the district makes application for approval of its project and bonds, the district may include a written request for a conditional waiver of the 30% developer cost participation requirements of this section to be considered by the commission, which request shall specifically state on which basis the district requests such waiver. The waiver request shall be accompanied by a written statement from the district's financial advisor stating that, in his opinion, the district can reasonably be expected to qualify for either an acceptable credit rating or a credit enhanced rating, and that the district financing is feasible without the developer contribution.

(2) Except for districts which have achieved a debt ratio of 10% or less at the time of application, the cost summary in support of any bond application proposed to be exempted by virtue of subsection (a) of this section must show the district bond issue requirement, cash flow, and tax rate with and without the developer contribution.

(3) If a conditional waiver is granted by the commission in anticipation of the district obtaining an acceptable credit rating, a credit enhanced rating, or a certified assessed valuation evidencing a ratio of debt to certified assessed valuation of 10% or less, no bonds shall be sold by the

district unless such acceptable or enhanced credit rating is obtained or such debt ratio is achieved.

(4) If a bond issue is approved on the basis of obtaining an acceptable credit rating, and an acceptable credit rating is not obtained, and if the district wishes to proceed with such bond issue on the basis of an enhanced credit rating, the district shall not issue the bonds unless the district requests and obtains a commission order approving the bonds to be sold with an enhanced credit rating and finding the financing to be feasible without the developer contribution.

(5) Upon request by the district, the commission order approving a bond issue without developer contribution may authorize an alternative amount of bonds to be issued with developer contribution in the event compliance with subsection (a) of this section is not achieved. Such order may contain other conditions otherwise applicable to a bond issue requiring developer contribution.

(d) Except as provided in subsection (a) of this section or in the remaining provisions of this subsection, the developer shall contribute to the district's construction program an amount not less than 30% of the construction costs for all water, wastewater, drainage, and recreational facilities, including attendant engineering fees and other related expenses, with the following exemptions:

- (1) wastewater treatment plant facilities, including site costs;
- (2) water supply, treatment and storage facilities, including site costs;

(3) stormwater pump stations associated with levee systems, including site costs;

(4) that portion of water and wastewater lines from the district's boundary to the interconnect, source of water supply, or wastewater treatment facility as necessary to connect the district's system to a regional, city, or another district's system;

(5) pump stations and force mains located within the boundaries of the district which directly connect the district's wastewater system to a regional trunkline or a regional plant, regardless of whether such line or plant is located within or without the boundaries of the district;

(6) segments of water transmission or wastewater trunk lines of districts or other authorities which are jointly shared or programmed to be jointly shared between the district and another political subdivision whether inside or outside of a participating district or authority;

(7) water and wastewater lines serving or programmed to serve 1,000 acres or more within the district;

(8) drainage channels, levees and other flood control facilities and stormwater detention facilities, or contributions thereto, meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) or §293.53 of this title (relating to District Participation in Regional Drainage Systems), and which are serving or are programmed to serve either areas of 2,000 acres or more or, at the discretion of the commission, areas of less than 2,000 acres, as the commission

may deem appropriate to encourage regional drainage projects. Construction cost paid in lieu of such a contribution does not qualify as an exemption unless the facility constructed is itself exempt;

(9) land costs for levees or stormwater detention facilities; and

(10) alternate water supply interconnects between a district and one or more other entities.

(11) lease payments for central plant capacity not included in operating expenses; and

(12) the district's financing of recreational facilities costs that do not involve reimbursement to a developer of property in the district as defined by TWC, §49.052(d).

(e) A developer will also be required to contribute toward construction costs in districts which are within the limits of a city, except for:

(1) facilities that were completed or under construction as of December 1, 1986;

(2) districts previously created or in the process of creation which, prior to December 1, 1986, have submitted petitions to the executive director requesting creation; or

(3) districts that are providing facilities and services on behalf of, in lieu of, or in place

of the city and which have contracted with the city to receive rebates of 65% or more of the city taxes actually collected on property located within the district.

(f) The developer's contribution toward construction cost shall be reduced by the amount that the developer is required by a city, state, or federal regulatory agency to pay toward costs that are otherwise eligible for district financing.

(g) The developer must enter into an agreement with the district, secured by an escrow of funds in the name of the district, a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the financial guarantee to pay the developer's share of construction costs and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least 45 days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least 45 days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit (LOC)), must be valid for a minimum of one year from the date of issuance, and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide

for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

(h) Actual payment of funds for the district's construction project shall be made by the developer to the district within 10 days following the developer's receipt of billing. The developer's applicable share will be adjusted by the overruns or underruns on developer participation items and will be shared by the developer at the same percentage utilized in determining his initial contribution.

