

The Texas Commission on Environmental Quality (commission) adopts amendments to §§293.1, 293.11, 293.41, 293.44, 293.51, 293.59, 293.80, 293.83, 293.113, 293.201, and 293.202. Sections 293.11, 293.41, 293.44, 293.51, 293.59, and 293.202 are adopted *with changes* to the proposed text as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 10073). Sections 293.1, 293.80, 293.83, 293.113, and 293.201 are adopted *without changes* to the proposed text and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water-related districts and to approve the issuance and sale of bonds for district improvements in accordance with Texas Water Code (TWC), Chapters 12 and 49 - 67. The commission oversees approximately 1,100 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of all general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to the engineering standards and economic feasibility of district construction project design and completion.

A corresponding rulemaking published in this issue of the *Texas Register* includes changes to 30 TAC Chapter 301, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements.

The adopted rulemaking establishes new or revises existing requirements relating to the administration of water districts and the commission's supervision over the districts' actions under TWC, Chapters 49,

54, and 57. House Bill (HB) 1541, 78th Legislature, 2003, amends provisions in TWC, Chapter 49, relating to the administration, management, operation, and authority of water districts and authorities. HB 1541 also amends provisions in TWC, Chapter 54, concerning municipal utility districts and in Chapter 57, concerning levee improvement districts. HB 2887 amends TWC, §49.278, to exempt construction of temporary erosion control facilities from having to comply with competitive bidding requirements. Senate Bill (SB) 624, 78th Legislature, 2003, amends provisions in TWC, Chapter 49, to allow districts located in certain areas of the state to use tax proceeds for the construction and/or maintenance of recreational facilities, subject to voter authorization. SB 898 amends TWC, §49.181, to include additional requirements that exempt certain districts from having to obtain commission approval of its bond issues.

Specifically, the adopted rules provide certain districts with additional exemptions from having to obtain commission approval of bonds and notes; modify requirements that establish when a district is to obtain commission approval of refunding bonds; allow districts in specific counties to submit bond applications for recreational facilities that are supported by taxes; add provisions relating to the definition of recreational facilities and the funding of recreational facilities; specify bidding requirements; add provisions to allow a construction contract to include certain economic incentives or disincentives; specify provisions for the use of proceeds from the sale of property; modify provisions regarding the ability of a district and water supply corporation to require connection to the provider's wastewater collection system; and modify provisions regarding a municipal utility district's petitioning the commission for road utility district powers.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, October 2002.

*§293.1, Objective and Scope of Rules; Meaning of Certain Words*

Adopted §293.1(c) adds the definition for “recreational facilities” to be consistent with TWC, §49.462, and in accordance with SB 624, §7, which adds TWC, §49.466.

*§293.11, Information Required to Accompany Applications for Creation of Districts*

Adopted §293.11(a)(10) includes the requirement that a creation application contain a detailed summary of proposed recreational facility projects, the projects’ estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report. This will allow the executive director to implement SB 624, §4, which amends TWC, §49.463, and states that financing recreational facilities for the people in the district is an authorized purpose for which a district is created.

*§293.41, Approval of Projects and Issuance of Bonds*

Adopted §293.41(a) requires commission approval for refunding bonds if the debt being refunded was not originally approved by the commission, exempts refunding bonds from commission approval if issued by a district to refund bonds issued by a municipality that paid the cost of financing facilities, and exempts from commission approval bonds issued to and approved by the North American Development Bank, in accordance with HB 1541, §12, which amends TWC, §49.181(a). Adopted §293.41(d) exempts from commission approval bonds issued by a municipal utility district that is located in two counties, has long-term indebtedness rated BBB or better by a nationally recognized

