The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§293.1, 293.11, 293.12, 293.20, 293.22, 293.23, 293.32, 293.41, 293.44, 293.51, 293.69, and 293.111 - 293.113.

Sections 293.12, 293.23, 293.32, and 293.44, are adopted *with changes* to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3199). Sections 293.1, 293.11, 293.20, 293.22, 293.41, 293.51, 293.69, and 293.111 - 293.113 are adopted *without changes* to the proposed text and will not be republished.

The commission also withdraws the proposal of §§293.54, 293.201, and 293.202 as published in the April 14, 2006, issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission has the statutory responsibility and authority to create, supervise, and dissolve certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with Texas Water Code (TWC), Chapters 12, 36, 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 engineering standards and economic feasibility of district construction project design and completion.

This rulemaking establishes new and revises existing requirements relating to the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 36, 49, 51, 54, and 65. House Bill (HB) 828, 79th Legislature, 2005, amends TWC, §49.181 to exempt certain refunding bonds from having to obtain commission approval. HB 1208, 79th Legislature, 2005, amends provisions in TWC, Chapter 54 concerning a municipal utility district's (MUDs) eminent domain authority outside its boundaries. HB 1644, 79th Legislature, 2005, amends provisions in TWC, Chapter 51 (Water Control and Improvement Districts - WCIDs) and Chapter 54 (MUDs) to allow more flexibility in contracting and funding, and to place limitations on a municipality annexing such districts. HB 1673, 79th Legislature, 2005, amends provisions in TWC, Chapter 65, to allow specific purposes to be requested upon conversion to a special utility district (SUD). HB 1763, 79th Legislature, 2005, amends provisions in TWC, Chapter 36, concerning notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts (GCD), and to management planning and joint management planning requirements for GCDs. Senate Bill (SB) 693, 79th Legislature, 2005, amends provisions in TWC, Chapter 54, to place limitations on the filling of a vacancy on a district board. The revisions amend and clarify commission rule language to conform with the statutory changes made to TWC, Chapters 36, 49, 51, 54, and 65.

Specifically, the rulemaking modifies requirements on when a district must obtain commission approval of refunding bonds; clarifies allowable land costs to reflect limitations on a MUD's eminent domain authority outside its boundaries; adds provisions allowing MUDs and WCIDs to contract with third parties for ownership and operation of facilities; adds provisions allowing districts to fund certain certificate of convenience and necessity (CCN) costs; allows a water supply corporation to request only

certain powers upon conversion to a SUD and requires the commission to only grant the powers requested; clarifies GCD management plan adoption, submittal, and implementation requirements; modifies joint GCD management planning requirements in groundwater management areas (GMAs) and compliance with joint planning provisions; clarifies review panel recommendations and commission actions regarding GCDs; and clarifies qualifications for directors of a MUD.

SECTION BY SECTION DISCUSSION

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

The adopted amendment to §293.1(a) corrects an outdated rule reference to the TWC.

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

The adopted amendment to §293.11(h) provides that a water supply corporation's (WSCs) resolution requesting conversion to a SUD can specify each purpose that a WSC wants the commission to grant upon conversion to a SUD. This adopted rule change is consistent with TWC, §65.021, as amended by HB 1673.

*§293.12, Creation Notice Actions and Requirements*

The adopted amendment to §293.12 states that if the commission determines that a hearing is necessary, it may only consider the purposes a WSC requests in its resolution requesting conversion to a SUD. This adopted rule change is consistent with TWC, §65.020 and §65.021, as amended by HB 1673.

*§293.20, Records and Reporting*

The adopted amendment to §293.20(c) provides the conforming three-year time frame for new GCDs to adopt and submit a management plan for consideration and approval by the executive administrator of the Texas Water Development Board (TWDB), and for GCDs to readopt and resubmit their readopted management plans to the executive administrator of the TWDB at least once every five years thereafter. The commission adopts changes that remove language referring to a "certified" management plan and replace it with "approved" management plan to conform with the new statutory language. There are no changes for subsections (a), (b), (d), or (e). This adopted rule change is consistent with TWC, §§36.1071 - 36.1073, and 36.302, as amended by HB 1763.

