

The Texas Natural Resource Conservation Commission (commission) proposes 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 proposes in Subchapter G, the re-adoption of §293.87, in Subchapter J, *Utility System Rules and Regulations*, new §293.113, and in Subchapter K the repeal of §293.121.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 proposed rulemaking would establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 36, 49, 51, 54, 55, 58, 59, and 65, as amended by 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 proposed 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 proposed 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 central appraisal district (CAD) in lieu of the county tax assessor; modify requirements for when an expedited bond application can be submitted; 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; re-adopt 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 will be the lead rulemaking to amend §293.11 (concerning information required to accompany applications for creation of districts), it will accommodate 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 proposing to amend §293.11 to exclude GCDs from the scope of §293.11. The separate rulemaking, which the commission is in the process of convening, will consolidate virtually all aspects of Chapter 293 affecting GCDs into Subchapter C and rename that subchapter as “Groundwater Conservation Districts.”

SECTION BY SECTION DISCUSSION

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

Section 293.1 is proposed to be 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 293.11, Information Required to Accompany Applications for Creation of Districts

Section 293.11 is proposed to be amended for those districts that are authorized to provide water services 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 proposed to be 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 proposed to be amended to exclude GCDs from its scope. In separate rulemaking, which the commission is in the process of convening, the commission will consolidate virtually all aspects of Chapter 293 affecting GCDs into Subchapter C and rename that subchapter as "Groundwater Conservation Districts." Section 293.11(h)(11) is also proposed to be amended to correct cross references. Other changes to §293.11 are proposed to conform to Texas Register style requirements.

Section 293.42, Submitting of Documents and Order of Review

Section 293.42(e) is 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 add requirements that must be met in order for a district to submit an expedited review bond application. The added requirements are intended to allow better management of workload and more accurately reflect bond applications targeted for expedited review by deleting certain complicated bond applications from the expedited process.

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

An amendment to §293.44(a)(1) is proposed to conform a statutory reference to Texas Register style requirements. Sections 293.44(b), 293.46, 293.47(a) and (d) are proposed to be amended to reference district funding of recreational facilities in addition to water, wastewater, and drainage facilities, and

include provisions under which a district could fund 70% or 100% of the costs. The amendments implement SB 1444, Article 24, which establishes in TWC, Chapter 49, new Subchapter N, which allows all districts to fund recreational facilities. Section 293.47(g) is proposed to be 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

Section 293.51(e) is proposed to be 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 §293.56(e) is proposed to be 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

Section 293.59(k) is proposed to be 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, would be clarified for ease of interpretation without changing the intent.

Section 293.81, Change Orders

Section 293.81(1)(A) is proposed to be amended to allow change orders to construction projects to be issued, in aggregate, up to 10% of the original contract amount, in addition to current provisions. The amendment implements SB 1444, Article 17, which amends TWC, §49.273, to allow districts greater flexibility in issuance of change orders.

Section 293.87, Application for Extension of Time to Sell Bonds

The commission proposes to re-adopt §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 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 proposes to re-adopt the rule with the same text as was adopted in 1993.

Section 293.89, Contract Tax Obligations

Section 293.89(a) is proposed to be 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) are proposed to conform the rules to Texas Register style requirements. Subsection (c),

relating to contract tax obligations, is proposed to be 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 §293.103 is proposed to be 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 293.113, District and Water Supply Corporations Authority Over Wastewater Facilities

Proposed 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 proposed to be repealed. In a concurrent rulemaking that appears in this issue of the Texas Register, the commission is proposing an amendment to §50.131 to delegate to the executive director (ED) authority to approve fire plans on behalf of the commission. That amendment is being proposed 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 proposed 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

Section 293.123 is proposed to be amended to delete 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

Section 293.171 is proposed to be 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 are proposed to clarify the rule.

Section 293.201, District Acquisition of Road Utility District Powers

Section 293.201(a) is proposed to be 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

Section 293.202 is proposed to be 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed rulemaking is in effect, no significant fiscal implication is expected for the agency or other units of state and local government due to implementation of the proposed rulemaking. The provisions of this rulemaking concern commission administration and oversight of water districts and WSCs and their allowable activities.

The proposed rulemaking implements certain provisions of several bills, including: SB 1444 (an Act relating to the general powers and authority of water districts; providing a penalty), 77th Legislature, 2001; HB 2912 (an Act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Legislature, 2001; and HB 2994 (an Act relating to the approval of certain contracts of special districts), 77th Legislature, 2001. The proposed

rulemaking will apply to all of the approximately 1,000 existing and any new water districts throughout the state regulated by the commission.

