

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §290.51, Fees for Services to Drinking Water System.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2912, §3.07, 77th Legislature, 2001 mandates the commission to consider equity in the establishment of the public drinking water fee rates. The proposed amendment to this chapter is intended to consider equity while generating overall revenue at the current revenue stream. The revenue generated from the new fee assessment does not exceed the amount appropriated by the legislature for fiscal year (FY) 2002, nor is it greater than the revenue generated under the previous assessment in FY 2001.

SECTION DISCUSSION

The proposed amendment to §290.51(a)(3) deletes the existing language and replaces it with a new §290.51(a)(3) that calculates the fees the commission will charge for services provided to community and nontransient noncommunity water systems using a more simplified and equitable method. The proposed amendment provides that for a system with fewer than 25 connections, the fee will be \$75; for systems with 25 - 99 connections, the fee will be \$150; and for a system with greater than or equal to 100 connections, the fee will be calculated as $c^{0.75} \times \$4.80$, where "c" is the number of connections. The remaining language in the section has only been reformatted for readability.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications, which may be significant, for units of state and local government as a result of administration and enforcement of the proposed amendment. The overall fiscal impact to units of state and local government affected by the proposed amendment is approximately \$228,000 annually in additional fees.

This rulemaking is intended to consider equity when assessing public drinking water system fees. The commission anticipates that approximately 80% (1,593) of the 2,000 affected units of state and local government will either pay the same or reduced fees to comply with the proposed amendment. The majority of the remaining 407 systems will pay less than \$1,000 annually in increased fees to comply with the proposed amendment. However, the five largest public drinking water systems in Texas, located in Houston, Dallas, Ft. Worth, Austin, and San Antonio will pay between \$13,000 to \$90,000 more annually to comply with the proposed amendment.

All governmental entities that currently pay the public services fee potentially may be affected. The fee calculation will change and the amount of the fee is determined by the number of connections from the most recent field inspection report. The governmental entities affected would be cities, counties, state and federal government if they supply drinking water to the general public.

The proposed amendment is intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the commission; providing penalties). The bill requires the commission to

consider equity in the establishment of the public drinking water fee rates, while generating revenue to cover the costs of the commission's public drinking water program. The proposed amendment is intended to restructure the public drinking water fee rate so that smaller drinking water systems pay reduced fees to comply with commission regulations, while maintaining sufficient revenues to cover program costs.

The proposed amendment is intended to introduce standard fee rates for smaller drinking water systems in lieu of using formulas based on the number of connections a system has. For a system with fewer than 25 connections, the annual fee rate will be \$75. For systems with 25 - 99 connections, the annual fee rate will be \$150. The annual fee rate formula for systems with greater than or equal to 100 connections will be modified, resulting in lower fees for the majority of systems with over 100 connections.

For example, the fee for a public drinking water system that services 24 connections will be reduced by approximately \$50 (\$2.08 per connection) per year, while the fee for a system that services 99 connections will be reduced by approximately \$120 (\$1.21 per connection) per year. Drinking water systems will not pay more than \$1,000 annually to comply with the proposed amendment unless they service over 11,000 connections per year. There are approximately 80 government owned and operated public drinking water systems that meet this criteria. All but five of these systems will pay under \$10,000 more annually to comply with the proposed amendment. The five systems that will pay in excess of \$10,000 more are located in Houston, Dallas, Ft. Worth, Austin, and San Antonio, and will pay between \$13,000 to \$90,000 more annually to comply with the proposed amendment. The total

fiscal impact to units of state and local government is anticipated to be approximately \$228,000 more annually to comply with the proposed amendment.

The commission does not anticipate significant impacts to agency revenues due to implementation of the proposed amendment. House Bill 2912 requires the agency to set fee rates sufficient to cover the costs to administer and enforce the commission's public drinking water program. The commission anticipates the proposed rulemaking will result in an annual \$8,000 increase in agency revenues.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be the consideration of fee equity when assessing public drinking water system fees.

All businesses that currently pay the public services fee potentially may be affected. The fee calculation will change and the amount of the fee is determined by the number of connections from the most recent field inspection report. The businesses affected would be companies, hotels and other various businesses, if they supply drinking water to the general public.

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connections will be modified, resulting in lower fees for the majority of systems with over 100 connections.

For example, the fee for a public drinking water system that services 24 connections will be reduced by approximately \$50 (\$2.08 per connection) per year, while the fee for a system that services 99 connections will be reduced by approximately \$120 (\$1.21 per connection) per year. Drinking water systems will not pay more than \$1,000 annually to comply with the proposed amendment unless they service over approximately 11,000 connections per year. Based on the latest fee and revenue data, the commission anticipates that none of the 4,456 individuals and businesses affected by the proposed amendment will pay \$1,000 more annually to comply with the proposed amendment. The commission anticipates an approximate annual \$220,000 cost savings to individuals and businesses to comply with the proposed amendment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal impacts to small or micro-businesses, which are not anticipated to be significant, due to implementation of the proposed amendment. However, the majority of affected small and micro-businesses will experience cost savings.