*§293.22, Noncompliance Review and Commission Action*

The adopted amendment to §293.22 makes conforming clarifications for instances when commission noncompliance review and action is required related to GCD management planning and joint GCD management planning in a GMA. In subsection (a), the adopted changes set out that the section is applicable if a GCD fails to: 1) submit a groundwater management plan to the executive administrator of the TWDB within three years of the date the GCD was created or the date the GCD was confirmed by election if an election was required; 2) achieve approval of a groundwater management plan, an amended plan, or a readopted plan from the executive administrator or the TWDB; 3) readopt and resubmit the management plan to the executive administrator of the TWDB at least once every five years after the date of management plan approval; 4) forward a copy of its approved groundwater management plan to the other GCDs included in a common GMA; 5) be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State

Auditor's Office review of the GCD's performance under its plan; or 6) adopt, implement, or enforce rules to protect groundwater as evidenced in a report prepared by peer review panel. There are no changes for subsections (b) - (e). In subsection (f), language is removed to conform with a statutory change clarifying GCD dissolution by the commission. There are no changes for subsections (g) - (i). This adopted rule change is consistent with TWC, §36.108 and §36.3011, as amended by HB 1763.

*§293.23, Petition Requesting Inquiry in Groundwater Management Area*

The adopted amendment to §293.23 renames the section "Petition Requesting Inquiry in Groundwater Management Area" and makes conforming changes in subsection (a) to ensure consistency with the statutory change that authorizes both a person with a legally defined interest in the groundwater within the GMA, and a GCD to petition the commission for an inquiry related to joint groundwater management planning. In subsection (b), the adopted changes clarify that a person with a legally defined interest in the groundwater within the GMA or a GCD may file a petition to request a commission inquiry; that after the desired future conditions for the GMA have been adopted, a petitioner may request a commission inquiry if the petitioner believes the GMA process has not established the future desired conditions for the aquifers in the GMA; documentation needed to support the petition; and responsibility to provide a copy of the petition to all of the GCDs in the GMA. Additional changes in subsection (b) provide any GCD that is the subject matter of the petition an opportunity to respond to the claims. In subsection (c), the adopted changes require the commission to also review any timely filed responses and add the word "groundwater" to references to the term "management area." No changes are adopted for subsection (d). One citation in subsection (e) has

been updated to conform with the changes in subsection (b). This adopted rule change is consistent with TWC, §36.3011 and §36.304, as amended by HB 1763.

*§293.32, Qualifications of Directors*

The adopted amendment to §293.32(a) provides additional qualifications to be a director of a MUD. This adopted rule change is consistent with TWC, §54.103, as added by SB 693.

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

The adopted amendment to §293.41(a) states that refunding bonds issued to refund bonds originally approved by certain federal or state agencies no longer require commission approval. This adopted rule change is consistent with TWC, §49.181, as amended by HB 828.

*§293.44, Special Considerations*

The adopted amendment to §293.44(b) reflects that a district may contract with a third party for operation and maintenance of district facilities, and obtain capacity or acquire facilities from another entity, and that a district may issue bonds or other obligations to fund CCN costs. This adopted rule change is consistent with TWC, §§49.218(a), 51.150, 51.402, 54.2351, 54.501, and 49.181, as amended by HB 1644.

*§293.51, Land and Easement Acquisition*

The adopted amendment to §293.51(e) provides limitations on a MUD's use of eminent domain powers outside of its boundaries. This adopted rule change is consistent with TWC, §54.209, as amended by HB 1208.

*§293.69, Purchase of Facilities*

The adopted amendment to §293.69 reflects that a pre-purchase inspection is required even if facilities are conveyed to a third party, and that a pre-purchase inspection may not be required if a district's facilities are conveyed to a municipality and the municipality assumes all costs of operation and maintenance. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

*§293.111, Water and Wastewater Service Lines and Connections*

The adopted amendment to §293.111 adds subsection (b) to clarify that §293.111 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

*§293.112, Water, Wastewater and Drainage Facilities*

The adopted amendment to §293.112 adds subsection (b) to clarify that §293.112 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

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

The adopted amendment to §293.113 adds subsection (c) to clarify that §293.113 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed these amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of §2001.0225. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (see Texas Government Code, §2001.0225(g)(3)). Here, the amendments do not meet those qualifications where the primary purposes of this rulemaking initiative are to clarify commission rule language in §§293.1 *et seq*. to conform with the statutory changes made to TWC, Chapter 5; and to create and amend other rules in Chapter 293 to remain consistent with the statutory changes set forth in HBs 828, 1208, 1644, 1673, and 1763 and SB 693 of the 79th Legislature, 2005. As to these six enacted bills, this rulemaking initiative modifies rules within Chapter 293 to accomplish the following: 1) exempt districts from obtaining commission approval to issue refunding bonds to refund bonds issued to and approved by the Farmer's Home Administration, the United States Department of Agriculture, the