The proposed rulemaking allows a fire plan to be approved at the time of creation of a water district; adds provisions to allow water districts to fund costs related to recreational facilities; and adds provisions requiring water districts and WSCs to reimburse the cost of connecting to wastewater collection systems. Allowing a fire plan to be requested and approved during the creation of a water district is anticipated to provide potentially increased fire protection to the customers served by the water district. Typically, fire plans allow a water district to contract with a local fire department and would allow a district to establish fees to provide a stable funding source for fire protection. Fire plans are already utilized by water districts. The proposed rulemaking is intended to allow this plan to be created and approved during the initial creation of the district. The commission does not anticipate significant fiscal implications for units of state or local government due to implementation of the proposed rulemaking.

The provisions allowing water districts to fund costs related to recreational facilities are also not anticipated to result in significant fiscal implications for units of state and local governments. Water districts are already allowed to fund the construction of water, wastewater, and drainage facilities. The proposed rulemaking would add recreational facilities to the types of projects a water district can fund. The types of recreational facilities that could be funded include parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, street and security lighting. The proposed rulemaking does not require a fiscal expenditure by water districts, and the decision to

fund recreational projects would be made at the local level. If a water district decides to pursue funding for recreational projects, certain water and wastewater fees paid by the district's customers may be increased; however, the commission does not anticipate the fees would result in significant fiscal implications for affected customers.

The provisions regarding districts and WSCs requiring connection to a wastewater system would require water districts and WSCs to reimburse in certain circumstances the cost to property owners for being required to connect to a wastewater collection system. Previously, only districts and WSCs that received funding under the Economically Distressed Areas Program (EDAP) were allowed to prohibit the installation of private on-site wastewater facilities on land within the district's or corporation's boundaries. The proposed rulemaking would require water districts and WSCs, that prohibit the installation of private on-site wastewater holding or treatment facilities, to reimburse the affected property owner the cost of connecting to the district's or corporation's wastewater collection system. The total cost for reimbursements can not be estimated. The commission estimates the cost will be approximately \$10 per foot, depending on how far the affected property is from the collection system and the type of subsurface material the connection will be installed in. Water districts and WSCs that have not received funding under the EDAP would not have the authority to 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.

The proposed rulemaking would also require certificates of land ownership and value to be provided by a CAD in lieu of the county tax assessor; modify requirements for when an expedited bond application

can be submitted; re-adopt 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; repeal or delete unnecessary rules; and correct and clarify the rules. These provisions are procedural in nature and are not anticipated to result in significant fiscal implications for the commission or affected water districts. In particular, the re-adoption of the requirements for applications for extension of time to sell bonds is not anticipated to result in significant fiscal impacts, as the commission has been applying these same requirements since the rule was originally adopted in 1993. Re-adoption of the rule will allow districts to continue to obtain extensions of the time to sell bonds where appropriate.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed rulemaking is in effect, the public benefit anticipated as a result of implementing the proposed rulemaking will be potentially increased fire protection to districts that avail themselves of the opportunity to seek approval of a fire plan at the time of creation, thereby providing the district and its customers a definitive plan for fire protection from its inception.

The proposed rulemaking implements certain provisions of several bills, including: SB 1444, 77th Legislature, 2001; HB 2912, 77th Legislature, 2001; and HB 2994, 77th Legislature, 2001. The proposed rulemaking will apply to all of the approximately 1,000 existing and any new water districts throughout the state regulated by the commission.

The proposed rulemaking would allow a fire plan to be approved at the time of creation of a water district; add provisions to allow water districts to fund costs related to recreational facilities; and add provisions requiring water districts and WSCs to reimburse the cost of connecting to wastewater collection systems. Allowing a fire plan to be requested and approved during the creation of a water district is anticipated to provide potentially increased fire protection to the customers served by the water district. Typically, fire plans allow a water district to contract with a local fire department and would allow a district to establish fees to provide a stable funding source for fire protection. Fire plans are already utilized by water districts. The proposed rulemaking is intended to allow this plan to be created and approved during the initial creation of the district. The commission does not anticipate significant fiscal implications for individuals and businesses due to implementation of the proposed rulemaking.

