

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Subchapter A, *General Provisions*, §§291.8; Subchapter B, *Rates, Rate Making, and Rates/Tariff Changes*, §§291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.32, and 291.34; Subchapter E, *Customer Service and Protection*, §§291.81, 291.82, 291.85, 291.87, and 291.88; Subchapter G, *Certificates of Convenience and Necessity*, §291.113; and Subchapter H, *Utility Submetering and Allocation*, §291.122 and §291.127.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these revisions to Chapter 291 in order to implement legislation from the 77th Legislature, 2001.

House Bill (HB) 924 and Senate Bill (SB) 1444, 77th Legislature, 2001, amended Texas Water Code (TWC), §49.218, Acquisition of Property, by adding subsection (d) specifying the conditions under which a water district or water supply corporation may require the grant of an easement as a precondition of service.

HB 2404, 77th Legislature, 2001, amended TWC, §13.502, Submetering, by adding subsections (b) - (e). The new provisions require the installation of submeters owned by the property owner or manager, or individual meters owned by the retail public utility, for any construction of an apartment house, a manufactured home rental community, a multiple use facility, or a condominium (referred to jointly as “facilities”) which begins after January 1, 2003. This section requires that if an owner or manager chooses to charge for water, the owner or manager must do so in the form of submetering or metering

in facilities constructed after January 1, 2003. The section provides an exception for government assisted or subsidized housing facilities for low or very low income residents by only requiring them to install a plumbing system that is compatible with the installation of submeters as opposed to requiring that they install submeters or charge for water on a submetered or metered basis. The section also requires a retail public utility, upon the request of an owner or manager of a facility, to install individual meters owned by the retail public utility unless the utility determines that the installation of meters is not feasible, in which case the owner or manager is required to install a plumbing system that is compatible with the installation of submeters or individual meters. The section allows the owner of any of these facilities to change from submetered to allocated billing only in certain situations. This legislation also amended TWC, Chapter 13, Subchapter M, Submetering and Nonsubmetering for Apartments and Manufactured Home Rental Communities and Other Multiple Use Facilities, by adding §13.506, Plumbing Fixtures, to require the owner of an apartment house, a manufactured home rental community, a multiple use facility, or a condominium which begins construction after January 1, 2003, to meet standards prescribed by Texas Health and Safety Code (THSC), §372.002, before billing tenants for submetered or allocated water service.

HB 2912, §3.10, 77th Legislature, 2001, amended TWC, §13.187, Statement of Intent to Change Rates; Hearing; Determination of Rate Level, by amending subsection (a) to increase the number of days required for a notice involving a Statement of Intent to Change Rates (SICR).

HB 2912, §20.01, 77th Legislature, 2001, amended TWC, Chapter 13, Subchapter K, Violations and Enforcement, by adding §13.4115, Action to Require Adjustment to Consumer Charge; Penalty, to

allow the commission to issue an order and assess penalties if a public utility fails to make an adjustment to a customer's bill.

SB 2, §2.53, 77th Legislature, 2001, provides, in part, groundwater conservation districts (GWCDs) with the authority to collect production fees based on the amount of water withdrawn from a well, not to exceed \$10 per acre foot of water used for any purpose (not including agricultural uses).

SB 2, Article 9, 77th Legislature, 2001, amended TWC, Chapter 13, Subchapter G, Certificates of Convenience and Necessity, by adding §13.2541, to allow a municipality with a population of more than 1.3 million to request that the commission revoke a public utility's certificate of convenience and necessity under certain situations.

SB 2, §10.01, 77th Legislature, 2001, amended TWC, §13.137(a), Office and Other Business Locations of Utility; Records; Removal from State, to require every utility to have a business location where customers can make payment to prevent disconnection or restore service in every county in which the utility provides service or not more than 20 miles from the residence of any residential customer; or to increase the number of days before a bill can be considered overdue if the executive director has granted an exception to this requirement.

SB 2, §10.03, 77th Legislature, 2001, amended TWC, Subchapter E, Records, Reports, Inspections, Rate, and Schedules, by adding §13.145, Multiple Systems Consolidated Under Tariff, to allow a utility to consolidate multiple systems under a single tariff only if the utility meets certain requirements.

SB 2, §10.04, 77th Legislature, 2001, amended TWC, §13.182, Just and Reasonable Rates, by adding subsection (d), which requires the commission to establish, by rule, a preference that rates under a consolidated tariff be consolidated by region. These regions are to be determined on a case-by-case basis.

SB 2, §10.05, 77th Legislature, 2001, amended TWC, §13.183, Fixing Overall Revenues, by adding affordability as a factor for the commission to consider in adopting alternative ratemaking methodologies.

SB 2, §10.06, 77th Legislature, 2001, amended TWC, §13.187, Statement of Intent to Change Rates; Hearing; Determination of Rate Level, to increase the number of days required for a notice involving an SICR and by adding information that must be included on the SICR; to increase the number of days after the effective date of the rate change for customer protest; to allow the regulatory authority to suspend the date of the rate change if the regulatory authority receives the number of complaints necessary to set a hearing; and to allow the regulatory authority to require the utility to refund money collected under the proposed rate.

SB 2, §10.07, 77th Legislature, 2001, amended TWC, Subchapter I, Relations with Affiliated Interests, by adding §13.343, Wholesale Water Contracts between Certain Affiliates, to restrict the purchase of wholesale water service from an affiliated supplier except in certain cases and to restrict the purchase of groundwater from any provider in a priority groundwater management area where a wholesale supply of surface water is available.

SB 352, 77th Legislature, 2001, amended THSC, §364.034, to allow fee collection for solid waste disposal services by an entity other than the public agency or county providing the services and to allow the termination of other utility services provided by the collecting entity if bills are not paid. A provision excluding anyone who has solid waste disposed by another service provider from being covered by the section (including the requirement to use the services of the public agency or county for solid waste disposal) is also included.

SECTION BY SECTION DISCUSSION

Section 291.8, Administrative Completeness

The proposed amendment to subsection (b) would increase from 30 days to 60 days the time lapse for a rate change to become effective after proper public notice is made of the rate change. This amendment is proposed in accordance with HB 2912, §3.10, and SB 2, §10.06.

Section 291.21, Form and Filing of Tariffs

The proposed amendment to §291.21 encompasses several changes. Per SB 352 provisions, subsection (a) is proposed to be amended both to allow a utility to enter into a contract with a county or other public agency to collect fees for solid waste disposal services provided by the county or public agency and to allow the fees to be included on the bills to customers for the water service provided by the utility. Subsection (b)(2)(A)(viii) is proposed to facilitate the collection from customers of production fees charged by a GWCD to utilities. Subsection (h)(1) is also proposed to be amended by removing language which requires a utility to submit a rate change application in order to pass on GWCD production fees to its customers. Subsection (k)(2) is proposed to be replaced with new language to

clarify the existing types of cost increases that can be passed on to customers as surcharges without being specifically listed in the tariff and to add GWCD production fees as another type of cost that may be recovered through a surcharge. This proposed amendment provides regulatory consistency because the executive director may already allow a utility to recover other types of regulatory assessment fees either through a minor tariff change or surcharge. Requiring a utility to submit a rate/tariff change application in order to recover a GWCD production fee from its customers would be overly burdensome because the utility does not have any control over the amount of the fee or whether to pay the fee.

Section 291.22, Notice of Intent to Change Rates

The proposed amendment to §291.22(a) adds new paragraphs (3) and (4) to describe additional information needed on public notices for rate changes, and the subsequent paragraph is renumbered to paragraph (5). Per SB 2, §10.06 provisions, the proposed amendments to subsections (a) and (c) - (e) would change the number of days by which a utility must provide notice of a proposed rate change from 30 to 60 days prior to the proposed effective date.