North American Development Bank, or the TWDB; 2) prohibit a MUD other than one created by Chapter 1029, Acts of the 76th Legislature, 1999, from exercising eminent domain authority outside its boundary if the land is to be used for: a) a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant; b) a site for a park, swimming pool, or other recreational facility except a trail; c) a site for a trail on real property designated as a homestead as defined by §41.002; or d) an exclusive easement through a county regional park; 3) provide more flexibility to a WCID and MUD regarding contracting and funding, and placing limitations on a municipality that may annex these types of districts; 4) requires applicants who seek to convert into a SUD to include a resolution specifying the purposes for the proposed conversion, if only specific purposes are desired, and then limiting the scope of the commission's review, including any hearings, of that application to those purposes contained in the resolution; 5) outlines the procedures for how a GCD or a person with a legally defined interest in groundwater in a GMA petitions the commission to inquire whether a GCD's management plan establishes reasonable future desired conditions for the aquifers in the GMA; and 6) places limitations on when a resigned board member can fill a vacancy on that same district board. While the commission has general jurisdiction over districts and authority to develop rules impacting districts, these changes to the operating processes of districts are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the adopted rulemaking project does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007. The purposes of this adopted district rulemaking action are to keep the commission's rules consistent with the changes in TWC, Chapters 12, 36, and 49 - 67 made by the legislature in HBs 828, 1208, 1644, 1673, and 1763, and SB 693, 79th Legislature, 2005; and amend a district rule to reflect a statutory change in TWC, Chapter 5. The adopted rules would substantially advance these stated purposes because these changes impact a district's ability to issue refunding bonds, exercise its eminent domain powers, operate with a properly appointed board of directors, convert into a SUD, and enter into a contract for the sale and purchase of capacity in or facilities for water, sewer, drainage, or other services for a municipality, district, other political subdivision, or other utility provider. These adopted rules also substantially advance the creation of a procedure for a GCD to adopt management plans and a review process for the commission thereto.

Promulgation and enforcement of these adopted rules regarding the operations of districts would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Updating commission rules to remain consistent with statutory changes to TWC, Chapter 5, does not involve private real property rights. The statutory changes set forth in HBs 828, 1208, 1644, 1673, and 1763 and SB 693, 79th Legislature, 2005, also do not impact private real property rights. Specifically, private real property rights do not pertain to a district's ability to issue refunding bonds,

appoint individuals to the board of directors, convert into a SUD, enter into a contract of sale with a municipality, district, other political subdivision, or other utility provider, or adopt groundwater management plans. In addition, while the issue of eminent domain may pertain to private real property rights, the rule changes implementing HB 1208 do not impact these property rights where the rules reduce the circumstances when a district can exercise this power. Thus, these adopted rules do not impose a burden on private real property, but instead benefit society by improving the process for districts to operate and for the commission to supervise, which should ultimately improve the quality of service that is provided to their customers. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

PUBLIC COMMENT

A public hearing was held in Austin on May 11, 2006. Only one oral comment was received from the Texas Rural Water Association (TRWA), which expressed support for the rulemaking including specifically the changes regarding conversion of a WSC to a SUD. During the comment period (April 14, 2006 to May 15, 2006) four written comments were received. Written comments were received from Edwards Aquifer Authority (EAA) and TWDB requesting changes to the GCD portion of the rules (§§293.20, 293.22, and 293.23). Written comments were received from Utility District Advisory Corporation (UDAC) and Law Offices of Clay E. Crawford, P.C. (CEC) requesting changes or stating that no changes were necessary regarding non-GCD sections.

The commenters suggested modification to the proposed rules as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

*General*

TRWA expressed support for the rulemaking, including specifically the changes regarding conversion of a WSC to a SUD.

**The commission acknowledges the commenter's support of the rule.**

*Fiscal Note*

CEC commented that the assertion in the fiscal note about no significant fiscal implications are anticipated is incorrect. CEC commented that affected districts issuing road bonds would incur the

commission's 0.25% bond proceeds fee, an application fee, engineering fees associated with preparing a bond application, and other additional consultant fees. CEC also commented that the assertion of two road bond applications per year is incorrect since for 2006 CEC has represented two districts issuing bonds for roads with an additional five anticipated.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

*§293.20, Records and Reporting*

The TWDB commented that §293.20(c) does not require a GCD to send a copy of its approved groundwater management plan to regional water planning groups as designated by TWDB in 31 TAC §356.4.