The provisions allowing water districts to fund costs related to recreational facilities are also not anticipated to result in significant fiscal implications for individuals and businesses. Water districts are already allowed to fund the construction of water, wastewater, and drainage facilities. The proposed rulemaking would add recreational facilities to the types of projects a water district can fund. The types of recreational facilities that could be funded include parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, street and security lighting. The proposed rulemaking does not require any fiscal expenditures by water districts, and the decision to fund recreational projects would be made at the local level. If a water district decides to pursue funding for recreational projects, certain water and wastewater fees paid by the district's customers may be increased; however, the commission does not anticipate the fees would result in significant fiscal

implications for affected customers.

The provisions regarding districts and WSCs requiring connection to a wastewater system would require water districts and WSCs to reimburse in certain circumstances the cost to property owners for being required to connect to a wastewater collection system. Previously, only districts and WSCs that received funding under the EDAP were allowed to prohibit the installation of private on-site wastewater facilities on land within the district's or corporation's boundaries. The proposed rulemaking would require water districts and WSCs, that prohibit the installation of private on-site wastewater holding or treatment facilities, to reimburse the affected property owner the cost of connecting to the district's or corporation's wastewater collection system. Water districts and WSCs that have not received funding under the EDAP would not have the authority to 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. The commission anticipates these provisions would provide economic benefits to those customers that in the past would not have been reimbursed for having to connect to a district's wastewater collection system.

The proposed rulemaking would also require certificates of land ownership and value to be provided by a CAD in lieu of the county tax assessor; modify requirements when an expedited bond application can be submitted; re-adopt the 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; repeal or delete unnecessary rules; and correct and clarify the rules. These provisions are procedural in nature and only affect water

districts; therefore, they are not anticipated to result in significant fiscal implications for individuals and businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses due to implementation of the proposed rulemaking, which is intended to implement certain provisions of SB 2, SB 1444, HB 2912, and HB 2994. The proposed rulemaking, which concerns commission administration and oversight of water districts and WSCs and their allowable activities, will apply to all of the approximately 1,000 existing and any new water districts throughout the state regulated by the commission.

The proposed rulemaking would allow a fire plan to be approved at the time of creation of a water district; add provisions to allow water districts to fund costs related to recreational facilities; and add provisions requiring water districts to reimburse the cost of connecting to wastewater collection systems. Allowing a fire plan to be requested and approved during the creation of a water district is anticipated to provide potentially increased fire protection to the customers, which can include small and micro-businesses, served by the water district. Typically, fire plans allow a water district to contract with a local fire department and would allow a district to establish fees to provide a stable funding source for fire protection. Fire plans are already utilized by water districts. The proposed rulemaking is intended to allow this plan to be created and approved during the initial creation of the district. The commission does not anticipate significant fiscal implications for small and micro-businesses due to implementation of the proposed rulemaking.

The provisions allowing water districts to fund costs related to recreational facilities are also not anticipated to result in significant fiscal implications for small and micro-businesses. Water districts are already allowed to fund the construction of water, wastewater, and drainage facilities. The proposed rulemaking would add recreational facilities to the types of projects a water district can fund. The types of recreational facilities that could be funded include parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, street and security lighting. The proposed rulemaking does not require any fiscal expenditures by water districts, and the decision to fund recreational projects would be made at the local level. If a water district decides to pursue funding for recreational projects, certain water and wastewater fees paid by the district's customers may be increased; however, the commission does not anticipate the fees would result in significant fiscal implications for affected customers.

The provisions regarding districts and WSCs requiring connection to a wastewater system would require water districts and WSCs to reimburse in certain circumstances the cost to property owners for being required to connect to a wastewater collection system. Previously, only districts and WSCs that received funding under the EDAP were allowed to prohibit the installation of private on-site wastewater facilities on land within the district's or corporation's boundaries. The proposed rulemaking would require water districts and WSCs, that prohibit the installation of private on-site wastewater holding or treatment facilities, to reimburse the affected property owner the cost of connecting to the district's or corporation's wastewater collection system. Water districts and WSCs that have not received funding under the EDAP would not have the authority to 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. The commission anticipates that these provisions would provide economic benefits to small or micro-businesses that in the past would not have been reimbursed for having to connect to a district's wastewater collection system.