Section 291.24, Jurisdiction Over Affiliated Interests

The proposed amendment to §291.24 would designate the existing language as subsection (a) and propose a new subsection (b) to incorporate provisions from SB 2, §10.07(a), which cover restrictions on any contract to purchase water that is made between a water utility and an affiliated wholesaler.

Section 291.26, Suspension of Rates

Per SB 2, §10.06(k) provisions, new subsection (c) is proposed to be added to §291.26. The new subsection would allow the commission to suspend the effective date of a rate change for up to 150 days if the required number of complaints from customers for a contested case hearing are received.

Section 291.28, Action on Notice of Rate Change by Ratepayers Pursuant to Texas Water Code, §13.187(b)

Per SB 2, §10.06(e) provisions, the time in §291.28(1) for customers to file complaints about rate changes is proposed to be increased from 60 days to 90 days.

Section 291.29, Interim Rates

Per SB 2, §10.06(n) provisions, a new subsection (c) is proposed, and the subsequent subsections are relettered. New §291.29(c) would allow the commission to require for good cause a utility to refund money to customers in cases where rate changes were delayed. Per SB 2, §10.06(o) provisions, existing subsection (i) is proposed to be deleted so as to remove the requirement that the commission make a final rate determination within 335 days after the effective date of setting interim rates or escrowed rates.

Section 291.31, Cost of Service

Per SB 2, §10.07(b) provisions, subsection (b)(2)(J) is proposed to be added to show that costs of purchasing groundwater from any source in a priority groundwater management area are not allowed as a component of cost of service if a wholesale supply of surface water is available.

Section 291.32, Rate Design

Per SB 2, §10.03 provisions, new subsections (e) and (f) are proposed to be added to §291.32 to provide for consolidating multiple water systems under one tariff and rate design.

Section 291.34, Alternative Rate Methods

Per SB 2, §10.05 provisions, subsection (a) is proposed to be amended to allow the commission to consider the affordability of rates when adopting alternative ratemaking methodologies.

Section 291.81, Customer Relations

Per SB 2, §10.01 provisions, the proposed amendment to subsection (d) requires that an office for customers to pay bills must be in each county where water service is provided or no more than 20 miles from any residential customer served if there is not an office in the same county. This requirement may be waived by the executive director upon request by the utility if such request demonstrates that the requirement would cause a rate increase or otherwise harm or inconvenience customers.

Section 291.82, Resolution of Disputes

The proposed amendment to §291.82 would place the existing language into proposed new subsection (a) and add a new subsection (b) to implement changes from HB 2912, §20.01 provisions. These amendments allow the commission to issue orders requiring utilities to make adjustments if the executive director, in response to a customer complaint arising out of a charge made by a utility, finds that a utility has failed to make the proper adjustment to a customer's bill after completion of the complaint process.

Section 291.85, Response to Requests for Service by a Retail Public Utility Within Its Certificated Area

The proposed amendment to subsection (d), concerning easements, divides the existing language into paragraphs (1) and (2) for clarity. Amendments to this section are also proposed to limit its applicability to retail public utilities other than districts and water supply corporations. Texas Water Code, §49.218 establishes the conditions under which districts and water supply corporations may require easements. For clarity, the term “and/or” is being replaced with “or” in paragraphs (1) and (2).

Section 291.87, Billing

The proposed amendment to §291.87(b), places the existing rule language into proposed new paragraph (1) and proposes a new paragraph (2) with new rule language to implement SB 2, §10.01(b). The proposed new language provides that if a utility has been granted an exemption from having a local office in part of its service area, the due date of bills for service must be at least 30 days after issuance. Based on SB 352, a new provision is proposed to be added to subsection (e)(3) to allow solid waste disposal fees collected under contract with a county or other public agency to be included on bills for water service.

Section 291.88, Discontinuance of Service

Based on SB 352 provisions, two changes are proposed in §291.88. The proposed amendment to subsection (a)(2)(F) is added to allow disconnection of water service if payment is not made after a utility sends a bill for solid waste disposal fees charged by a county or other public agency. Subsection (h)(2)(D) is proposed as new language to specify that a fee cannot be charged for reconnecting water

service after disconnection solely for failure to pay for solid waste disposal fees collected by the utility.

Section 291.113, Revocation or Amendment of Certificate

Based on SB 2, §9.01 provisions, new subsections (i) - (m) are proposed to be added to §291.113

These cover the potential for certain municipalities to request that the commission revoke a certificate of public convenience and necessity if a utility has failed to provide continuous and adequate service, has been grossly or continuously mismanaged, or has grossly or continuously not complied with applicable laws, rules, or orders. If the certificate is revoked, the municipality must operate the decertified utility during an interim period while waiting for the commission to transfer the certificate of public convenience and necessity and to approve the municipality's acquisition of the decertified utility's facilities. The monetary amount to be paid for the facilities will be determined by a qualified individual or firm acting as an independent appraiser who is agreed upon by the utility and municipality. The appraiser's fee must be paid by the municipality. The appraiser must refer to Texas Property Code, Chapter 21 to determine the value of real property. The commission must determine if the compensation to the utility from the municipality will be in a lump sum or paid over a specified period of time.

Section 291.122, Owner Registration and Records

The proposed amendment to §291.122 adds new subsections (b) - (d), and the subsequent subsections are relettered. New subsection (b) would require the manager of condominiums and the owners of apartment houses, manufactured home rental communities, or multiple use facilities, on which construction begins after January 1, 2003, to provide individual meters or submeters to measure the

amount of water used in each unit. New subsection (c) requires the owners of apartment houses constructed on or after January 1, 2003, which provide government assisted or subsidized rental housing, to install plumbing systems that are compatible with the installation of submeters. New subsection (d) would require that, upon request of the property owner or manager, a public utility install at a reasonable charge individual meters in the types of multi-family residences above, unless this action is not feasible. If the installation is not feasible for the utility, the owner or manager must install a plumbing system that is compatible with the installation of submeters or individual meters.

Section 291.127, Submeters

Section 291.127 is proposed to be renamed as “Submeters and Plumbing Fixtures” and the new requirements for plumbing fixtures in HB 2404 are proposed within this section. The existing requirements for submeters are grouped in proposed new subsection (a), and the plumbing fixture requirements are in proposed new subsection (b). The proposed new plumbing fixture subsection would require that after January 1, 2003, prior to billing tenants for water service, an owner or manager must:

- 1.) meet the standards for all sink and lavatory faucets, faucet aerators and showerheads prescribed in THSC, §372.002;
- 2.) perform water leak audits on all dwelling units and common areas and repair all leaks; and
- 3.) within one year of the date that the billing starts, replace toilets exceeding the maximum flow rate of 3.5 gallons per flush (gpf) with 1.6-gallon toilets meeting the standards in THSC, §372.002.

These requirements would not apply to manufactured home rental community owners who do not own the manufactured homes on the property.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are expected for the agency or other units of state and local government. However, there may be fiscal implications, which may be significant, for owners of apartment houses, manufactured home rental communities, multiple use facilities, managers of condominiums, and renters of these facilities due to the implementation of the proposed amendments.

The proposed amendments implement certain provisions of several bills, including: HBs 924, 2404, and 2912; SBs 2 and 352, 77th Legislature, 2001.