rating agency for municipal securities, and has at least 5,000 active water connections, in accordance with SB 898, §1, which amends TWC, §49.181(h). Adopted §293.41(e) allows districts in certain counties to submit tax-supported bond applications that include funding for certain recreational facilities and limits principal debt for recreational facilities to 1% or less of a district's taxable assessed valuation, in accordance with SB 624, §6, which adds TWC, §49.4645. Section 293.41(e)(1) requires a copy of a district's park plan to be provided with a bond application, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.41(e)(2) and (3) details the types of recreational facilities that can be funded by a district and items that are not allowed to be funded, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.41(e)(4) states that principal debt for recreational facilities can be no more than 1% of a district's taxable assessed valuation or the estimated cost in the park plan, whichever is less, in accordance with SB 624, §6, which adds TWC, §49.4645. Section 293.41(e)(5) provides that a district may submit a bond application for recreational facilities if the district has funded water, wastewater, and drainage facilities, or either of those facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads necessary to provide access to the recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.41(e)(6) requires plans and specifications for recreational facilities to be signed by an appropriate design professional, in accordance with SB 624, §7, which adds TWC, §49.466. SB 624, §7, adds TWC, §49.466, which requires the commission to develop rules for districts that emphasize the primary goal of financing water, wastewater, and drainage facilities, and the secondary goal of financing recreational facilities. Adopted §293.41(e) implements these goals.

*§293.44, Special Considerations*

Section 293.44(a)(1) is adopted to reference recreational facility service, in addition to the existing water, wastewater, and drainage services referenced, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted §293.44(a)(12) and (24) reflects that costs for the portion of an amenity lake considered a recreational facility may be funded by the district, in accordance with SB 624, §4, which amends TWC, §49.463 and SB 624, §7, which adds TWC, §49.466. Adopted §293.44(b)(4) modifies the reference regarding a definition of recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466; deletes the reference to TWC, §54.772, in accordance with HB 1541, §27, which amends TWC, §54.201(b); reflects that districts in certain counties may issue tax-supported bonds for recreational facilities, in accordance with SB 624, §6, which adds TWC, §49.4645; and deletes the reference to requiring a 30% developer contribution for recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted §293.44(b)(5) reflects that bidding requirements are not applicable to contracts or services related to temporary erosion-control devices or to cleaning of silt and debris from streets and storm sewers, in accordance with HB 2887, §1, which amends TWC, §49.278(a). Adopted §293.44(b)(6) allows a district's construction contract to include economic incentives for early completion or disincentives for late completion of the work, in accordance with HB 1541, §19, which amends TWC, §49.271. The economic incentives for early completion or disincentives for late completion will be part of the proposal prepared by each bidder before the bid opening, and not negotiated after bid opening.

*§293.51, Land and Easement Acquisition*

Section 293.51(a) is adopted to require that easements or right-of-way areas for recreational facilities be donated without reimbursement, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted new §293.51(b)(8) adds district funding of recreational facility sites at a cost similar to sites for other

district facilities, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted §293.51(c) allows funding of land within a floodplain (including land for recreational purposes) to be the lesser of original cost plus carry or the appraised value, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.51(d) is adopted to allow district funding of land costs for that portion of an amenity lake considered a recreational facility, in accordance with SB 624, §4, which amends TWC, §49.463; and SB 624, §7, which adds TWC, §49.466. Amended §293.51(g) allows funding of a regional site for recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466. New §293.51(i) reflects that costs for dual-use recreational and drainage/detention sites should be split 50% for each use, and that the costs for recreational sites should be reduced due to an existing drainage/detention easement, if any, in accordance with SB 624, §7, which adds TWC, §49.466. Allocating costs 50% to each use for dual-use items is common in the commission's existing Chapter 293 rules, such as clearing and grubbing right-of-way for district and developer use.

*§293.59, Economic Feasibility of Project*

Section 293.59(e) is adopted to include taxes attributable to recreational facilities in the calculation for projected combined no-growth tax rate of all overlapping entities, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.59(f) is adopted to include taxes attributable to recreational facilities in the calculation for combined projected tax rate of all overlapping entities, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.59(i) is adopted to be amended to include taxes attributable to recreational facilities in the calculation for the rebate of taxes to a city or other entity, in accordance with SB 624, §7, which adds TWC, §49.466.