(i) The district (or district engineer) shall forward to the commission's executive director copies of the board approved monthly construction contract pay estimates, engineering fee statements and/or other adequate documentation reflecting payment of the developer's required contribution to construction and engineering costs.

(j) A district may submit other information and data to demonstrate that all or any part of this section should not apply and/or request that it be waived.

(k) If the bond issue includes funds owed the developer in an amount which exceeds that amount required as the developer's contribution and the estimated costs of required street and road construction, the district may request a waiver of the requirement of a letter of credit if the developer enters into an agreement with the district whereby the developer agrees to defer receipt of payment of a sufficient amount of such owed funds until the facilities for which guarantees are required have been

completed and certified complete by the district's engineer. Any such agreement shall be made a part of the agreement required by subsection (g) of this section if the funds are being withheld for the developer 30% contribution of construction costs, and if appropriate, such agreement shall be made part of the street and road construction Agreement required by §293.48 of this title, if the funds are being withheld for guaranteeing street and road construction costs.

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, and drainage 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, and the right of way necessary for a drainage swale or ditch constructed generally along a street or road right of way in lieu of a storm sewer, 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).

(c) Price of land acquisition. If a district acquires such a site, as described in subsection (b) of this section, 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, he 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 site must contain a request by the district to acquire the site in such manner and must explain the reason the seller is unable to provide price and carrying cost records. 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 stormwater detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer, payment to the developer shall be limited to that cost that is associated only with the drainage 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.

(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.

(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, or levee 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 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 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.

§293.56. Requirements for Letters of Credit (LOC).

(a) Any LOC submitted as a financial guarantee for combined amounts greater than \$10,000 and less than \$250,000 pursuant to these rules must be from financial institutions which meet the following qualifications:

(1) Qualifications for Banks.

(A) Must be federally insured;

(B) Sheshunoff rating must be ten or better; and

(C) Total assets must be at least fifty million dollars.

(2) Qualifications for Savings and Loan Associations.

(A) Must be federally insured; and

(B) Tangible capital must be at least:

(i) 1.5% of total assets if total assets are fifty million dollars or more;

or

(ii) Tangible capital must be at least 3.0% of total assets if total assets are less than fifty million dollars; and

(C) Sheshunoff rating must be 30 or better.

(b) Any LOC submitted as a financial guarantee for combined amounts greater than \$250,000 pursuant to these rules must be from financial institutions which meet the following qualifications:

(1) Qualifications for Banks.

(A) Must be federally insured;

(B) Sheshunoff rating must be 30 or better; and

(C) Total assets must be at least seventy-five million dollars.

(2) Qualifications for Savings and Loan Associations.

(A) Must be federally insured;

(B) Tangible capital must be at least:

(i) 3.0% of total assets and total assets must be seventy-five million dollars or more; or

(ii) Tangible capital must be at least 5.0% of total assets if total assets are less than seventy-five million dollars; and

(C) Sheshunoff rating must be 30 or better.

(c) All LOC's must be valid for a minimum of one year from the date of issuance and if the aggregate amount of the LOC is \$100,000 or more, the LOC shall be held and administered in an account for the benefit of the district by a bank corporate trust department. The district shall authorize the agent to administer all draws on the letter of credit including a final draw prior to the LOC expiration date if the letter of credit is:

(1) not renewed for an additional year at least 45 days prior to its date of expiration;

(2) not called upon in its entirety at least 30 days prior to its date of expiration;

(3) not found to be unnecessary by the commission at least 45 days prior to its date of expiration; or

(4) no longer required because the construction project has been completed as certified by the district's engineer at least 45 days prior to its date of expiration.

(d) Should the financial institution or agent deposit funds in an account in the name of the district, the district shall not commit or expend such funds until it has received written authorization from the executive director.

(e) All LOC's required pursuant to these rules must be approved by the commission staff.

(f) Form of letter of credit. The following form shall be used as a letter of credit for the financial guarantee for utilities construction and/or construction and paving of streets.

Figure: 30 TAC §293.56(f)

ROCK OF GIBRALTAR BANK
LETTER OF CREDIT

GREEN ACRES MUNICIPAL
UTILITY DISTRICT
ONE HOLLOW LOG LANE
MEGALOPOLIS, TEXAS 77000

Irrevocable Credit No. 1
Amount: \$250,000

GENTLEMEN:

You are hereby authorized to value on ROCK OF GIBRALTAR BANK for account of ALL AMERICAN HOMES, INC. up to an aggregate amount of ----- TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ----- available by your drafts at ----- SITE ----- to be accompanied by the original of this letter of credit and the following documents:

1. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes Inc. has failed to construct streets in Knot Holes West Subdivision in accordance with the terms of the Street and Utility Construction Agreement dated December 1, 1980. (Required only for draft No. 1), and a written certification(s) by the engineer for Green Acres Municipal Utility District that payment is due to the contractor for construction of streets in Knot Holes West Subdivision in the amount shown on the draft(s); or

2. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes, Inc. has failed to renew or replace this letter of credit within forty-five (45) days prior to its expiration date; or

3. Written statement signed by the President or Vice president of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes, Inc. has commenced any proceeding, voluntary or involuntary, or that any proceeding has been commenced against All American Homes, Inc. involving bankruptcy, insolvency, reorganization, liquidation or dissolution of All American Homes, Inc., that any receiver has been appointed by All American Homes, Inc., or that All American Homes, Inc. has made a general assignment for the benefit of creditors.