The proposed rulemaking would also require certificates of land ownership and value to be provided by a CAD in lieu of the county tax assessor; modify requirements when an expedited bond application can be submitted; re-adopt 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; repeal or delete unnecessary rules; and correct and clarify the rules. These provisions are procedural in nature and only affect water districts; therefore, they are not anticipated to result in significant fiscal implications for small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS

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 proposed 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 changes 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 proposed 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 proposed 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 proposed 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 proposed rules do not exceed the express requirements of those state statutes. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of the proposed rulemaking pursuant to Texas Government Code, §2007.043. The specific purpose of the proposed 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 proposed 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; modifying requirements for when an expedited bond application can be submitted; adding provisions to allow districts to fund costs related to recreational facilities; modifying provisions for allowable change orders; re-adopting 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 proposed 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 proposed 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 proposal is a 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 will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission determined that the proposed rules are included under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the proposed 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 proposed rules do not specifically regulate location or type of development allowed, Chapter 293 provides requirements for developers and for water districts. Section §505.11 of 31 TAC 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 proposed rules will be effective throughout the state, the CMP policy is applicable. CMP policies applicable to the proposed 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 proposed rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The specific purpose of the proposed 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 proposed rules will substantially advance this specific purpose. Specifically, the proposed 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; modify requirements for when an expedited bond application can be submitted; add provisions to allow districts to fund costs related to recreational facilities; re-adopt 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 proposed rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed 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 proposed rules do not alter the allowable location, standards, or stringency of the requirements for infrastructure on coastal barriers.

The commission seeks public comment on the consistency of the proposed rulemaking.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-054-293-WT. Comments must be submitted by 5:00 p.m. on May 13, 2002. For further information, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1873.

STATUTORY AUTHORITY

The amendments are proposed 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 proposed 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 proposed 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 proposed 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 proposed under Texas Local Government Code, §395.080(b), which requires the commission to adopt rules for reviewing petitions for approval

of district impact fees.

The proposed amendments implement TWC, §5.122; §36.011, which authorizes the commission to create GCDs; §36.013, which establishes the requirements for a petition to create a GCD; §36.015, which establishes the criteria for creation of a GCD by the commission; §49.108, as amended by SB 1444 and HB 2994, 77th Legislature, 2001, which generally requires a district to obtain the approval of the ED before entering into an obligation to collect tax for debt that exceeds three years, but exempts from this requirement contract taxes levied to pay for bonds issued by a municipality; §49.181, which requires districts to obtain commission approval before issuing bonds and requires the commission to examine the feasibility of proposed projects; §49.212(d), as amended by SB 1444, 77th Legislature, 2001, which sets out the types of fees that shall not be deemed impact fees under Texas Local Government Code, Chapter 395; §49.234; §49.273(i), as amended by SB 1444, 77th Legislature, 2001, which establishes the circumstances under which a district may issue change orders; §49.351, which, as amended by SB 1444, 77th Legislature, 2001, allows a fire plan to be considered at the same time as an application for district creation, no longer requires a district to hold a hearing before adopting a fire plan, and no longer requires the commission to hold a hearing on an application for approval of a fire plan; Chapter 49, Subchapter N, as added by SB 1444, 77th Legislature, 2001, which authorizes districts to develop and maintain recreational facilities; §51.149(a), as amended by SB 2 and HB 2912, 77th Legislature, 2001, which exempts contract tax agreements between water control and improvement districts and municipalities from the requirement to obtain ED approval; §54.014, as amended by SB 1444, 77th Legislature, 2001, which provides that the tax rolls of the CAD shall be used to determine whether a petition for creation of a municipal utility district has been signed by a sufficient number of

landowners; Texas Local Government Code, §395.080; and HB 2912, 77th Legislature, 2001, §18.01, which changes the name of the agency to the Texas Commission on Environmental Quality.

SUBCHAPTER A: GENERAL PROVISIONS

§293.1

STATUTORY AUTHORITY

The amendment is proposed 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 proposed amendment implements HB 2912, §18.01, which changes the name of the commission to the Texas Commission on Environmental Quality.

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

(a) The commission [Texas Natural Resource Conservation Commission (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) (No change.)

SUBCHAPTER B: CREATION OF WATER DISTRICTS

§293.11

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements TWC, §36.011, which authorizes the commission to create GCDs; §36.013, which establishes the requirements for a petition to create a GCD; §36.015, which establishes the criteria for creation of a GCD by the commission; §49.351; and §54.014, as amended by SB 1444, 77th Legislature, 2001, which provides that the tax rolls of the CAD shall be used to determine whether a petition for creation of a municipal utility district has been signed by a sufficient number of landowners.

§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) - (10) (No change.)