*§293.80, Revenue Notes*

Section 293.80(a) is adopted to exempt from commission approval revenue notes executed by the North American Development Bank, in accordance with HB 1541, §11, which amends TWC, §49.153(e).

*§293.83, District Use of Surplus Funds for Any Purpose and Use of Maintenance Tax Revenue for Certain Purposes*

Section 293.83(a) is adopted to reflect that proceeds from the sale of property originally acquired with bond funds are subject to commission rules regarding surplus funds, unless the proceeds are used to retire outstanding bonds of a district, in accordance with HB 1541, §16, which amends TWC, §49.266(d).

*§293.113, District and Water Supply Corporations' Authority Over Wastewater Facilities*

Section 293.113(a) is adopted to reflect that a district or corporation may not require a property owner who installed an on-site wastewater system before the adoption of the district or corporation's rule to connect to the district or corporation's system, in accordance with HB 1541, §17, which amends TWC, §49.234(a).

*§293.201, District Acquisition of Road Utility District Powers and §293.202, Application Requirements for Commission Approval*

Sections 293.201 and 293.202 are adopted to reflect that a municipal utility district only needs to petition the commission for road utility district powers, in lieu of the commission and Texas Department of Transportation (TxDOT), in accordance with HB 1541, §29, which amends TWC, §54.234.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted 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 statute. A “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 intent of the adopted rules is to primarily establish new or revise existing requirements relating to the administration of water districts and the commission’s supervision over their actions under TWC, Chapters 49, 54, and 57, as amended by HB 1541, HB 2887, SB 624, and SB 898. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the adopted rules do not exceed a federal standard because no applicable federal standards exist. The adopted rules do not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The adopted rules are not developed solely under the general powers of the agency; but also under the specific authority of TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes. The adopted rules are also specifically developed to implement TWC, §§49.463, 49.4645, and 49.466, as amended by SB 624; to implement TWC, §§49.153, 49.181, 49.234, 49.266, 49.271, and 54.234, as amended by HB 1541; to implement TWC, §49.278, as amended by HB 2887; and to implement TWC, §49.181, as amended by SB 898. The adopted rules do not exceed the express requirements of those state statutes. The commission invited, but received, no public comment on the regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed a preliminary assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49 and 54, as amended by HB 1541, HB 2887, SB 624, and SB 898. Promulgation and enforcement of this rulemaking will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the adopted rules neither relate to, nor have any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a preliminary consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rules is to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The CMP policy applicable to the adopted rules requires that the commission's rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water districts under TWC, Chapter 49; water control and improvement districts under TWC, Chapter 51; municipal utility districts under TWC, Chapter 54; regional plan implementation agencies under TWC, Chapter 54; special utility districts under TWC, Chapter 65; storm water control districts under TWC, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the commission comply with the policies in 31 TAC §501.14(m).

The adopted rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The adopted rules, which implement HB 1541, HB 2887, SB 624, and SB 898, amend the existing rules that govern construction and funding of district facilities and that

govern the commission's process for reviewing applications for district creation, bond issue, and other district matters.

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

The commission invited, but received, no comments on the consistency of this rulemaking with the CMP.

#### PUBLIC COMMENT

A public hearing was held November 18, 2004. One oral comment was received from Sam Jones Consulting, Inc. (Jones) supporting the rules. The comment period closed on November 29, 2004 and was extended to December 15, 2004. The commission received five written comments requesting changes to the rules from Allen Boone Humphries, L.L.P. (ABH); Association of Water Board Directors-Texas (AWBD-Texas); Blake Magee Company, L.P. (BMC); Jim Box - Consultant, Inc. (JBC); and Tiemann Land and Cattle Development, Inc. (Tiemann). Oral comments were also received from ABH as a follow-up to their written comments.