Multiple drafts may be presented.

Drafts must be presented to drawee bank not later than May 31, 1983, all drafts must state on their face "DRAWN UNDER ROCK OF GIBRALTAR BANK IRREVOCABLE CREDIT NO. 1".

We hereby engage with you, that all drafts drawn under and in compliance with the terms of this credit will be duly honored, if drawn and presented for payment at our office in Megalopolis, Texas, on or before the expiration date of this credit.

We further engage with you that without further notice, if so requested by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more), we shall deposit in a special account in the name of the district, the remaining face amount of the letter of credit if the letter of credit is:

1. not renewed for an additional year at least 45 days prior to its date of expiration;
2. not called upon in its entirety at least 30 days prior to its date of expiration;
3. not found to be unnecessary by the executive director of the Texas Commission on Environmental Quality at least 45 days prior to its date of expiration; or
4. unless the construction project has been completed as certified by the district's engineer at least 45 days prior to its date of expiration.

Very truly yours,

Authorized Signature

§293.59. Economic Feasibility of Project.

(a) In addition to determining the engineering feasibility of a project, the commission shall also determine the economic feasibility of each proposed bond issue, bond amendment, and extension of time application for a bond issue. The staff of the commission shall use the following sections in making economic feasibility analysis. In its written recommendations to the commission which analyze the particular application, the staff shall always address the economic feasibility.

(b) Economic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates. Utility rates which do not exceed the rates of the largest city in the geographic area in which the district is located are conclusively deemed to be competitive. Economic feasibility is influenced by many factors and varies widely depending on economic conditions, the real estate market, the number of competing projects, and geographic location.

(c) Projected debt service tax rate is the tax rate required to meet projected annual debt service

requirement using projected assessed valuations and an appropriate tax collection rate. The projected annual debt service requirement shall include the previous and proposed debt. The projected debt service tax rate for any bond issue shall be shown in the cash flow table as a level or decreasing tax rate.

(d) No-growth debt service tax rate is the tax rate required to meet projected annual debt service requirements using the current assessed value and a 100% tax collection rate. The current value is determined by either:

(1) the most recent certificate of assessed valuation from the central appraisal district;

or

(2) a certificate of estimated assessed valuation from the central appraisal district.

Projected annual debt service requirements shall include the previous and proposed debt. The no-growth debt service tax rate for any bond issue shall be shown on the cash flow table as a level or decreasing tax rate.

(e) Combined no-growth tax rate is the sum of the following:

(1) No-growth debt service tax rate of the district;

(2) Projected no-growth debt service tax rate of all overlapping entities specifically

attributable to water, wastewater, drainage that are smaller in size than a county, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct. In other words, for road districts or road utility districts that are as large as one county commissioner's precinct, the road district tax is not counted.

(3) An equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) City tax rate specifically attributable to water, sewage and drainage if the district is located within a city;

(5) Current or proposed district or overlapping maintenance tax levy, if any;

(6) Contract tax, if any;

(7) Less any equivalent tax rebate or other payments.

(f) Combined projected tax rate is the sum of the following:

(1) Projected debt service tax rate of the district;

(2) Projected debt service tax rate of all overlapping entities specifically attributable to water, wastewater, and drainage, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct.

(3) An equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) City tax rate specifically attributable to water, sewage and drainage if the district is located within a city;

(5) Current or proposed district or overlapping maintenance tax levy, if any;

(6) Contract tax, if any;

(7) Less any equivalent tax rebate or other payment.

(g) A surcharge is a flat charge in addition to rates imposed on residents receiving water and/or wastewater service from resources of a city or other entity and supplied through district facilities. Surcharge revenues are placed in the district's debt service fund and are intended to be used to meet the debt service requirement on the district's bonds.

(h) For districts collecting surcharge revenues, the equivalent surcharge tax rate shall be calculated as follows:

(1) For residential development with similar house prices:

Figure: 30 TAC §293.59(h)(1)

$$\text{equivalent tax rate} = \frac{\text{monthly surcharge} \times 12 \times 100}{\text{average house price}}$$

(2) For mixed-use development and diverse house prices:

Figure: 30 TAC §293.59(h)(2)

$$\text{equivalent tax rate} = \frac{\text{total annual surcharge revenues at projected build out} \times 100}{\text{total assessed value of district at buildout}}$$

(3) For purposes of this calculation, no adjustments shall be made for projected collection rate of the surcharge, interest earnings on the surcharge account, or other factors.