(b) Creation application requirements and procedures [applications] for Texas Water Code, Chapter 36 [Chapter 36, Texas Water Code], Groundwater Conservation Districts are provided in Subchapter C of this chapter (relating to Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas). [shall contain the items listed in subsection (a) of this section and the following items:]

[(1) a petition containing the items required by Texas Water Code, §36.013, signed by the majority of the landowners in the proposed district, or if there are more than 50 landowners, at least 50 of those landowners. The petition shall include the following:]

[(A) the name of the proposed district;]

[(B) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;]

[(C) the purpose or purposes of the proposed district;]

[(D) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated cost of those projects according to the petitioners if the projects are to be funded by the issuance of bonds or notes;

and]

[(E) any additional terms or conditions that limit the powers of the proposed district from those authorized in Chapter 36, Texas Water Code.]

[(2) evidence that the boundaries are coterminous with or inside the boundaries of a delineated groundwater management area, priority groundwater management area, or groundwater reservoir or subdivision thereof. A groundwater conservation district may include all or part of one or more counties, cities, districts, or other political subdivision and may consist of separate bodies of land within a groundwater management area, priority groundwater management area, or groundwater reservoir or subdivision thereof separated by land not included in the proposed district. Evidence shall show:]

[(A) a rule adopted by the commission designating a groundwater management area as provided in the Texas Water Code, §35.004, and §§293.21 - 293.25 of this title (relating to Designation of Groundwater Management Areas), an order designating a priority groundwater management area as provided under the Texas Water Code, §35.008, or an order designating delineation of a groundwater reservoir or subdivision thereof; or]

[(B) if part of the proposed district is not included within either a delineated groundwater management area, priority groundwater management area, or groundwater reservoir or a subdivision thereof, the petition may also contain a request (meeting the requirements of the Texas

Water Code, §35.005 and §§293.21 - 293.25 of this title) to create or alter the boundaries of a management area. If such a request is made, it may be acted upon separately by the commission from the petition for the creation of the proposed district;]

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

[(4) a vicinity map (22 - 24 inches by 36 inches or in a digital data electronic format) showing as appropriate the location of municipalities, highways, roads, and other improvements, together with the areal extent of groundwater aquifers, reservoirs, or subdivisions thereof, and showing the location of known recharge (i.e., outcrops of aquifer units, karst features, etc.) or discharge (i.e., known seeps, springs, etc.) features, and any other information pertinent to the creation of the proposed district;]

[(5) a geologic/hydrologic report including as appropriate:]

[(A) the purpose or purposes of the proposed district and its management planning objectives/goals;]

[(B) a description of the existing area, conditions, topography, economic endeavors which rely heavily upon groundwater, and any proposed improvements;]

[(C) a description of the groundwater resources, including the characteristics (i.e., recharge/discharge features, depth of usable groundwater, etc.) of individual aquifers within the proposed district;]

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

[(E) if the proposed district is located in a designated priority groundwater management area, a description of how the proposed projects will address issues identified within the priority groundwater management area;]

[(F) the existing and projected land use in the proposed district;]

[(G) the existing and projected groundwater quality, quantity, availability, and usage within the proposed district, including any foreseeable quality, quantity, availability, and usage issues as identified by the petitioners;]

[(H) the existing and projected population;]

[(I) an evaluation of the effect the proposed district and its programs will have within the district on the following:]

[(i) land elevation;]

[(ii) subsidence;]

[(iii) groundwater levels;]

[(iv) groundwater conservation and availability;]

[(v) groundwater quality;]

[(vi) monitoring of ambient groundwater conditions;]

[(vii) groundwater educational initiatives;]

[(J) financial information including the following:]

[(i) the projected maintenance tax rate, under Texas Water Code, §36.020, which should not exceed \$.50 on each \$100 of assessed valuation;]

[(ii) the proposed budget of revenues and expenses for the district;]

[(iii) an evaluation of the effect the district and its programs will have on the total tax assessments on all land within the district, including a discussion of current and projected tax rates;]

[(iv) tentative itemized cost estimates of the proposed projects and itemized cost summary for anticipated bond issue requirements;]

[(K) if water supply utility services are proposed:]

[(i) an evaluation of the availability of comparable service from other entities, including, but not limited to, water districts, water supply corporations, municipalities, and regional authorities;]

[(ii) complete justification, supported by evidence, for the necessity and feasibility of the proposed district to provide water supply services;]

[(iii) the current and projected water rates in the proposed district;]

[(iv) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirements; and]

[(v) any other related technical information as required by the executive director;]

[(6) a certificate by the county tax assessor(s) 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 petitioners to be the majority of the landowners within the proposed district, then the petitioners shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioners and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the proposed district;]

[(7) 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, and in accordance with Texas Water Code, §§36.051(b), 36.058, and 36.059(b) for appointment of directors; and]

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

(c) Creation applications for Texas Water Code, Chapter 51, [Chapter 51, Texas Water Code,] 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 [county] 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) - (F) (No change.)