RESPONSE TO COMMENTS

*§293.41, Approval of Projects and Issuance of Bonds*

ABH, AWBD-Texas, BMC, JBC, and Tiemann indicated that the rules should specifically state the types of recreational facilities for which a district can incur debt. ABH, AWBD-Texas, and JBC listed separate items that may and should not be funded by a district as a recreational facility; stated that a district's park plan should be included in a district's application for approval of bonds for recreational facilities; stated that commission rules should reflect that plans and specifications for recreational facilities may be signed by a design professional allowed by law to engage in landscape architecture; and stated that commission rules should reflect greater flexibility for mature (more than 90% of infrastructure financed) districts in funding recreational facilities. BMC and Tiemann submitted similar comments requesting that commission rules reflect that amenity/recreation centers and perimeter walls be allowable items to be funded as recreational facilities.

**The commission concurs that the rules should include details about facilities that may and should not be funded as recreational facilities in order to reduce confusion regarding what is acceptable and to save staff time in reviewing an application by reducing debate over the eligibility of an item. Accordingly, the rules are revised to include a detail of items that may be funded and items that may not be funded. As a compromise between the ABH, AWBD-Texas, and JBC comments and BMC and Tiemann comments, the rules allow mature districts to fund amenity/recreation centers and a portion of perimeter fences. The commission concurs that a copy of a district's park plan should be submitted with a bond application and that plans and specifications should be signed by an appropriate design professional. The rules have been revised to reflect such requirements.**

*§293.44, Special Considerations*

ABH, AWBD-Texas, and JBC commented that recreational facilities should be exempt from the 30% developer contribution requirement and that only mature districts should be allowed to fund certain recreational facilities (trails, sidewalks, landscaping, etc.) within the right-of-way required by governmental jurisdictions to be dedicated for streets. The comments from ABH, AWBD-Texas, and JBC expressed a belief that developers should continue to fund those items (sidewalks, landscaping, swimming pools, amenity centers, etc.) that they have historically funded, and that district funding of recreational facilities should be automatically exempt from the 30% developer contribution requirement in order to encourage developers to plan for and build additional recreational facilities. Additionally, comments from ABH expressed that the 1% cap on the debt for recreational facilities to a district's assessed valuation effectively limits what a district can fund and what a developer can be reimbursed.

**The commission concurs that funding of recreational facilities should be exempt from the 30% developer contribution requirement in order to encourage the planning for and construction of additional recreational facilities. The commission recognizes that excluding some facilities from district funding, only allowing for mature districts to fund certain facilities, and the 1% cap on debt for recreational facilities to a district's assessed valuation encourages developer participation in funding recreational facilities. Accordingly, the rules have been revised to automatically exempt allowable recreational facilities from the 30% requirement. Additionally, the rules are modified to clarify a conflict with §293.47(d)(12).**

*§293.51, Land and Easement Acquisition*

ABH, AWBD-Texas, and JBC commented that land within the floodplain is worth less than other land, and, in mature districts, often represents the majority of available land for recreational purposes. ABH, AWBD-Texas, and JBC commented that the cost of land in the floodplain should be the lower of the developer's original cost, plus carry or fair market value. Additionally, ABH, AWBD-Texas, and JBC commented that land for regional recreational facility sites should be subject to the same provisions as other regional district sites in order to encourage planning for and construction of regional facilities. BMC and Tiemann commented that the rule referencing recreational facility sites should be expanded to reflect greenbelts, park facilities, trails, etc.

**The commission concurs that land within the floodplain is worth less than other land, and that land should be purchased at the lowest possible cost. The commission also concurs that regional facility sites should be subject to the same provisions as regional sites for other district facilities. The rules are modified accordingly. In response to the BMC and Tiemann comment, the commission responds that the reference to recreational facility sites automatically includes sites for allowable projects as detailed in §293.41(e)(2). No change has been made in response to this comment.**

*Other Comments*

ABH, AWBD-Texas, and JBC commented that rules for recreational facilities should be included in a separate subchapter, and that funding of recreational facilities should not be subject to all of the provisions in Subchapter F, District Actions Related to Construction Projects and Purchase of Facilities.