(i) For districts receiving a rebate for taxes paid to a city or other entity for water, wastewater, drainage or road service, the equivalent tax rebate shall be calculated as follows:

Figure: 30 TAC §293.59(i)(1)

$$\frac{(\text{total amount rebated by entity to district}) \times 100}{\text{certified assessed value of district}}$$

(j) The assessed value is the appraised value after considering exemptions and special valuations and is the amount to which the tax rate is applied to determine the total tax levy.

(k) For a district's first bond issue, the following paragraphs apply except that paragraphs (5), (6), (8), and (10) of this subsection are only applicable to a district that has a developer as defined by Texas Water Code, §49.052(d).

(1) The District shall provide the current and projected tax rates of all entities levying or proposing to levy taxes on land within the district and a comparison of such taxes with the total tax levy on all competing projects in the same market area, as defined in the market study, if applicable, shall be provided.

(2) A cash flow analysis to determine the projected debt service revenue and projected tax rate shall be provided. It should include the following assumptions:

(A) Each ending debt service balance in the cash flow analysis will be not less than 25% of the following year's debt service requirement.

(B) Interest income will only be shown on the ending debt service balance for the first two years.

(C) A 90% tax collection rate shall be used in all the projected tax rate calculations and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(D) The projected tax rate shall be level or decreasing for the life of the bonds.

(3) The combined projected tax rate shall not exceed the following:

(A) \$1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties;

(C) \$1.00 in all other counties.

(4) The combined no-growth tax rate shall not exceed the following:

(A) \$2.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, Brazoria Counties;

(B) \$2.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties;

(C) \$2.00 for all other counties.

(5) The following applies to the central appraisal district certificate:

(A) If the valuations contained in the certificate of certified assessed valuation are at least 25% higher than those contained in the previous year's certified valuation, a written explanation from the district of such increase and a detailed calculation demonstrating how the value was derived shall be provided.

(B) In determining the projected or no-growth tax rates, a certificate of estimated assessed valuation may be used under the following conditions:

(i) The developer or landowner to receive bond proceeds shall certify, represent, and agree that it will not challenge and attempt to reduce its valuations below the values shown on the certificate for the life of the bonds;

(ii) If the valuation contained in the certificate of estimated taxable valuation is at least 25% higher than that contained in the most recent certified valuation, a written explanation from the district of such increase shall be provided;

(iii) If the estimated taxable valuation results in an exemption from §293.47 of this title (Relating to Thirty Percent of District Construction Costs To Be Paid by

Developer) and the final certificate of taxable value is not sufficient for an exemption from that section, the developer will be obligated to refund to the district the difference in the bond issue requirement without developer contribution and with developer contribution plus interest at the bond interest rate to the district; and

(iv) Developed land values will not be used in the commission's analysis for lots which do not have completed water, wastewater, and drainage facilities and roads constructed to county or city standards, as applicable, at the time of development.

(6) At the time of commission approval, the following shall apply:

(A) all underground water, wastewater, and drainage facilities to be financed with proceeds from the proposed bond issue or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, shall be at least 95% complete as certified by the district's engineer;

(B) all groundwater, surface water, waste discharge permits or other permits needed to secure capacity to support the projected buildout shall have been obtained;

(C) sufficient lift station, water plant and sewage treatment plant capacity, as applicable depending on the type of district, to serve the connections projected for a period of not less than 18 months shall be either 95% complete as certified by the district's engineer or available in existing plants pursuant to executed contracts for capacity in plant(s) owned by other entities (but in no event less than 50,000 gallons per day water plant and sewage treatment plant capacity);

(D) water supply, lift station, and wastewater treatment capacity needed to support the projected build-out used to support the feasibility of the subject bond application shall be existing or funds for that capacity shall be included in the bond issue or secured by a letter of credit or other acceptable guarantees approved by the executive director; and

(E) all street and road construction to provide access to the areas provided with utilities to be financed with proceeds from the proposed bond issue, or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, shall be 95% complete as certified by the district's engineer. All streets and roads shall be constructed in accordance with city or county standards, as appropriate.

(7) At least 25% of the projected value of houses, buildings and/or other improvements shown in the projected tax rate calculations shall be completed prior to advertising for the bond issue. The projections used to satisfy this section shall also be used in the calculations required by paragraphs (2) and (3) of this subsection.