The proposed amendments which implement certain provisions of HB 2912 increase the number of days required for a rate change proposed by a water or sewer utility to become effective after proper public notice from 30 to 60 days. They also allow the commission to issue orders requiring utilities to make adjustments to customers' bills if, in response to a customer complaint regarding charges made by a water or sewer utility, the agency finds that the utility has failed to make the proper adjustment to a customer's bill after completion of the complaint process. These changes are designed to allow additional time for customers to become aware of proposed rate changes and provide incentives for water and sewer utilities to address customer billing complaints in order to avoid potential administrative penalties. These proposed amendments are not expected to result in significant fiscal implications for the agency or for affected water or sewer utilities as the utilities are anticipated to begin the rate change process earlier to accommodate the additional 30-day period, and a consumer billing complaint process is currently in place at the agency.

The proposed amendments would implement certain provisions of HB 2404 by doing the following things. First, for apartment houses, manufactured home rental communities, multiple use facilities, or condominiums (facilities) that begin construction on or after January 1, 2003, the owner or manager must provide for the measurement of the quantity of water consumed by the occupants of each unit through either the use of submeters owned by the property owner or manager; or individual meters owned by the retail public utility. Second, after January 1, 2003, before the owner or manager of one of these facilities may implement a program to bill tenants for submetered or allocated water use, the owner or manager must install plumbing fixtures which meet certain water saving performance standards and have a water leak audit performed and repair any leaks.

Under the proposed amendments, a retail public utility, upon the request of an owner or manager of a facility, would be required to install individual meters owned by the retail public utility unless the utility determines that the installation of meters is not feasible, in which case the owner or manager is required to install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility would be allowed to charge reasonable costs to install the meters. The proposed submetering requirements would provide an exception for government assisted or subsidized housing to low or very low income residents in that facilities would only be required to install a plumbing system that is compatible with the installation of submeters, but not required to install submeters or charge for water on a submetered or metered basis.

Managers or owners of affected facilities would incur costs for the installation of submeters with compatible plumbing systems. According to recent estimates from the Comptroller's Office, there will

be an estimated 48,000 multi-family housing starts in the year 2003, rising to approximately 61,000 in 2008. It is not known how many of these projected housing starts will be subject to the proposed amendments, but it could be assumed that most, if not all of them, would be. It is estimated that the cost of installing a meter ranges from \$175 to \$200. If an individual meter is installed by the retail public utility, the estimated cost of a meter is also estimated to be between \$175 and \$200. There would also be costs for the additional plumbing that would be necessary to accommodate the submetering or metering system in the newly constructed buildings. Costs would vary depending upon the size and types of dwellings and the additional pipe and other plumbing necessary for the installation of the meters. It has been estimated that submetered water service could reduce water consumption in multi-family housing units by an estimated 10% to 30%. Assuming there are 48,000 new multi-family housing units constructed in the year 2003, and an estimated cost of \$200 for installing each meter, costs would be estimated at \$9.6 million for the year. It is estimated that these costs would increase each year for the first five years. Assuming 61,000 new multi-family housing units were constructed in the year 2008, costs would be estimated to rise to \$12.2 million for that year.

After January 1, 2003, those owners of apartment houses, manufactured home rental communities, multiple use facilities, or managers of condominiums who implement submetered or allocated water use billing for their tenants, must have water efficient plumbing fixtures installed. The proposed amendments would include the required removal of toilets that exceed 3.5 gpf and replacing them with a maximum 1.6 gpf toilet. The proposed amendments would also require the replacement or installation of water saving sink or lavatory faucets, faucet aerators, and shower heads. It is assumed that most facilities would not implement a submetered or allocated water use billing system after

January 1, 2003 unless they had the required plumbing fixtures in place. Newly constructed facilities with metered or submetered systems would have to install water saving fixtures, but the difference in costs between these fixtures and others is not anticipated to be significant. For those facilities that do implement a submetered or allocated water use billing system after the deadline, they will have to ensure that the required plumbing fixtures are in place. Excluding installation costs, the toilets are estimated to cost between \$75 and \$150 with the faucets, aerators, and shower heads also estimated to cost between \$75 and \$150. The commission anticipates that renters will be required to pay for the cost of water use as a result of this rulemaking in new apartments constructed after 2003. However, the commission has made no estimate of the cost to renters as a result of this rulemaking because it is not known how these provisions may affect the rents charged by apartment owners and managers.

The proposed amendments which implement certain provisions of SB 2 also do several things. First, the amendments provide authority for public utilities to add production fees charged to them by the recently created GWCDs to consumer's bills. The fee is calculated by multiplying the customer's total consumption by the actual production fee per thousand gallons. The proposed amendments also allow these required fees charged by GWCDs to be passed on to consumers without the utility applying for a rate change and allow the utility to pass on these fees as surcharges without being specifically listed in the tariff, if the surcharge is approved by the commission or the municipality exercising jurisdiction over the utility. These changes will allow certain water and sewer utilities to recoup any production fees charged to them by the newly created GWCDs and to avoid applying for a rate change to bill for these costs. There are approximately 87 GWCDs in the state, but some of these have not been confirmed by elections in their districts and have not set fee structures. Some districts do not have

production fees, but may have other types of fees which are charged to utilities. These fees may range from \$.10 to \$.25 per 1,000 gallons of water. It is not known how many utilities would pass through GWCD production fees, but for those that do, they could expect to avoid rate application fees, consultant fees, and a potential contested case hearing with savings anywhere from \$10,000 to \$50,000 and perhaps more. It is anticipated that consumers obtaining service from utilities in GWCDs could realize fee increases of an estimated \$.10 to \$.25 per 1,000 gallons used.

Next, the proposed amendments increase the number of days required for a notice involving an SICR from 30 to 60 days to allow consumers more time to review the proposed rate change. The proposed amendments also add information that must be included on the SICR to include a billing comparison to demonstrate the effect of the proposed rate change. These proposed amendments are not expected to have significant fiscal implications as the utilities are expected to begin the rate change process one month earlier to allow for the additional 30-day time period and add a billing comparison on the statement of intent.

The proposed amendments would restrict the owner of a utility that supplies retail water service from contracting to purchase water from an affiliated supplier of wholesale water service unless there has been a serious impairment in providing service or the agency has determined that the utility cannot obtain wholesale water at a lower cost than from the affiliate. The proposed amendments would also prohibit water and wastewater utilities from including as part of their cost of service, the costs of purchasing water from a priority groundwater management area if wholesale surface water is available. These provisions are anticipated to conserve groundwater especially in priority groundwater

management areas and to encourage the use of surface water. However, because surface water tends to be more expensive than groundwater due to additional treatment costs, some utilities are expected to pay more for water as this provision would move utilities from using groundwater to surface water if they are in priority groundwater management areas. It is not known to what extent additional costs will affect some utilities, but over time as more surface water is purchased, costs are expected to increase.

The proposed amendments allow a utility to consolidate multiple water systems under a single tariff, if the utility meets certain conditions. In addition, the proposed amendments require the commission to establish by rule, a preference that consolidated tariff rates be consolidated by region. These provisions will allow a utility that owns several systems which may have different costs of service for each to combine all of the systems under one pricing tariff. The single tariff could result in more efficient, simplified bookkeeping for the utility when billing for service. Multiple systems under a single tariff are expected to result in some consumers paying more for service and some paying less than they were under multiple tariffs. However, the overall cost for service is not expected to change.

The proposed amendments would allow the commission to suspend the effective date of a rate change, not to exceed 150 days, if the commission receives the required number of protests that would entitle customers to a contested case hearing. The proposed amendments also extend the time allowed for customers to file complaints about rate changes from 60 to 90 days. In addition, they would allow the commission to require a utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established, to the extent the proposed rate exceeds the existing rate or interim rate. These provisions are not expected to have significant fiscal implications as the utilities

would take into account the new time frames in the rate change process, and it is assumed that final decisions on rate change requests and any associated refunds would fairly reflect costs to the utilities for providing service and costs to the consumer for purchasing that service.