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For example, the fee for a public drinking water system that services 24 connections will be reduced by approximately \$50 (\$2.08 per connection) per year, while the fee for a system that services 99 connections will be reduced by approximately \$120 (\$1.21 per connection) per year. Drinking water systems will not pay more than \$1,000 annually to comply with the proposed amendment unless they service over approximately 11,000 connections per year. Based on the latest fee and revenue data, the commission anticipates that none of the 4,456 individuals and businesses, some of which are small or micro-businesses, affected by the proposed amendment will pay \$1,000 more annually to comply with the proposed amendment. The commission anticipates an approximate \$220,000 annual cost savings to individuals and businesses to comply with the proposed amendment.

All businesses that currently pay the public services fee potentially may be affected. The fee calculation will change and the amount of the fee is determined by the number of connections from the most recent field inspection report. The businesses affected would be restaurants, trailer parks, and other various small businesses, if they supply drinking water to the general public.

The following is an analysis of the potential costs per employee for small or micro-businesses affected by the proposed amendment. The commission has chosen to use \$100 for the following analysis since over 96% of known businesses that would have to pay increased fees will pay \$100 or less to comply with the proposed amendment. Small and micro-businesses are defined as having fewer than 100 or 20

employees respectively. A small business that supports approximately 1,500 water connections annually would incur costs of approximately \$1.00 per employee every year to comply with the proposed rule. A micro-business that supports approximately 1,500 water connections annually would incur costs of approximately \$5.00 per employee every year to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule.” “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, 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. This rulemaking is administrative only and considers equity while generating overall revenue at the current revenue stream. Therefore, the rulemaking does not meet the definition of “major environmental rule” because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Furthermore, the proposed rule does not meet any of the four applicability requirements listed in §2001.0225(a). The proposed rule does not exceed a standard set by federal law. The proposed rule does not exceed an express requirement of state law, because it is authorized by and consistent with the requirements of THSC, §341.041(a), as amended by HB 2912, §3.07. The proposed rule does not exceed the requirements of a delegation agreement or contract between the State and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements and is in accordance with THSC, §341.041(a), which requires the commission to establish fees sufficient to cover the costs of administering the federal Safe Drinking Water Act. The proposed rule is not proposed to be adopted solely under the general powers of the agency, but will be adopted under the express requirements of THSC, §341.041(a).

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for this rule under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to consider equity while generating overall revenue at the current revenue stream. The rulemaking contains administrative rule changes only and does not affect private real property. Therefore, the rulemaking will not constitute a takings under Texas Government Code.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed rule amendment is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules subject to the Texas Coastal Management Program (CMP), nor does it affect any action or authorization identified in §505.11. This proposed rulemaking concerns only administrative rules of the commission intended to consider equity while generating overall revenue at the current revenue stream. Therefore, the rulemaking is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on November 8, 2001 at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before 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, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-099-290-WT. Comments must be received by 5:00 p.m., November 12, 2001. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which establish the commission's general authority to adopt rules; and THSC, §341.041(a), as amended by HB 2912, §3.07, which states that the commission may charge fees sufficient to cover the reasonable costs of administering the programs and services of the federal Safe Drinking Water Act and requires the commission to consider equity among persons required to pay the fees when setting the amount of the fees.

The amendment implements HB 2912, §3.07.

SUBCHAPTER E: FEES FOR PUBLIC WATER SYSTEMS

§290.51

§290.51. Fees for Services to Drinking Water System.

(a) Purpose and scope.

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

(3) The fees which the commission will charge for services provided to community and nontransient noncommunity water systems under this subsection will be according to the following schedule.

(A) For a system with fewer than 25 connections, the fee will be \$75.

(B) For systems with 25 - 99 connections, the fee will be \$150.

(C) For a system with greater than or equal to 100 connections, the fee = $c^{0.75}$

X \$4.80, where "c" is the number of connections.

(i) The number of connections will be determined from data collected from the latest agency inspection report.

(ii) All nontransient noncommunity systems, state, federal, and other community water system installations determined by the commission to serve large populations through a few connections will have the number of connections for fee purposes determined by dividing the population served by a value of ten.

(iii) Examples of such installations include, but are not limited to, universities, children's homes, correctional facilities, and military facilities which generally do not bill customers for water service.

~~[Figure: 30 TAC §290.51(a)(3)]~~

~~Number of connections (c)*~~

$$\del A_{\text{fee}} = (c)^{0.65} \times \$9.50$$

~~Number of wells (w)~~

$$\del B_{\text{fee}} = (w) \times \$40.00$$

~~Number of surface plants (s)~~

$$\del C_{\text{fee}} = (s) \times \$400.00$$

$$\del \text{TOTAL FEE} = A_{\text{fee}} + B_{\text{fee}} + C_{\text{fee}}$$

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~~number of connections for fee purposes determined by dividing the population served by a value of ten.
Examples of such installations include, but are not limited to, are universities, children's homes,
correctional facilities, and military facilities which generally do not bill customers for water service.~~

~~The minimum total fee will be \$75.00.]~~

(4) - (6) (No change.)

(b) (No change.)