(8) For bonds supported by taxes, a written agreement must be executed between the district and the developer and any other landowner and their respective lenders receiving proceeds of the bonds which permanently waives the right to claim agricultural, open-space, timberland, or inventory valuation for any land, homes, or buildings which they own in the district with respect to taxation by the district. The agreement shall be binding for 30 years on such developer, other landowners, their respective lenders, any related or affiliated entities, and their successors and assignees, unless such exemptions were in effect at the time of the commission's approval of the bond issue and such exemptions were shown in the projected tax rate calculations. Such developer, landowners, and lenders shall record covenants running with the land to such effect, which shall not be modified or released without written authorization of the commission, and shall provide recorded copies to the commission at the time of filing a bond application. If written agreements by owners of developable property who are not receiving bond proceeds are not voluntarily provided, and the ratio of the assessed valuation of their property to the district's total certified assessed valuation exceeds 10% for any individual or 20% for all combined, the feasibility analysis of the bond issue will be based on a reduced value for such property if not already on the tax rolls at a minimal value.

(9) One or more of the foregoing requirements may be waived for good cause by commission order if all of the facilities proposed under a bond issue application are essential because of valid orders, permits or actions against the district by a governmental agency or court. If only a portion of the bond issue is for facilities essential because of valid orders, permits, or actions against the district by a governmental agency or court and if a waiver of any of the foregoing requirements is requested, all nonessential projects may be deleted from the bond issue if not feasible under the other provisions of

these rules.

(10) A current market study is required for districts using growth projections to support the feasibility of the bond issue. The market study will meet the guidelines set out in the Bond Application Report Format. The market study provided will specifically address the projected building program for the three years subsequent to filing of the bond application and the period of projected build-out shown in the bond application and the competing projects in the surrounding market area. The study shall contain a detailed description of the proposed development and the houses, buildings and other improvements which are proposed.

(11) Requirements of paragraph (6)(A), (C), and (E) of this subsection, and the requirements of paragraph (7) of this subsection shall not apply in the following cases where:

(A) the no-growth tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed \$1.30; the no-growth tax rate of a district providing major water and sewage facilities which it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed \$1.30, and the combined no-growth tax rate does not exceed \$2.00; and, the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district; or

(B) the district has an acceptable credit rating as defined in §293.47(b)(4) (Relating to Thirty Percent of District Construction Costs To Be Paid by Developer) or a credit

enhanced rating as defined in paragraph (5) of this subsection; or

(C) the district is providing water, wastewater, and drainage facilities and the combined no-growth tax rate of all overlapping entities specifically attributable to water, sewage and drainage, and roads if the entity is a special district encompassing less than one county commissioner's precinct, if any, does not exceed the following:

(i) \$1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(ii) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties;

(iii) \$1.00 in all other counties.

(D) for the immediately preceding exceptions in subparagraph (A) or (C) of this paragraph, the developer shall provide a guarantee for its 30% share of utilities, if required pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer), in the form and manner required by §293.47(g) of this title;

(E) for utilities which are not funded and not complete but necessary to support the feasibility of the bond issue, the developer shall provide a guarantee for 100% of utilities for the

immediately preceding exceptions in subparagraphs (A), (B), or (C) of this paragraph in the form and manner required by §293.47(g) of this title;

(F) for the preceding exceptions in subparagraph (B) or (C) of this paragraph, the developer shall provide a paving guarantee pursuant to §293.48 of this title (relating to Street and Utilities Construction by Developer);

(G) for the preceding exceptions in subparagraph (A) of this paragraph, financial guarantees for the internal subdivision utilities and streets are not required.

(I) For a district's second and subsequent bond issues, all of the foregoing of subsection (k) of this section shall apply, and the following shall apply except that only paragraph (1) of this subsection applies to districts that do not have a developer as defined by Texas Water Code, §49.052(d) or to districts which meet the criteria set out in subsection (k)(11) of this section.

(1) A 90% tax collection rate shall be used in the projected tax rate calculations unless the district demonstrates that its historical collection rate is higher, and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(2) The water, wastewater and drainage facilities financed by the district under previous bond issues and all road and street construction to serve such connections shall be at least 95% complete as certified by the district's engineer.

(3) Sufficient lift station, water plant, and sewage treatment plant capacity to serve the connections shown in the tax rate calculations submitted in prior bond issues shall be at least 95% complete as certified by the district's engineer, unless the district is a participant in a regional surface water or wastewater plant, a permit sufficient for the expansion has been issued, and either:

(A) funds are available to finance such capacity and any additional capacity necessary for a feasible expansion;

(B) sufficient capacity is contractually available to serve all such prior connections; or

(C) the plant is under construction with sufficient capacity to serve all such prior connections.