The proposed amendments would require that each utility have an office in each county where utility service is provided or not more than 20 miles from any residential customer if there is no location in that county in which it keeps all books, records, tariffs, and memoranda required by the commission and where it can accept payments or applications for service. To meet current requirements, most utilities have business offices in portions of their immediate service areas, but not necessarily in each county of their service area. In addition, the proposed amendments would require each utility to make available and notify customers of a location in each county where it provides service or not more than 20 miles from any residential customer if there is no location in the county, where payments can be made to restore service after disconnection for nonpayment, nonuse, or other specified reasons.

The proposed amendments would allow the requirement for a local office to be waived if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm customers. The local office requirement could be very costly for those utilities that cover large areas. At this time, there is one known utility that operates in a 20-county area. Another utility is known to operate in 12 to 15 counties, and another in 45 counties. The proposed amendments would require an office in each county or within 20 miles of a residential customer. At this time, the costs to the utilities to implement this provision is not known due to the variability in office rent and overhead in each county, the number and salaries of staff required, office equipment, duplication of records, and other costs. However, it is

anticipated that these costs could be significant to utilities who must meet this requirement. According to the program responsible for providing the waivers for this proposed requirement, the agency will work with the utilities on a case-by-case basis to waive this requirement in order to avoid rate increases or otherwise harm consumers.

The proposed amendments provide that on the request of a municipality with a population of more than 1.3 million (the City of Houston), the commission, after notice and public hearing, may revoke a utility's certificate of public convenience and necessity if it finds that a utility has failed to provide continuous service, has been grossly mismanaged, or has continuously not complied with applicable statutes, commission rules, or orders. If the certificate is revoked, the municipality must operate the decertified utility until the certificate is transferred and the commission approves the acquiring of the decertified utility's facilities. The monetary amount to be paid for the facilities will be determined by a qualified independent appraiser agreed upon by the municipality and utility. The appraiser's fee would be paid by the municipality. There would be significant costs to the municipality for operating the decertified utility, and for anyone acquiring the utility's facilities. These costs would depend upon the appraised value of the facilities if and when the municipality chose to take such action. It is not known how much it would cost to acquire such a utility, but it could be estimated to cost between \$500 and \$1,000 per connection.

The proposed amendments which implement certain provisions of SB 352 allow a water or wastewater utility to contract with a county to collect solid waste disposal fees and include that fee on the same bill with its water charges. The proposed amendments also allow termination of water or wastewater service for failure to pay solid waste disposal fees and would prohibit a utility from collecting a reconnect fee after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency. For those cases where a water or wastewater utility disconnects service to a customer for nonpayment of a solid waste disposal bill, any costs associated with reconnecting service are assumed to be paid by the solid waste service provider or else absorbed by the utility, but in any event are not considered significant. Water utilities could lose some revenue during the period of time the solid waste disposal bill remains unpaid, though this amount is not anticipated to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed amendments would include compliance with state law, improved levels of customer service, and increased water conservation.

It is anticipated that there will be costs to businesses and individuals that own, manage, or rent apartment houses, manufactured home rental communities, multiple use facilities, or condominiums, which may be significant. In addition, it is anticipated that occupants or tenants of these facilities will pay for the water that they use which could result in decreased water consumption for the occupants,

owners, and managers of these facilities.

The proposed amendments would increase the number of days required for a rate change proposed by a water or sewer utility to become effective after proper public notice from 30 to 60 days. They would also allow the commission to issue orders requiring utilities to make adjustments to customers' bills if, in response to a customer complaint regarding charges made by a water or sewer utility, the agency finds that the utility has failed to make the proper adjustment to a customer's bill after completion of the complaint process. These changes are designed to allow additional time for customers to become aware of proposed rate changes and provide incentives for water and sewer utilities to address customer billing complaints in order to avoid potential administrative penalties. These proposed amendments are not expected to result in significant fiscal implications for the agency or for affected water or sewer utilities as the utilities are anticipated to begin the rate change process earlier to accommodate the additional 30-day period, and a consumer billing complaint process is currently in place at the agency.

The proposed amendments would require that for apartment houses, manufactured home rental communities, multiple use facilities, or condominiums (facilities) that begin construction on or after January 1, 2003, the owner or manager must provide for the measurement of the quantity of water consumed by the occupants of each unit through either the use of submeters owned by the property owner or manager; or individual meters owned by the retail public utility. Second, after January 1, 2003, before the owner or manager of one of these facilities may implement a program to bill tenants for submetered or allocated water use, the owner or manager must install plumbing fixtures which meet certain water saving performance standards and have a water leak audit performed and repair any leaks.

Under the proposed amendments, a retail public utility, upon the request of an owner or manager of a facility, would be required to install individual meters owned by the retail public utility unless the utility determines that the installation of meters is not feasible, in which case the owner or manager is required to install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility would be allowed to charge reasonable costs to install the meters. The proposed submetering requirements would provide an exception for government assisted or subsidized housing to low or very low income residents in that facilities would only be required to install a plumbing system that is compatible with the installation of submeters, but not required to install submeters or charge for water on a submetered or metered basis.

Managers or owners of affected facilities would incur costs for the installation of submeters with compatible plumbing systems. According to recent estimates from the Comptroller's Office, there will be an estimated 48,000 multi-family housing starts in the year 2003, rising to approximately 61,000 in 2008. It is not known how many of these projected housing starts will be subject to the proposed amendments, but it could be assumed that most, if not all of them, would be. It is estimated that the cost of installing a meter ranges from \$175 to \$200. If an individual meter is installed by the retail public utility, the estimated cost of a meter is also estimated to be between \$175 and \$200. There would also be costs for the additional plumbing that would be necessary to accommodate the submetering or metering system in the newly constructed buildings. Costs would vary depending upon the size and types of dwellings and the additional pipe and other plumbing necessary for the installation of the meters. It has been estimated that submetered water service could reduce water consumption in multi-family housing units by an estimated 10% to 30%. Assuming there are 48,000 new multi-family

housing units constructed in the year 2003, and an estimated cost of \$200 for installing each meter, costs would be estimated at \$9.6 million for the year. It is estimated that these costs would increase each year for the first five years. Assuming 61,000 new multi-family housing units were constructed in the year 2008, costs would be estimated to rise to \$12.2 million for that year.

After January 1, 2003, those owners of apartment houses, manufactured home rental communities, multiple use facilities, or managers of condominiums who implement submetered or allocated water use billing for their tenants, must have water efficient plumbing fixtures installed. The proposed amendments would include the required removal of toilets that exceed 3.5 gpf and replacing them with a maximum 1.6 gpf toilet. The proposed amendments would also require the replacement or installation of water saving sink or lavatory faucets, faucet aerators, and shower heads. It is assumed that most facilities would not implement a submetered or allocated water use billing system after January 1, 2003 unless they had the required plumbing fixtures in place. Newly constructed facilities with metered or submetered systems would have to install water saving fixtures, but the difference in costs between these fixtures and others is not anticipated to be significant. For those facilities that do implement a submetered or allocated water use billing system after the deadline, they will have to ensure that the required plumbing fixtures are in place. Excluding installation costs, the toilets are estimated to cost between \$75 and \$150 with the faucets, aerators, and shower heads also estimated to cost between \$75 and \$150. The commission anticipates that renters will be required to pay for the cost of water use as a result of this rulemaking in new apartments constructed after 2003. However, the commission has made no estimate of the cost to renters as a result of this rulemaking because it is not known how these provisions may affect the rents charged by apartment owners and managers.