**The commission made no changes in response to these comments. The rules for funding recreational facilities have been incorporated into the existing subchapters. The concept of a separate subchapter setting forth rules for recreational funding is not opposed, however, to do so at this time would cause significant delays in this rulemaking. The commission determined that the Subchapter F requirements should apply to recreational facilities in the same manner as those rules that apply to other district projects.**

**SUBCHAPTER A: GENERAL PROVISIONS**

**§293.1**

**STATUTORY AUTHORITY**

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The adopted amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624; and TWC, Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

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

(a) The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water related districts and to approve the issuance and sale of bonds for district improvements in accordance with the Texas Water Code (TWC). This chapter, adopted under TWC, §§5.103, 5.105, and 5.235, shall govern the creation, supervision, and dissolution of all general and special law districts subject to and within the applicable limits of the jurisdiction of the commission.

(b) This chapter shall govern the conversion of districts into municipal utility districts as provided in TWC, §§54.030 - 54.036.

(c) The term "recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting.

**SUBCHAPTER B: CREATION OF WATER DISTRICTS**

**§293.11**

**STATUTORY AUTHORITY**

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The adopted amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624.

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

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

(1) \$700 nonrefundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the

governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Local Government Code, §42.042, have been followed;

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

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

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

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

(5) evidence of submitting a creation petition and report to the appropriate commission regional office;

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

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

(8) a vicinity map;

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

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

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

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

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

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

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

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

(F) statement of estimated cost of project;

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

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

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

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

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

(B) land use plan;

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

(D) existing and projected populations;

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

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

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

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

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

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

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

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

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

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

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

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

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

(A) name of district;

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

(C) necessity for the work;

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

(E) statement of estimated cost of project;

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

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

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

(5) a preliminary engineering report including as appropriate:

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

(B) land use plan;

- (C) 100-year flood computations or source of information;
- (D) existing and projected populations;
- (E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;
- (F) projected tax rate and water and wastewater rates;
- (G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;
- (H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:
  - (i) land elevation;
  - (ii) subsidence;
  - (iii) groundwater level within the region;
  - (iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

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

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

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

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial

jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

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

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

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

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

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

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

(A) name of district; and

(B) area and boundaries of district;

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

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

(4) a preliminary engineering report including as appropriate:

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

- (B) land use plan;
  
- (C) 100-year flood computations or source of information;
  
- (D) existing and projected populations;
  
- (E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;
  
- (F) projected tax rate and water and wastewater rates;
  
- (G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;
  
- (H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:
  - (i) land elevation;
  
  - (ii) subsidence;
  
  - (iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

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

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

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

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

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

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

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

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

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

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

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

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

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

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

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

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

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

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

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

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

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

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

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

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

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

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

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

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

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

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

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

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

and

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

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

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC , §59.006;

(4) a preliminary engineering report including as appropriate:

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

(B) land use plan;

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

(D) existing and projected populations;

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

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

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

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

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

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

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

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

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

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

(C) name of the district;

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

(E) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

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

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

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

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

(B) existing and projected populations;

(C) for proposed system expansion:

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

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

(D) water and wastewater rates;

(E) projected water and wastewater rates;

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

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

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

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

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

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

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

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

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

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

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

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

(13) other information as the executive director requires.

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

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

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

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

(C) the proposed name of the district;

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

(3) a preliminary engineering report including:

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

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

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

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

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

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SUBCHAPTER E: ISSUANCE OF BONDS**

### **§§293.41, 293.44, 293.51, 293.59**

#### **STATUTORY AUTHORITY**

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and under TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The adopted amendments implement TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624, SB 898, HB 1541, and HB 2887.

#### **§293.41. Approval of Projects and Issuance of Bonds.**

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities; or

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to a district if:

(1) the boundaries include one entire county;

(2) the district was created by a special act of the legislature; and

(A) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(B) the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(C) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(3) the district is a special water authority as defined by TWC, §49.001(8);

(4) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(5) the district:

(A) is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(B) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(C) has at least 5,000 active water connections.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than

500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), payable from any source, for recreational facilities must not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

**§293.44. Special Considerations.**

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, sewer, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the

commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district

creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, sewage, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this subsection, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this subsection, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not

available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, under contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain water or sewer service from a municipality, district, or other political subdivision and proposes to use bond proceeds to compensate the providing political subdivision for the water or sewer services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or providing the entity has adopted a uniform service plan for such water and sewer services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to

§293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

**§293.51. Land and Easement Acquisition.**

(a) Water, sanitary sewer, storm sewer, drainage, and recreational facilities easements. All easements required within a district's boundaries for water lines; sanitary sewer lines; storm sewer lines; sanitary control at water plants; noise and odor control at wastewater treatment plants; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for

streets that are used for recreational facilities, shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) shall not apply to such acquisition.