(2) - (5) (No change.)

(6) a certificate by the central appraisal district [county tax assessor] 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 [county tax rolls] 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; [and]

(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) [(8)] other information as required by the executive director.

(d) Creation applications for Texas Water Code, Chapter 54, [Chapter 54, Texas Water Code,] 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 [county] 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) - (E) (No change.)

(2) - (5) (No change.)

(6) a certificate by the central appraisal district [county tax assessor] 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 [county tax rolls] 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) - (8) (No change.)

(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) [(10)] other data and information as the executive director may require.

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

(1) - (4) (No change.)

(5) a certificate by the central appraisal district [county tax assessor] 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 [county tax rolls] 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; [and]

(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) [(6)] other data and information as the executive director may require.

(f) Creation applications for Texas Water Code, Chapter 58, [Chapter 58, Texas Water Code,]

Irrigation Districts within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) - (5) (No change.)

(6) a certificate by the central appraisal district [county tax assessor] 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 [county tax rolls] 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) - (8) (No change.)

(g) Creation applications for Texas Water Code, Chapter 59, [Chapter 59, Texas Water Code,]

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) - (F) (No change.)

(2) - (4) (No change.)

(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; [and]

(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) [(6)] other information as the executive director may require.

(h) Creation applications for Texas Water Code, Chapter 65, [Chapter 65, Texas Water Code,] 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) - (F) (No change.)

(2) - (10) (No change.)

(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 [§291.110] of this title relating to Report of Sale, Merger, or Consolidation [relating to Report of Sale, Merger or Consolidation] and §291.112 [§291.111] of this title relating to Transfer of Certificate of Convenience and Necessity [relating to Transfer of Certificates of Convenience and Necessity]; [and]

(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) [(12)] other information as the executive director requires.

(i) (No change.)

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General [Chapter 375, Local Government Code, Municipal Management Districts] 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) - (E) (No change.)

(2) (No change.)

(3) a certificate by the central appraisal district [county tax assessor] 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 [county tax rolls] 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 proposed 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 proposed amendments to §§293.42, 293.44, 293.46, 293.47, 293.51, and 293.59 implement TWC, §49.181, which requires districts to obtain commission approval before issuing bonds and requires the commission to examine the feasibility of proposed projects. The proposed amendments to §§293.44, 293.46, and 293.47 also implement TWC, Chapter 49, Subchapter N, as added by SB 1444, 77th Legislature, 2001, which authorizes districts to develop and maintain recreational facilities. The proposed amendment to §293.56 implements HB 2912, 77th Legislature, 2001, §18.01, which changes the name of the agency to the Texas Commission on Environmental Quality.

§293.42. Submitting of Documents and Order of Review.

(a) - (d) (No change.)

(e) An [If a complete bond application is pending on the effective date of this section, an] applicant may qualify for expedited review under subsection (b) or (c) of this section only for a second

or subsequent bond issue submitted to the commission [upon the submission of a complete response to all outstanding requests for additional information and a certificate stating that a complete application is on file in accordance with subsection (b) or (c) of this section].

§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) [Water Code], §49.052(d).

(2) - (23) (No change.)

(b) All projects.

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

(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. The district's share shall 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, [and] 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) - (8) (No change.)

§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, [and] 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) - (4) (No change.)

(b) - (c) (No change.)

(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, [and] drainage, and recreational facilities, including attendant engineering fees and other related expenses, with the following exemptions:

(1) - (10) (No change.)

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

(12) the district's share of recreational facilities which are made available to all the people in a district.

(e) - (f) (No change.)

(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 [utility] construction costs and/or engineering costs within a reasonable and specified period of

time, the district may draw upon the financial guarantee [letter of credit] 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) - (k) (No change.)

§293.51. Land and Easement Acquisition.

(a) - (d) (No change.)

(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) [(b)] 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) - (h) (No change.)