The proposed amendments would provide authority for public utilities to add production fees charged to them by the recently created GWCDs to consumer's bills. The fee is calculated by multiplying the customer's total consumption by the actual production fee per thousand gallons. The proposed amendments also allow these required fees charged by GWCDs to be passed on to consumers without the utility applying for a rate change and allow the utility to pass on these fees as surcharges without being specifically listed in the tariff, if the surcharge is approved by the commission or the municipality exercising jurisdiction over the utility. These changes will allow certain water and sewer utilities to recoup any production fees charged to them by the newly created GWCDs and to avoid applying for a rate change to bill for these costs. There are approximately 87 GWCDs in the state, but many of these have not been confirmed by elections in their districts and have not set fee structures. Some districts do not have production fees, but may have other types of fees which are charged to utilities. These fees may range from \$.10 to \$.25 per 1,000 gallons of water. It is not known how many utilities would pass through GWCD production fees, but for those that do, they could expect to avoid rate application fees, consultant fees, and a potential contested case hearing with savings anywhere from \$10,000 to \$50,000 and perhaps more. It is anticipated that consumers obtaining service from utilities in GWCDs could realize fee increases of an estimated \$.10 to \$.25 per 1,000 gallons used.

Next, the proposed amendments increase the number of days required for a notice involving a SICR from 30 to 60 days to allow consumers more time to review the proposed rate change. The proposed amendments also add information that must be included on the SICR to include a billing comparison to demonstrate the effect of the proposed rate change. These proposed amendments are not expected to have significant fiscal implications as the utilities are expected to begin the rate change process one

month earlier to allow for the additional 30-day time period and add a billing comparison on the statement of intent.

The proposed amendments would restrict the owner of a utility that supplies retail water service from contracting to purchase water from an affiliated supplier of wholesale water service unless there has been a serious impairment in providing service or the agency has determined that the utility cannot obtain wholesale water at a lower cost than from the affiliate. The proposed amendments would also prohibit water and wastewater utilities from including as part of their cost of service, the costs of purchasing water from a priority groundwater management area if wholesale surface water is available. These provisions are anticipated to conserve groundwater especially in priority groundwater management areas and to encourage the use of surface water. However, because surface water tends to be more expensive than groundwater due to additional treatment costs, some utilities are expected to pay more for water as this provision would move utilities from using groundwater to surface water if they are in priority groundwater management areas. It is not known to what extent additional costs will affect some utilities, but over time as more surface water is purchased, costs are expected to increase.

The proposed amendments allow a utility to consolidate multiple water systems under a single tariff, if the utility meets certain conditions. In addition, the proposed amendments require the commission to establish by rule, a preference that consolidated tariff rates be consolidated by region. These provisions will allow a utility that owns several systems which may have different costs of service for each to combine all of the systems under one pricing tariff. The single tariff could result in more efficient, simplified bookkeeping for the utility when billing for service. Multiple systems under a single tariff

are expected to result in some consumers paying more for service and some paying less than they were under multiple tariffs. However, the overall cost for service is not expected to change.

The proposed amendments would allow the commission to suspend the effective date of a rate change, not to exceed 150 days, if the commission receives the required number of protests that would entitle customers to a contested case hearing. The proposed amendments also extend the time allowed for customers to file complaints about rate changes from 60 to 90 days. In addition, they would allow the commission to require a utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established, to the extent the proposed rate exceeds the existing rate or interim rate. These provisions are not expected to have significant fiscal implications as the utilities would take into account the new time frames in the rate change process, and it is assumed that final decisions on rate change requests and any associated refunds would fairly reflect costs to the utilities for providing service and costs to the consumer for purchasing that service.

The proposed amendments would require that each utility have an office in each county where utility service is provided or not more than 20 miles from any residential customer if there is no location in that county in which it keeps all books, records, tariffs, and memoranda required by the commission and where it can accept payments or applications for service. To meet current requirements, most utilities have business offices in portions of their immediate service areas, but not necessarily in each county of their service area. In addition, the proposed amendments would require each utility to make available and notify customers of a location in each county where it provides service or not more than 20 miles from any residential customer if there is no location in the county, where payments can be

made to restore service after disconnection for nonpayment, nonuse, or other specified reasons.

The proposed amendments would allow the requirement for a local office to be waived if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm customers. The local office requirement could be very costly for those utilities that cover large areas. At this time, there is one known utility that operates in a 20-county area. Another utility is known to operate in 12 to 15 counties, and another in 45 counties. The proposed amendments would require an office in each county or within 20 miles of a residential customer. At this time, the costs to the utilities to implement this provision are not known due to the variability in office rent and overhead in each county, the number and salaries of staff required, office equipment, duplication of records, and other costs. However, it is anticipated that these costs could be significant to utilities who must meet this requirement. According to the program responsible for providing the waivers for this proposed requirement, the agency will work with the utilities on a case-by-case basis to waive this requirement in order to avoid rate increases or otherwise harm consumers.

The proposed amendments provide that on the request of a municipality with a population of more than 1.3 million (the City of Houston), the commission, after notice and public hearing, may revoke a utility's certificate of public convenience and necessity if it finds that a utility has failed to provide continuous service, has been grossly mismanaged, or has continuously not complied with applicable statutes, commission rules, or orders. If the certificate is revoked, the municipality must operate the decertified utility until the certificate is transferred and the commission approves the acquiring of the decertified utility's facilities. The monetary amount to be paid for the facilities will be determined by a

qualified independent appraiser agreed upon by the municipality and utility. The appraiser's fee would be paid by the municipality. There would be significant costs to the municipality for operating the decertified utility, and for anyone acquiring the utility's facilities. These costs would depend upon the appraised value of the facilities if and when the municipality chose to take such action. It is not known how much it would cost to acquire such a utility, but it could be estimated to cost between \$500 and \$1,000 per connection.

The proposed amendments would allow a water or wastewater utility to contract with a county to collect solid waste disposal fees and include that fee on the same bill with its water charges. The proposed amendments also allow termination of water or wastewater service for failure to pay solid waste disposal fees and would prohibit a utility from collecting a reconnect fee after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency. For those cases where a water or wastewater utility disconnects service to a customer for nonpayment of a solid waste disposal bill, any costs associated with reconnecting service are assumed to be paid by the solid waste service provider or else absorbed by the utility, but in any event are not considered significant. Water utilities could lose some revenue during the period of time the solid waste disposal bill remains unpaid, though this amount is not anticipated to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are adverse fiscal implications as a result of the implementation and enforcement of the proposed amendments for small and micro-businesses that own or manage apartments, condominiums, manufactured home rental communities, or multiple use facilities which begin construction on or after January 1, 2003. There may also be costs for these same small or micro-businesses if they implement a submetered or allocated water use billing system after January 1, 2003 and have to install certain water saving plumbing appliances.

Managers or owners of affected facilities would incur costs for the installation of submeters with compatible plumbing systems. According to recent data from Apartment Market Data Research Services, as of November 2000, there were an estimated 1,277,439 apartment units in 28 major metropolitan areas in Texas. Other data indicate that of this total 198,933 or about 15.6% of the total number of apartments are owned by Real Estate Investment Trusts. This leaves a rather large percentage of units that are owned by other types of businesses and it could be assumed that many of them would be small businesses. According to recent estimates from the Comptroller's Office, there will be an estimated 48,000 multi-family housing starts in the year 2003, rising to approximately 61,000 in 2008. It is not known how many of these projected housing starts will be subject to the proposed amendments, or how many of them would be small or micro-businesses.

It is estimated that the cost of installing a meter ranges from \$175 to \$200. If an individual meter is installed by the retail public utility, the estimated cost of installing a meter is also estimated to be between \$175 and \$200. There would also be costs for the additional plumbing that would be necessary

to accommodate the submetering or metering system in the newly constructed buildings.