(b) Land acquisition. A district may acquire the following in fee simple from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition:

(1) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;

(2) lift or pump station sites;

(3) drainage channels other than those described in subsection (a) of this section and other than those which are natural waterways with defined bed and banks;

(4) detention/retention pond sites;

(5) levees;

(6) mitigation sites for compliance with flood plain regulation and wetlands regulation or payments in lieu of mitigation;

(7) mitigation sites for compliance with endangered species permits or payments in lieu of mitigation, the cost of which shall be shared between the district and the developer as provided in §293.44(a)(22) of this title (relating to Special Considerations); or

(8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual taxes and interest paid to the date of acquisition by the district. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied. Provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, the executive director may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as

shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the taxes and interest costs are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by subsection (c)(1) of this section or fair market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land or easement.

(d) Joint storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be limited to that cost that is associated only with the drainage or recreational function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (c) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title.

(f) Shared land or easements outside the district's boundaries. If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the

event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station, detention pond, drainage channel, levee, or recreational facility if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(h) Certification by registered professional engineer. Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants, or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

(i) Joint recreational and drainage/detention sites without a constant level lake. If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50%

to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

**§293.59. Economic Feasibility of Project.**

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

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

(c) Projected debt service tax rate is the tax rate required to meet the projected annual debt service requirement using projected assessed valuations and an appropriate tax collection rate. The projected annual debt service requirement shall include the previous and proposed debt. The projected

debt service tax rate for any bond issue shall be shown in the cash flow table as a level or decreasing tax rate.

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

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

or

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

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

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

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

(2) projected no-growth debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage, or recreational facilities that are smaller in size than a county, and for roads if the entity is a road district or road utility district smaller in size than a county

commissioner's precinct. (In other words, for road districts or road utility districts that are as large as one county commissioner's precinct, the road district tax is not counted.);

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

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

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

(6) contract tax, if any; and

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

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

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

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

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

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

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

(6) contract tax, if any; and

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

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

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

(1) For residential development with similar house prices:

Figure: 30 TAC §293.59(h)(1)

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

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

Figure: 30 TAC §293.59(h)(2)

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

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

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

Figure: 30 TAC §293.59(i)

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

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

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

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

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

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

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

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

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

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

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

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

(C) \$1.00 in all other counties.

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

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

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

(C) \$2.00 for all other counties.

(5) The following apply to the central appraisal district certificate.

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

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

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

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

(iii) if the estimated taxable valuation results in an exemption from §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) and the final certificate of taxable value is not sufficient for an exemption from that section, the developer will be obligated to refund to the district the difference in the bond issue requirement without developer contribution and with developer contribution plus interest at the bond interest rate to the district; and

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

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

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

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

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

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

(E) all street and road construction to provide access to the areas provided with utilities to be financed with proceeds from the proposed bond issue, or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, must be 95% complete as certified by

the district's engineer. All streets and roads shall be constructed in accordance with city or county standards, as appropriate.

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

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

(9) One or more of the requirements in paragraphs (1) - (8) of this subsection may be waived for good cause by commission order if all of the facilities proposed under a bond issue application are essential because of valid orders, permits, or actions against the district by a governmental agency or court. If only a portion of the bond issue is for facilities essential because of valid orders, permits, or actions against the district by a governmental agency or court and if a waiver of any of the requirements is requested, all nonessential projects may be deleted from the bond issue if not feasible under the other provisions of these rules.