(4) Houses and/or buildings equal to 75% of the projected buildout used in the projected tax rate calculations contained in all prior bond issues shall be completed and may be located on either:

(A) the area developed from the proceeds of the prior bond issues; or

(B) a combination of the area developed from the proceeds of prior bond issues, the proposed bond issue, and future bond issues.

(5) The requirements of subsection (k)(10) of this section shall apply, unless the district requests and the commission, in its discretion waives such requirement for one of the following reasons:

(A) disregarding those areas which had growth projected and were financed in previous bond issues, at least 50% of the value of the houses and/or buildings shown in the buildout schedule and used in the projected tax rate calculations supporting the subject bond issue must be existing;

(B) the district anticipates receiving an acceptable credit rating as defined in §293.47(b)(4) of this title or a credit enhanced rating as defined in §293.47(b)(5) of this title, and such rating must be obtained prior to the sale of bonds; or

(C) the district has ratio of debt to assessed valuation as provided in §293.47(a)(1) of this title.

(m) Bond issues supported only by revenue from a defined area shall be analyzed to assure that the defined area meets the requirements of this section independently of the remainder of the issuing district.

(n) A district may request a variance if it does not meet the guidelines contained in subsections (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing

sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The commission shall not grant a variance to the maximum combined projected tax rate or the maximum combined no-growth tax rate specified in subsection (k) of this section for districts that have a developer and the district is financing 100% of construction costs pursuant to criteria set out in §293.47(a) of this title which would otherwise require 30% developer participation. In determining whether to grant a variance, the following factors shall be considered:

- (1) the degree of variation from the guidelines;
- (2) the past history of the district with respect to its projections versus actual buildout and compliance with commission rules;
- (3) the past history of the developer and related or affiliated entities with respect to its projections versus actual buildout and its compliance with commission rules and agreements with the district and other districts in which it developed land;
- (4) other factors peculiar to the district, such as the area in which situated, economic factors, the adjoining competitive developments, and their status;
- (5) the financial resources of the developer and its lender and any special

commitments, obligations, or expenditures for the project;

(6) past history of the market area in which the project is located; and

(7) other factors which may affect the feasibility of the project.

SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION

CONSIDERATION FOR APPROVAL

§§293.81, 293.87, 293.89

STATUTORY AUTHORITY

The amendments and readoption are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§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 10%. Additional change orders 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 \$25,000 or less. If the change order is more than \$25,000, 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 \$25,000, even though the net change in the contract price will be \$25,000 or less, approval by the executive director is required.

(3) If the change order is \$25,000 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 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 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.

§293.87. Application for Extension of Time to Sell Bonds.

An application to extend commission approval of a bond issue must include the following:

(1) a resolution by the governing board requesting the approval to extend commission approval of the bond issue;

(2) updated build-out schedules if changed from original projections;

- (3) market study update if a market study was required in original bond application;
- (4) revised table of projected revenues and expenses;
- (5) if the application includes a change in the approved interest rate, maturity schedule or total bond amount, a revised amortization table;
- (6) if the original approval did not contain funds for the 0.25% fee required under §293.45 of this title (relating to Action of the Commission and Bond Proceeds Fee), applicant must submit a revised cost summary including such fee;
- (7) a filing fee in the amount of \$100; and
- (8) other information as the executive director may require.

§293.89. Contract Tax Obligations.

(a) A district that is required under Texas Water Code (TWC), §49.181 to obtain approval by the commission of the issuance of bonds may not enter into an obligation under TWC, §49.108 to collect taxes for debt that exceeds three years unless approved by the executive director. This section does not apply to contract taxes that are levied to pay for a district's share of bonds that have been issued by another district and approved by the commission or for bonds issued by a municipality.

(b) Applications for commission approval of contract tax obligations shall include the following:

- (1) a resolution by the governing board requesting approval of the contract;
- (2) a copy of the proposed contract;
- (3) a detailed explanation of the intended use and project to be financed, and complete justification for the project to be financed;
- (4) a proposed cash flow over the life of the obligation which includes all debt obligations of the district;
- (5) unless waived by the executive director, if growth is used to support the projected tax rates, an independent market study;
- (6) if funds received under the contract are proposed to reimburse a developer as defined in TWC, §49.052(d), a complete Bond Application Report as described in §293.43(5) of this title (relating to Application Requirements) for the issuance of bonds. The reimbursement is subject to §§293.44, 293.46 - 293.53, 293.56, 293.57, 293.59, and 293.60 of this title (relating to the Issuance of Bonds) and, if appropriate, subject to executive director approval before reimbursement to the

developer. The executive director may waive any of the requirements of this subsection upon a showing by the applicant that waiver will promote regionalization or is otherwise justified.

(7) an application fee in the amount of \$100; and

(8) other information as the executive director may require.

(c) All applications for executive director approval of contract tax obligations will be subject to §293.59 of this title (relating to Economic Feasibility of Project).