Costs would vary depending upon the size and types of dwellings and the additional pipe and other plumbing necessary for the installation of the meters. It has been estimated that submetered water service could reduce water consumption in multifamily housing units by an estimated 10% to 30%.

Assuming that a small or micro-business owner has 50 apartment units, at \$200 per meter installation, costs are estimated to be \$10,000 plus the costs of additional plumbing necessary to accommodate the submetering system.

After January 1, 2003, those owners of apartment houses, manufactured home rental communities, multiple use facilities, or managers of condominiums who implement submetered or allocated water use billing for their tenants, must have water efficient plumbing fixtures installed. The proposed amendments would include the required removal of toilets that exceed 3.5 gpf and replacing them with a maximum 1.6 gpf toilet. Most of the apartments in Texas were built in the 1980's when 3.5-gallon toilets were used extensively. The proposed amendments would also require the replacement or installation of water saving sink or lavatory faucets, faucet aerators, and shower heads. It is assumed that most facilities would not implement a submetered or allocated water use billing system after January 1, 2003 unless they had the required plumbing fixtures in place. Newly constructed facilities with metered or submetered systems would have to install water saving fixtures, but the difference in costs between these fixtures and others would not be significant. For those facilities that do implement a submetered or allocated water use billing system after the deadline, they will have to ensure that the required plumbing fixtures are in place. Excluding installation costs, the toilets are estimated to cost between \$75 and \$150 with the faucets, aerators, and shower heads also estimated to cost between \$75

and \$150. If a small or micro-business owner implements a submetering or allocated water use system after the deadline and does not have water saving appliances in place, there will be costs to install the fixtures. For a 50-unit complex, assuming \$300 for the fixtures, total costs are estimated at \$15,000 excluding installation costs. It is assumed that the water saving plumbing fixtures will save water over the long run for the occupants of the dwellings.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed amendments. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business with 50 apartment units that opts to construct a new facility after January 1, 2003, would incur additional costs for the installation of a submetering system of approximately \$100 per employee. A small business that implements a submetering or allocated water use system after the deadline and does not have water saving appliances in place, will incur additional costs of \$150 per employee. A micro-business with 50 apartment units that opts to construct a new facility after January 1, 2003, would incur additional costs for the installation of a submetering system of approximately \$500 per employee. A micro-business that implements a submetering or allocated water use system after the deadline and does not have water saving appliances in place, will incur additional costs of \$750 per employee. The projected costs for affected facilities are the same for small businesses as for larger 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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS

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 the regulation of utility rates and services. The proposed rules incorporate new legislative requirements and provide for regulatory consistency. The proposed amendments 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 amendments do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. The proposed amendments are not adopted solely under the general rulemaking authority of the commission but also under TWC, §§13.041(b), 13.137(b), 13.182(d), and 13.183.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed amendments in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed amendments is to implement applicable requirements of SB 2, SB 352, HB 2912, and HB 2404, 77th Legislature, 2001, relating to utility regulations; and for regulatory consistency, to amend rules to provide the executive director with the authority to allow utilities to pass through to their customers the cost of a GWCD production fee either by a minor tariff change or by surcharge. The proposed rule amendments substantially advance the stated purpose by incorporating the applicable requirements of SB 2, SB 352, HB 2912, and HB 2404 and by amending the applicable provisions regarding the recovery of GWCD production fees. Promulgation and enforcement of these amendments will not burden private real property because the actions that are required by the amendments relate primarily to the relationships between water utility operators and their customers, concerning establishment of rates, procedures for providing services, and billing for the services. The proposed rules will provide protection to both the utility operators and their customers. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. Therefore, the proposed amendments to Chapter 291 are not subject to

the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 6, 2001 at 10:00 a.m., in Building F, Room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-061-291-WT. Comments must be received by 5:00 p.m., April 29, 2002. For further information, please contact Joe Thomas, Policy and Regulations Division, at (512) 239-4580.

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; §13.137(b), which provides the commission with the authority to adopt rules waiving the requirement that a utility have a local business location where customers may make payments to prevent disconnection or restore service; §13.182(d), which requires the commission to establish by rule a preference that rates under a consolidated tariff be consolidated by region; and §13.183, which provides the commission with the authority to approve rates under an alternative ratemaking methodology after certain requirements are met.

The proposed amendments also implement TWC, §13.137(a), which requires a utility to have a business location where customers can make a payment to prevent disconnection or restore service; §13.145, which allows a utility to consolidate multiple systems under a single tariff only if the utility meets certain requirements; §13.187, which requires the commission to regulate utility rate changes; §13.343, which requires the commission to regulate wholesale water contracts; §13.502, which requires the commission to regulate submetering; §13.506 which requires the owner of an apartment house, a manufactured home rental community, a multiple use facility, or a condominium which begins construction after January 1, 2003, to install water conserving plumbing fixtures before billing tenants for submetered or allocated water service; §13.2541, which allows a municipality with a population of more than 1.3 million to request that the commission revoke a public utility's certificate of convenience and necessity under certain situations; §13.4115, which allows the commission to issue an order and

assess penalties if a public utility fails to make an adjustment to a customer's bill; and THSC, §364.034, which allows fee collection for solid waste disposal services by an entity other than the public agency or county providing the services and allows the termination of other utility services provided by the collecting entity if bills are not paid.

SUBCHAPTER A: GENERAL PROVISIONS

§291.8

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; and §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

The proposed amendment also implements TWC, §13.187, which requires the commission to regulate utility rate changes.

§291.8. Administrative Completeness.

(a) (No change.)

(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 60 [30] days after:

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

(c) (No change.)

SUBCHAPTER B: RATES, RATE MAKING, AND RATES/TARIFF CHANGES

§§291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.32, 291.34

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; §13.182(d), which requires the commission to establish by rule a preference that rates under a consolidated tariff be consolidated by region; and §13.183, which provides the commission with the authority to approve rates under an alternative ratemaking methodology after certain requirements are met.

The proposed amendments also implement TWC, §13.145, which allows a utility to consolidate multiple systems under a single tariff only if the utility meets certain requirements; §13.187, which requires the commission to regulate utility rate changes; §13.343, which requires the commission to regulate wholesale water contracts; and THSC, §364.034, which allows fee collection for solid waste disposal services by an entity other than the public agency or county providing the services and allows the termination of other utility services provided by the collecting entity if bills are not paid.

§291.21. Form and Filing of Tariffs.

(a) Approved tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed

in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under [the] Texas Water Code (TWC), §13.187(a) (relating to Statement of Intent to Change Rates) after the proposed effective date, unless the rates are suspended or the commission or a judge sets interim rates. The regulatory assessment required in (TWC), [Texas Water Code] §5.235(n) does not have to be listed on the utility's approved tariff to be charged and collected but shall be included in the tariff at the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service which enters into an agreement in accordance with TWC, [pursuant to Texas Water Code] §13.250(b)(2), may collect charges for wastewater services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement. A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes₂, and filing of tariffs.

(1) (No change.)

(2) Minor Tariff Changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county can change rates for water or wastewater service without commission approval but must file a copy of the revised

tariff with the commission within 30 days after the effective date of the rate change.

(A) The executive director may approve the following minor changes to tariffs:

(i) - (v) (No change.)

(vi) addition of a provision allowing a utility to collect wastewater charges in accordance with TWC [pursuant to an agreement under the Texas Water Code], §13.250(b)(2); [or]

(vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs; or [.]

(viii) addition of a production fee charged by a groundwater conservation district as a separate item calculated by multiplying the customer's total consumption, including the number of gallons in the base bill, by the actual production fee per thousand gallons.