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

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

(A) the no-growth tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed \$1.30; the no-growth tax rate of a district providing major water and sewage facilities that it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed \$1.30, and the combined no-growth tax rate does not exceed

\$2.00; and, the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district;

(B) the district has an acceptable credit rating as defined in §293.47(b)(4) of this title or a credit enhanced rating as defined in paragraph (5) of this subsection; or

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

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

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

(iii) \$1.00 in all other counties.

(D) for the exceptions in subparagraph (A) or (C) of this paragraph, the developer shall provide a guarantee for its 30% share of utilities, if required under §293.47 of this title, in the form and manner required by §293.47(g) of this title;

(E) for utilities that are not funded and not complete but necessary to support the feasibility of the bond issue, the developer shall provide a guarantee for 100% of utilities for the exceptions in subparagraphs (A), (B), or (C) of this paragraph in the form and manner required by §293.47(g) of this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) A district may request a variance if it does not meet the guidelines contained in subsections (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The commission shall not grant a variance to the maximum combined projected tax rate or the maximum combined no-growth tax rate specified in subsection (k) of this section for districts that have a developer and the district is financing 100% of construction costs under the criteria set out in §293.47(a) of this title, which would otherwise require 30% developer participation. In determining whether to grant a variance, the following factors shall be considered:

(1) the degree of variation from the guidelines;

(2) the past history of the district with respect to its projections versus actual build-out and compliance with commission rules;

(3) the past history of the developer and related or affiliated entities with respect to its projections versus actual build-out and its compliance with commission rules and agreements with the district and other districts in which it developed land;

(4) other factors peculiar to the district, such as the area in which situated, economic factors, the adjoining competitive developments, and their status;

(5) the financial resources of the developer and its lender and any special commitments, obligations, or expenditures for the project;

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

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

**SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION**

**CONSIDERATION FOR APPROVAL**

**§293.80, §293.83**

**STATUTORY AUTHORITY**

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The adopted amendments implement TWC, Chapter 49, relating to Provisions Applicable to All Districts, and Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

**§293.80. Revenue Notes.**

(a) A district, as defined by Texas Water Code (TWC), §49.001 may not execute a revenue note as described by TWC, §49.153 for a term longer than three years unless approved by the commission. This section does not apply to a note issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the Texas Water Development Board, North American Development Bank, or successor agencies.

(b) This section does not apply to special water authorities, as defined by TWC, §49.001 or a district described by TWC, §49.181(h).

(c) Applications for commission approval of revenue notes except as provided in subsection (d) of this section shall include the following:

- (1) a resolution by the governing board requesting approval of the revenue note;
- (2) documents indicating district ownership of the facility;
- (3) a detailed explanation of the intended use and project to be financed, and complete justification for the proposed revenue note;
- (4) a copy of the district's current Rate Order or Amended Rate Order;
- (5) a proposed amortization schedule for the revenue note;
- (6) a draft of the proposed revenue note;
- (7) copies of the district's current operating budget and estimates of revenues and expenses for the years associated with the revenue note;
- (8) copies of all existing notes, liens, or judgements against revenues associated with the facility;
- (9) an application fee in the amount of \$100; and

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

(d) Revenue notes proceeds of which are used to reimburse a developer as defined in TWC , §49.052(d) are subject to Subchapter E of this chapter (relating to the Issuance of Bonds).

**§293.83. District Use of Surplus Funds for Any Purpose and Use of Maintenance Tax Revenue for Certain Purposes.**

(a) Except as provided in subsection (c)(3) and (4) of this section, and as provided in subsection (d) of this section, a district must receive approval from the executive director before obligating the use of:

(1) surplus bond funds;

(2) interest earned on invested bond proceeds, grants, or contributions by others for costs sharing of facilities constructed with bond funds;

(3) proceeds from the sale of property originally acquired with bond proceeds, unless the proceeds are applied to retire the outstanding bonds of the district; and

(4) litigation settlements related to projects financed by bond proceeds.

(b) A district contemplating the use of operation and maintenance tax revenue for reimbursement to a developer (as defined in Texas Water Code (TWC), §49.052(d)), of property, or its assigns, for planning, construction, or acquiring facilities must receive approval from the executive director.