SUBCHAPTER I: DISTRICT NAME CHANGES AND POSTING SIGNS

§293.103

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§293.103. Form of Notice for Name Change.

The following form may be used to provide notice of a name change pursuant to §293.102(c) of this title (relating to District Name Change):

Figure: 30 TAC §293.103

**NOTICE OF NAME CHANGE OF BASS FISHERMAN'S MUNICIPAL
UTILITY DISTRICT TO JOY COUNTY MUNICIPAL
UTILITY DISTRICT NO. 1**

Notice is hereby given that Bass Fisherman's Municipal Utility District obtained approval of the Texas Commission on Environmental Quality on January 1, 1996 to change its name to Joy County Municipal Utility District No. 1. This change takes effect immediately. This change does not affect any outstanding bonds, obligations, or other indebtedness of the District. Any questions concerning the change should be directed to the District's manager, _____, at (a/c) phone number, or the District's attorney, _____, at (a/c) phone number.

SUBCHAPTER J: UTILITY SYSTEM RULES AND REGULATIONS

§293.113

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and §49.234, as added by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules concerning the reimbursement of the costs to connect to a district's or WSC's wastewater system under certain circumstances where the district or corporation has prohibited the installation of private on-site wastewater facilities.

§293.113. District and Water Supply Corporations Authority Over Wastewater Facilities.

(a) A district or water supply corporation (WSC) that operates or proposes to operate a wastewater collection system may prohibit by rule the installation of private on-site wastewater holding or treatment facilities on land within the district or the corporation's service area that is not served by the district's or corporation's wastewater collection system. A district or WSC that has not received funding under Texas Water Code, Chapter 17, Subchapter K, may not require a property owner who has already installed an on-site wastewater holding or treatment facility to connect to the district's or corporation's wastewater collection system.

(b) A district or WSC that prohibits the installation of private on-site wastewater facilities shall agree to reimburse the owner of a residence the costs (engineering and construction) of connecting the residence to the district's or corporation's wastewater collection system if the distance along a public right-of-way or utility easement from the nearest point of the district's or corporation's wastewater collection system to the boundary line of the tract requiring wastewater collection services is 300 feet or more.

SUBCHAPTER K: FIRE DEPARTMENT PROJECTS

§293.121

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; §5.122, which provides that the commission may adopt rules to delegate to the ED the authority to act on uncontested matters; and §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval.

§293.121. Approval of Fire Department Projects.

SUBCHAPTER K: FIRE DEPARTMENT PROJECTS

§293.123

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval.

§293.123. Application Requirements for Fire Department Plan Approval.

Applications for fire department plan approval shall include:

(1) application by the district's board covering the subject matter contained in Water Code, §49.351, as amended, and specifically identifying:

(A) the method proposed for district fire protection: i.e. establishment of own fire department, joint fire protection service between two or more districts, or contract with others for fire fighting services; and

(B) the method proposed for financing the project including, if applicable, the amount and type bonds (tax, revenue, combination) proposed for issuance by the district;

(2) certified copy of the district board's resolution authorizing submission of application for fire department plan approval;

(3) certified copy of the district board's order adopting a fire protection plan and/or any proposed contract to be entered into by the district for this purpose;

(4) evidence that a copy of the fire protection plan and proposed contracts as adopted by the district's board has been coordinated with the city having extra-territorial jurisdiction of the district; and if the district is outside the jurisdiction of any city, then provide evidence that the county commissioners court of the county in which the district is located has been provided a copy of the plan;

(5) filing fee in the amount of \$100;

(6) fire protection plan (the plan) which shall include, but not be limited to, the following applicable requirements:

(A) number and type of buildings and other facilities to be constructed including preliminary drawings, individual cost estimates, together with a location map of the area covered by the plan showing building/facility sites;

(B) discussion of existing and/or proposed water supply and distribution systems and their capabilities to support the district board's adopted plan;

(C) number, type, purpose and estimated cost of each programmed item of fire fighting equipment;

(D) number and combined salary estimate of paid employees proposed, including benefit packages;

(E) copy of each proposed contract adopted by the district's board;

(F) number and type of facilities and structures existing and projected within the district proposed for fire protection coverage under the adopted plan;and

(G) preliminary summary of costs, as applicable, for capital improvements, including buildings, support facilities, vehicles, and miscellaneous equipment; and associated expenses, including legal fees; fiscal agent fees; administration, printing and selling bonds; capitalized interest (two years); building and facility sites (itemize showing cost/acre/site); organization, operation, maintenance, and administration costs; and bond discount;

(7) financial presentation for the district board's adopted plan which shall include, but not be limited to:

(A) total amount of all bonds currently authorized by the district's electorate;

(B) total amount of bonds approved for issuance by the commission or its predecessors;