(B) (No change.)

(3) - (5) (No change.)

(c) - (g) (No change.)

(h) Purchased water or sewage treatment provision.

(1) A utility which purchases water or sewage treatment [or pays water use fees to an underground water conservation district] may include a provision in its tariff to pass through to its customers changes in such costs. The provision shall specify how it is calculated and affects customer billings.

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

(i) - (j) (No change.)

(k) Surcharge.

(1) (No change.).

(2) If specifically authorized for the utility in writing by the executive director or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for: [A surcharge to recover the actual increase in costs to the utility for sampling, inspection fees or other governmental requirements beyond the control of the utility may be collected over a specifically authorized time period without being listed on the approved tariff if specifically authorized for the utility in writing by the executive director or the municipality exercising original

jurisdiction over the utility]

(A) Sampling fees not already included in rates;

(B) Inspection fees not already included in rates;

(C) Production fees or connection fees not already included in rates charged by
a groundwater conservation district; or

(D) Other governmental requirements beyond the control of the utility.

(3) (No change.)

(l) (No change.)

§291.22. Notice of Intent To Change Rates.

(a) In order to change rates which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail or hand delivery to all affected utility customers at least 60 [30] days prior to the proposed effective date. Notice shall be provided on the notice form included in the commission's rate

application package and shall contain the following information:

(1) (No change.)

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests; [and]

(3) a billing comparison showing the existing rate and the new water rate computed using:

(A) 10,000 gallons of water; and

(B) 30,000 gallons of water.

(4) a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; and

(5) [(3)] any other information which is required by the executive director in the rate change application form.

(b) (No change.)

(c) Notices may be mailed separately, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed or hand delivered to the customers at least 60 [30] days prior to the effective date of the rate increase.

(d) The applicant utility shall mail or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 [30] days prior to the effective date of the proposed change. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it must also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(e) Proof of notice in the form of an affidavit stating that proper notice was mailed to customers and affected municipalities, and stating the dates of such mailing, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 [30] days before the effective date.

(f) - (h) (No change.)

§291.24. Jurisdiction over Affiliated Interests.

(a) The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but in no way limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

(b) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any part of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or

(2) the executive director determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

§291.26. Suspension of Rates.

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

(c) If the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission,

suspend the date the rate change would be effective. The proposed rate may not be suspended for more than 150 days.

§291.28. Action on Notice of Rate Change Pursuant to [the] Texas Water Code, §13.187(b).

The commission may conduct a public hearing on any application.

(1) If, before the 91st day [within 60 days] after the effective date of the rate change, the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

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

§291.29. Interim Rates.

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

(c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was

established to the extent the proposed rate exceeds the existing rate or the interim rate.

(d) [(c)] Interim rates may be established by the commission or judge in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(e) [(d)] In making a determination under subsection (d) [(c)] of this section:

(1) The commission or judge may limit its consideration of the matter to oral arguments of the affected parties and may:

(A) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(B) deny interim rate relief;

(C) require that all or part of the requested rate increase be deposited in an escrow account in accordance with rules set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase); or

(2) The commission may remand the request for interim rates to SOAH for an

evidentiary hearing on interim rates. The presiding judge will issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.

(f) [(e)] The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(g) [(f)] Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.

(h) [(g)] Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(i) [(h)] The retail public utility must provide a notice to its customers including the interim rates set by the commission or judge with the first billing at the interim rates with the following wording: "The commission [Texas Natural Resource Conservation Commission] (or judge) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established."

[(i) If the commission or judge establishes interim rates or an escrow account in a proceeding under Texas Water Code, §13.187, the commission must make a final determination on the rates within 335 days after the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility in its application.]

§291.31. Cost of Service.

(a) (No change.)

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the ratepayers shall be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered.

(1) (No change.)

(2) Expenses not allowed. The following expenses shall not be allowed as a component of cost of service:

(A) - (G) (No change.)

(H) costs, including, but not limited to, interest expense of processing a refund

or credit of sums collected in excess of the rate finally ordered by the commission; [and]

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and [.]

(J) costs of purchasing groundwater from any source if:

(i) The source of the groundwater is located in a priority groundwater management area; and

(ii) A wholesale supply of surface water is available.

(c) - (d) (No change.)

§291.32. Rate Design.

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

(e) Multiple system consolidation. A utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(f) Regional rates. For applications submitted with a consolidated tariff and rate design for more than one system, the commission where practicable shall consolidate the rates by region.

§291.34. Alternative Rate Methods.

(a) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The executive director may prescribe modified rate filing packages for these alternate methods of establishing rates.

(b) - (d) (No change.)

SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION

§§291.81, 291.82, 291.85, 291.87, 291.88

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; and §13.137(b), which provides the commission with the authority to adopt rules waiving the requirement that a utility have a local business location where customers may make payments to prevent disconnection or restore service.

The proposed amendments also implement TWC, §13.137(a), which requires a utility to have a business location where customers can make payment to prevent disconnection or restore service; §13.4115, which allows the commission to issue an order and assess penalties if a public utility fails to make an adjustment to a customer's bill; and THSC, §364.034, which allows fee collection for solid waste disposal services by an entity other than the public agency or county providing the services and allows the termination of other utility services provided by the collecting entity if bills are not paid.

§291.81. Customer Relations.

(a) - (c) (No change.)

(d) Local Office.

(1) Unless authorized by the executive director pursuant to a written request, each utility shall have an office, in each [the] county where utility service is provided, or not more than 20 miles from any residential customer if there is no location in that county, [or immediate area (within 20 miles) of a portion of its utility service area] in which it keeps all books, records, tariffs, and memoranda required by the commission and at which it will accept customer payments or applications for service.

(2) Unless authorized by the executive director pursuant to a written request, each utility shall make available and notify customers of a location in each county where it provides service or not more than [within] 20 miles from any residential customer if there is no location in the county [of each of its utility service facilities] where payments can be made to restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title (relating to Discontinuance of Service).

(3) Upon request by the utility, the requirement for a local office may be waived by the executive director if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers.

§291.82. Resolution of Disputes.

(a) Any customer or service applicant requesting the opportunity to dispute any action or determination of a utility under the utility's customer service rules shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer will not allow an inspection or chooses not to participate in such review or chooses not to make arrangements for such review to take place within five working days after requesting it, the utility may disconnect service for the reasons listed in §291.88 of this title (relating to Discontinuance of Service), provided notice has been given in accordance with that section [subsection].

(b) In regards to a customer complaint arising out of a charge made by a public utility, if the executive director finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the commission, the commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 working days of receiving the order is a violation for which the commission may impose an administrative penalty under Texas Water Code, §13.4151.

§291.85. Response to Requests for Service by a Retail Public Utility Within Its Certificated Area.

(a) - (c) (No change.)

(d) Easements.

(1) Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the property of a service applicant, the retail public utility, other than a district or water supply corporation, may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the retail public utility which will provide a reasonable right of access and use to allow the retail public utility to construct, install, maintain, inspect and test water or [and/or] sewer facilities necessary to serve that applicant.

(2) As a condition of service to a new subdivision, retail public utilities, other than districts or water supply corporations, may require developers to provide permanent recorded public utility easements to and throughout the subdivision sufficient to construct, install, maintain, inspect, and test water or [and/or] sewer facilities necessary to serve the subdivision's anticipated service demands upon full occupancy.

(e) (No change.)

§291.87. Billing.

(a) (No change.)

(b) Due date.

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

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service shall not be less than 30 days after issuance.

(c) - (d) (No change.)

(e) Rendering and form of bills.

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

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

(f) - (q) (No change.)