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

(a) - (e) (No change.)

(f) Form of letter of credit [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)

[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, effective September 1, 2002, [Texas Natural Resource Conservation Commission] 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) - (j) (No change.)

(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) - (4) (No change.)

(5) The following applies to the central appraisal district [tax assessor's] certificate:

(A) - (B) (No change.)

(6) - (11) (No change.)

(l) 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) [paragraphs (2), (3), (4), and (5)] of this subsection applies [only apply] to districts that do not have a developer as defined by Texas Water Code [Water Code], §49.052(d) or to districts which [fail to] meet the criteria set out in subsection (k)(11) of this section.

(1) - (5) (No change.)

(m) - (n) (No change.)

SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION

CONSIDERATION FOR APPROVAL

§§293.81, 293.87, 239.89

STATUTORY AUTHORITY

The amendments and re-adoption are proposed 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 proposed amendment to §293.81 implements TWC, §49.273(i), as amended by SB 1444, 77th Legislature, 2001, which establishes the circumstances under which a district may issue change orders. The proposed re-adoption of §293.87 implements TWC, §49.181, which requires districts to obtain commission approval before issuing bonds and requires the commission to examine the feasibility of proposed projects. The proposed amendment to §293.89 implements TWC, §49.108, as amended by SB 1444 and HB 2994, 77th Legislature, 2001, which generally requires a district to obtain the approval of the ED before entering into an obligation to collect tax for debt that exceeds three years, but exempts from this requirement contract taxes levied to pay for bonds issued by a municipality; and also TWC, §51.149(a), as amended by SB 2 and HB 2912, 77th Legislature, 2001, which exempts contract tax agreements between water control and improvement districts and municipalities from the requirement to obtain ED approval.

§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 scope or change the nature of a project by more than 10% of the original contract price. Additional change [Change] orders may be issued only in response to:

(i) - (iii) (No change.)

(B) (No change.)

(2) - (6) (No change.)

§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) [Water Code], §49.181 to obtain approval by the commission of the issuance of bonds may not enter into an obligation under TWC, [Water Code] §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) - (5) (No change.)

(6) if funds received under the contract are proposed to reimburse a developer as defined in TWC [the Water Code], §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) - (8) (No change.)

(c) All applications for executive director approval of contract tax obligations will be subject to [the limitations in] §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 proposed 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 proposed amendment implements HB 2912, 77th Legislature, 2001, §18.01, which changes the name of the agency to the Texas Commission on Environmental Quality.

§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, effective September 1, 2002, [Texas Natural Resource Conservation Commission] 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 proposed 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.

The proposed new section implements TWC, §49.234.

§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 proposed 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.

The proposed repeal implements TWC, §5.122; and §49.351, as amended by SB 1444, which eliminated the requirement that the commission hold a hearing on applications for approval of a fire plan.

§293.121. Approval of Fire Department Projects.

SUBCHAPTER K: FIRE DEPARTMENT PROJECTS

§293.123

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements TWC, §49.351, as amended by SB 1444, which eliminated the requirement that a district hold a hearing before adopting a fire plan.

§293.123. Application Requirements for Fire Department Plan Approval.

Applications for fire department plan approval shall include:

(1) - (2) (No change.)

(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 [, together with evidence that a hearing in conformance with Texas Water Code [Water Code], §49.351(g), was held at which any

person residing in the district could present testimony for or against the proposed plan and/or any proposed contract];

(4) - (8) (No change.)

SUBCHAPTER N: PETITION FOR APPROVAL OF IMPACT FEES

§293.171

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements TWC, §49.212(d), as amended by SB 1444, 77th Legislature, 2001, which sets out the types of fees that shall not be deemed impact fees under Texas Local Government Code, Chapter 395; and Texas Local Government Code, §395.080.

§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 [that]:

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

(B) [if] 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 [, shall not be deemed to be an impact fee]; 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) - (5) (No change.)

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

§293.201, §293.202

STATUTORY AUTHORITY

The amendments are proposed 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 proposed amendments implement HB 2912, 77th Legislature, 2001, §18.01, which changes the name of the agency to the Texas Commission on Environmental Quality.

§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 [Texas Natural Resource Conservation Commission], 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) (No change.)

§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 [Texas Natural Resource Conservation Commission] an application which shall include the following documents, prior to petitioning the Texas Department of Transportation for [or] road utility district powers:

(1) (No change.)

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

(3) - (11) (No change.)