(c) Application requirements are as follows.

(1) For engineering projects, the following documents shall be submitted:

(A) a resolution by the governing board requesting approval of the project;

(B) construction plans and specifications approved by all agencies having jurisdictional responsibilities;

(C) a detailed explanation of the project;

(D) a detailed cost summary;

(E) if developer reimbursement from an operation and maintenance tax, operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(F) the number of utility connections to be added (if applicable) and area served;

(G) engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) a written statement from district's bookkeeper stating the amount and source of funding including how available funds were generated;

(I) the 100-year flood data for area to be served if not previously provided;

(J) evidence of compliance with the requirements of Subchapter E of this chapter (relating to Issuance of Bonds);

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

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

(2) For expenditures other than engineering projects, the following documents shall be submitted:

(A) a resolution by the governing board requesting approval of the expenditure;

(B) a complete justification and explanation of purpose for which the funds are proposed for expenditure;

(C) if developer reimbursement from an operation and maintenance tax, operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(D) other information as the executive director may require; and

(E) an application fee in the amount of \$100.

(3) Subject to the requirements prescribed in paragraph (4) of this subsection, a district which has a no-growth tax rate of \$2.00 per \$100 assessed valuation or less calculated by dividing its average annual debt service on existing tax supported debt by current taxable assessed valuation/100, may use surplus funds for improvements necessary to serve development within the district as follows without further approval:

(A) rehabilitation or maintenance of facilities previously approved by the commission for funding and owned by the district if the scope of the originally approved project has not changed;

(B) engineering and construction costs associated with constructing water plant or wastewater treatment plant improvements located on the plant site, including storage facilities to meet project needs within the district's boundaries;

(C) pump stations and force mains located within the boundaries of the district which directly connect the districts wastewater system to a regional plant; or

(D) alternate water supply interconnects between two or more districts.

(4) Districts contemplating the use of surplus funds as provided in paragraph (3) of this subsection must:

(A) receive all required approvals of associated plans and specifications from other governmental agencies, including the agency, prior to construction;

(B) submit to the executive director and the appropriate field office those documents required by §293.62 of this title (relating to Construction Related Documents To Be Submitted to the Agency); and

(C) report expenditures of all surplus funds in their annual audit report in the notes to the financial statements disclosing any amounts transferred among the funds including the use of surplus funds and the authority for such transfers.

(d) A district may transfer surplus interest earnings on invested bond proceeds to its debt service account without executive director approval if permitted by its bond covenants and if such funds are not committed for other purposes.

**SUBCHAPTER J: UTILITY SYSTEM RULES AND REGULATIONS**

**§293.113**

**STATUTORY AUTHORITY**

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The adopted amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by HB 1541.

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

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

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

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

**§293.201, §293.202**

**STATUTORY AUTHORITY**

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The adopted amendments implement TWC, Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

**§293.201. District Acquisition of Road Utility District Powers.**

(a) Texas Water Code (TWC), §54.234, authorizes a municipal utility district with the power to levy taxes to petition the commission to acquire the powers granted under Texas Transportation Code, Chapter 441, to road utility districts.

(b) A municipal utility district may petition the commission to acquire the road utility district powers authorized in TWC, §54.235. This section and §293.202 of this title (relating to Application Requirements for Commission Approval) provide the requirements for petitioning the commission for road utility district powers.

**§293.202. Application Requirements for Commission Approval.**

A conservation and reclamation district, operating under Texas Water Code (TWC), Chapter 54, and which has the power to levy taxes, may submit to the executive director of the commission an application for road utility district powers, which shall include the following documents:

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

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

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

(4) evidence that the petition or written request to the commission requesting road utility district powers was filed with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction that any part of the district is located, concurrently with filing its application for such powers with the commission;

(5) a certified copy of the latest audit of the district performed under TWC, §§49.191 - 49.194;

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

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

(8) a cost analysis and detailed cost estimate of the proposed facilities to be constructed, acquired, or improved by the district under road utility district powers with a statement of the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, and improvement;

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

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

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