§291.88. Discontinuance of Service.

(a) Disconnection with notice.

(1) (No change.)

(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:

(A) - (C) (No change.)

(D) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to Service Applicant and Customer Deposit); [and]

(E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section; and [.]

(F) failure to pay solid waste disposal fees collected under contract with a county or other public agency.

(b) - (g) (No change.)

(h) Service restoration.

(1) (No change.)

(2) Reconnect Fees.

(A) - (C) (No change.)

(D) A reconnect fee cannot be charged for reconnecting service after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency.

SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

§§291.113

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; and §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

The proposed amendments also implement TWC, §13.2541, which allows a municipality with a population of more than 1.3 million to request that the commission revoke a public utility's certificate of convenience and necessity under certain situations.

§291.113. Revocation or Amendment of Certificate.

(a) - (h) (No change.)

(i) On the request of a municipality with a population of more than 1.3 million served by a public utility, the commission at any time after notice and hearing may revoke the public utility's certificate of public convenience and necessity if it finds that the public utility:

(1) has never provided, is no longer providing, or has failed to provide continuous and adequate service as defined in §291.93 of this title (relating to Adequacy of Water Service) or §291.94 of this title (relating to Adequacy of Sewer Service) in the municipality requesting the revocation; or

(2) has been grossly or continuously mismanaged or has grossly or continuously not complied with applicable statutes, commission rules, or commission orders.

(j) If the certificate is revoked under subsection (i) of this section, the municipality that requested the revocation shall operate the decertified public utility for an interim period necessary for the municipality to gain commission approval to acquire the decertified public utility's facilities and to transfer the decertified public utility's certificate of public convenience and necessity. The municipality must apply in accordance with commission rules.

(k) The monetary amount to be paid for the facilities of a public utility decertified under subsection (i) of this section shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified public utility and the municipality. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the municipality.

(l) For the purpose of implementing subsection (k) of this section, the value of real property shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain.

(m) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time.

SUBCHAPTER H: UTILITY SUBMETERING AND ALLOCATION

§291.122, §291.127

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; and §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

The proposed amendments also implement TWC, §13.502, which requires the commission to regulate submetering; and §13.506, which requires the owner of an apartment house, a manufactured home rental community, a multiple use facility, or a condominium which begins construction after January 1, 2003, to install water conserving plumbing fixtures before billing tenants for submetered or allocated water service.

§291.122. Owner Registration and Records.

(a) (No change.).

(b) Except as provided by subsections (c) and (d) of this section, a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction begins after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:

(1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or

(2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.

(c) An owner of an apartment house on which construction begins after January 1, 2003, and which provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.

(d) On the request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction begins after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.

(e) [(b)] Records. The owner shall make the following records available for inspection by the tenant or the executive director at the onsite manager's office during normal business hours in

accordance with subsection (g) [(d)] of this section. The owner may require that the request by the tenant be in writing:

- (1) a current and complete copy of Texas Water Code, Chapter 13, Subchapter M;
- (2) a current and complete copy of this subchapter;
- (3) a current copy of the retail public utility's rate structure applicable to the owner's bill;
- (4) information or tips on how tenants can reduce water usage;
- (5) the bills from the retail public utility to the owner;
- (6) for allocated billing:
 - (A) the formula, occupancy factors, if any, and percentages used to calculate tenant bills;
 - (B) the total number of occupants or equivalent occupants if an equivalency factor is used under §291.124(e)(2); and

(C) the square footage of the tenant's dwelling unit or rental space and the total square footage of the apartment house, manufactured home rental community or multiple use facility used for billing if dwelling unit size or rental space is used.

(7) for submetered billing:

(A) the calculation of the average cost per gallon, liter or cubic foot;

(B) if the unit of measure of the submeters differs from the unit of measure of the master meter, a chart for converting the tenant's submeter measurement to that used by the retail public utility;

(C) all submeter readings; and

(D) all submeter test results;

(8) the total amount billed to all tenants each month;

(9) total revenues collected from the tenants each month to pay for water and wastewater service; and

(10) any other information necessary for a tenant to calculate and verify a water and wastewater bill.

(f) [(c)] Records retention. Each of the records required under subsection (e) [(b)] of this section shall be maintained for the current year and the previous calendar year, except that all submeter test results shall be maintained until the submeter is permanently removed from service.

(g) [(d)] Availability of records.

(1) If the records required under subsection (e) [(b)] of this section are maintained at the onsite manager's office, the owner shall make the records available for inspection at the onsite manager's office within three days after receiving a written request.

(2) If the records required under subsection (e) [(b)] of this section are not routinely maintained at the onsite manager's office, the owner shall provide copies of the records to the onsite manager within 15 days of receiving a written request from a tenant or the executive director.

(3) If there is no onsite manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant.

(4) Copies of the records may be provided by mail if postmarked by midnight of the last day specified in paragraphs (1), (2), or (3) of this subsection.

§291.127. Submeters and Plumbing Fixtures.

(a) Submeters.

(1) [(a)] Same type submeters required. All submeters throughout a property shall use the same unit of measurement, such as gallon, liter, or cubic foot.

(2) [(b)] Installation by owner. The owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water to tenants and to common areas, if applicable.

(3) [(c)] Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from service, it shall be properly tested and calibrated before being placed in service again.

(4) [(d)] Accuracy requirements for submeters. Submeters shall be calibrated as close as possible to the condition of zero error and within the accuracy standards established by the American Water Works Association (AWWA) for water meters.

(5) [(e)] Location of submeters. Submeters shall be installed in accordance with applicable plumbing codes and AWWA standards for water meters, and shall be readily accessible to the tenant and to the owner for reading, testing, and inspection where such activities will cause minimum interference and inconvenience to the tenant.

(6) [(f)] Submeter records. The owner shall maintain a record on each submeter which includes:

(A) [(1)] an identifying number;

(B) [(2)] the installation date (and removal date if applicable);

(C) [(3)] date(s) the submeter was calibrated or tested;

(D) [(4)] copies of all tests; and

(E) [(5)] the current location of the submeter.

(7) [(g)] Submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:

(A) [(1)] provide evidence, at no charge to the tenant, that the submeter was

calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters; or

(B) [(2)] have the submeter removed and tested and promptly advise the tenant of the test results.

(8) [(h)] Billing for submeter test.

(A) [(1)] The owner shall not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards.

(B) [(2)] The owner shall not bill the tenant for testing costs if there is no evidence the submeter was calibrated or tested within the preceding 24 months.

(C) [(3)] The owner may bill the tenant for actual testing costs (not to exceed \$25) if the submeter meets AWWA accuracy standards and evidence as described in subsection (a)(7)(A) [(g)(1)] of this section was provided to the tenant.

(9) [(i)] Bill adjustment due to submeter error. If a submeter does not meet AWWA accuracy standards and the tenant was overbilled, an adjusted bill shall be rendered in accordance with §291.125(k) of this title (relating to Billing). The owner shall not charge the tenant for any underbilling that occurred because the submeter was in error.

(10) [(j)] Submeter testing facilities and equipment. An owner shall comply with the meter testing requirements applicable to utilities under §291.89(e) of this title (relating to Meters).

(b) Plumbing fixtures. After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager must adhere to the following standards.

(1) Texas Health and Safety Code (THSC), §372.002, for sink or lavatory faucets, faucet aerators, and showerheads;

(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found.

(3) not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service, the owner or manager shall:

(A) remove any toilets that exceed a maximum flow of 3.5 gallons per flush;
and

(B) install 1.6-gallon toilets that meet the standards prescribed by THSC.

§372.002.

(c) Subsection (b) of this section does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.