(C) total bonds sold by the district, existing debt, including an itemization of all outstanding bonds, tax or bond anticipation notes, miscellaneous short and long term debt, and present district tax rate to support debt service;

(D) projection of revenues and expenses over the life of the proposed bond issue, together with an amortization schedule for the proposed bond issue, if bonds are to be sold to finance the establishment of the fire department; and all debt, as outlined under subparagraph (C) of this paragraph, plus the anticipated debt for any proposed bond issue to finance establishment of a fire department shall be included in the projection of revenues and expenses;

(E) a draft of the proposed contract for services and the plan that describes in detail the facilities and equipment to be devoted to service to the district, including financial requirements under the proposed contract, if the district proposes to contract with any other person to perform fire fighting services within the district under Water Code, §§49.351(e); and

(F) evidence that the district can financially sustain the operation and maintenance costs of the proposed fire department, and a presentation of the method proposed for generating funds for these purposes, and other miscellaneous expenses; and

(8) report describing existing fire department and fire fighting services (fire service organization) within 25 miles of the district, including,

(A) a map showing prominent roads, landmarks and the location of each fire service organization, and depicting distance and route to the center of the district by each organization;
and

(B) a narrative statement addressing the capabilities and willingness of each fire service organization to serve the needs of the district; the probability of a reasonable contract with one or more of the fire service organizations within a 25 mile radius, and a preliminary estimate of the annual costs of this anticipated fire protection service; and any other information deemed pertinent to the proposed application.

SUBCHAPTER N: PETITION FOR APPROVAL OF IMPACT FEES

§293.171

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and Texas Local Government Code, §395.080(b), which requires the commission to adopt rules for reviewing petitions for approval of district impact fees.

§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.

(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, or for wholesale facilities that serve such water, sanitary sewer, or drainage facilities, shall not be deemed to be an impact 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 or wastewater 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, 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 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 improvements plan.

**SUBCHAPTER P: ACQUISITION OF ROAD UTILITY DISTRICT POWERS
BY MUNICIPAL UTILITY DISTRICT**

§293.201, §293.202

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§293.201. District Acquisition of Road Utility District Powers.

(a) Texas Transportation Code, Chapter 441, authorizes a district operating pursuant to the Texas Water Code, Chapter 54, and which has the power to levy taxes to petition the Department of Transportation, after first obtaining approval of the Texas Commission on Environmental Quality, effective September 1, 2002, to acquire the powers granted under said Texas Transportation Code, Chapter 441, to road utility districts. Texas Transportation Code, §441.051 requires the written consent of the landowners within the boundaries of the district to be given to the governing board of the district to file a petition with the Department of Transportation.

(b) Authority to add road utility district powers is also given to municipal utility districts in Chapter 951, Acts of the 69th Legislature, 1985, which added §54.234 and §54.235 to the Texas Water Code. This section and §293.202 of this title (relating to Application Requirements for Commission

Approval) of this chapter will provide the requirements for obtaining approval of the commission to petition the Texas Department of Transportation for road utility district powers.

§293.202. Application Requirements for Commission Approval.

A conservation and reclamation district, operating pursuant to the Texas Water Code, Chapter 54, and which has the power to levy taxes, shall submit to the executive director of the commission an application which shall include the following documents, prior to petitioning the Texas Department of Transportation for road utility district powers:

(1) a petition or written request which will include a detailed narrative statement of the reasons for requesting road utility district powers and the reasons why such powers will be of benefit to the district and to the land which is included in the district, signed by the president of the board of directors of the district;

(2) a certified copy of the resolution of the governing board of the district authorizing the request for approval of the commission to petition the Texas Department of Transportation for road utility district powers;

(3) a certification that the district is operating under the Texas Water Code, Chapter 54, and has the power to levy taxes, with proper statutory references;

(4) evidence that the governing board of the district received written consent of all landowners within its boundaries prior to adopting the resolution of the governing board of the district authorizing it to petition for road utility district powers and that the petition or written request to the commission requesting road utility district powers was filed with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with filing its application for such powers with the commission;

(5) a certified copy of the latest audit of the district performed pursuant to Water Code, §§49.191-49.194;

(6) for districts which have not submitted an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30 days before the date the district submits its request for approval with the executive director;

(7) a certified copy of preliminary plans for all the facilities to be constructed, acquired, or improved by the district, which the district is required to submit to the governmental entity to which it proposes to convey district facilities by Texas Transportation Code, §441.013;

(8) a cost analysis and detailed cost estimate of the proposed facilities to be constructed, acquired, or improved by the district under road utility district powers with a statement of

the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, and improvement;

(9) a narrative statement which will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district;

(10) any other information which may be required by the executive director; and

(11) a filing fee in the amount of \$100 plus the cost of the required notice.