**The amendment to §293.20(c) is limited to modifying the management plan terminology from "certified" to "approved," so that the commission's rules are consistent with HB 1763's changes to the TWC. Additionally, §293.20(c), as currently enacted, tracks the statutory language of TWC, Chapter 36, where §36.1071 requires GCDs to forward copies of their management plans, or amendments thereto, to regional water planning groups and TWC, §36.108(b), sets forth that all GCDs in a GMA must forward their management plans to the other GCDs in that area. TWDB rules govern procedures for submitting, reviewing, and approving management plans. Thus, the rule is consistent with the commission's responsibilities as set forth in TWC, Chapter 36, and no change has been made in response to this comment.**

*§293.22, Noncompliance Review and Commission Action*

The TWDB suggested that commission action under proposed §293.22(a)(5) would be unlikely as a result of a GCD's failure to be actively engaged and operational in achieving the objectives of its groundwater management plan. The TWDB suggested that it was unlikely that any GCD will be found to be non-operational, and commented that the State Auditor's Office is no longer required to audit GCDs.

**The commission disagrees with this comment and made no change in response to the comment. TWC, §36.302 provides that a GCD is subject to review by the State Auditor's Office under the direction of the legislative audit committee pursuant to Texas Government Code, Chapter 321, and that the State Auditor's Office is authorized to determine if a GCD is not operational.**

*§293.23, Groundwater Conservation District Petition Requesting Inquiry in Groundwater Management Area*

The TWDB commented that some GMAs are expected to establish desired future conditions before the September 1, 2010, deadline, and as proposed, §239.23 would prevent GCDs or interested persons from filing a petition requesting an inquiry in the GMA prior to that time.

**The commission agrees with this comment and has changed the section to more closely conform to the statutory language. The start of the last sentence in §293.23(b) now reads "After the desired future conditions for the GMA have been adopted, . . ." instead of "After September 1, 2010, . . .."**

EAA commented that §293.23 should consistently refer to "a person with a legally defined interest in the groundwater within the groundwater management area" instead of "an interested person."

**The commission agrees with this comment and has made the suggested change in each instance in §293.23 where the term "an interested person" was used. TWC, §36.108(f), describes potential petitioners as "district or person with a legally defined interest in the groundwater within the management area," and the commission agrees that the rule should use terminology that is consistent with the TWC.**

The EAA suggested §293.23 be revised to include a definition for "a person with a legally defined interest in the groundwater within the groundwater management area," which would limit the entities that would have standing to file a petition. EAA suggested the requested definition should focus on whether the person's interest could be directly and substantially affected by the issues raised in the petition, and provided suggested language for a definition.

**The commission disagrees with this comment. In the petition process contemplated by TWC, Chapter 36, the commission will determine on a case-by-case basis if a non-GCD petitioner is "a person with a legally defined interest in the groundwater within the groundwater management area." While the phrase "person with a legally defined interest in groundwater" is used in TWC, §36.1072 and §36.108, it is undefined in that chapter. Thus, providing a definition for this phrase in the commission's rules could create a subset of potential petitioners that excludes some**

**entities which the legislature had intended to include. Further, no proof of legislative intent was provided in the comment. Thus, no change was made to the rule in response to this comment.**

The EAA suggested that language should be inserted in §293.23 to clarify that GCDs have the opportunity to respond to and defend themselves against a petition requesting an inquiry. EAA suggested that this opportunity should be given before the commission considers and acts on the petition. The EAA provided suggested language.

**The commission agrees with this comment and has revised §293.23(b)(4) and (5) and (c) to read as follows:** ***(4) The petitioner shall provide a copy of the filed petition to all groundwater conservation districts within the groundwater management area within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD with the petitioner's GMA.***

***(5) Any GCD that is within the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in the GMA. The chief clerk shall accept a response that is filed after the deadline, but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.***

**The first sentence of §293.23(c) is changed as follows: The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed.**

The EAA commented that the commission and any review panel should "tread lightly" anytime a petition requesting inquiry is granted, especially when providing recommendations to locally determined policy issues related to adequate planning or adequate protection of groundwater in the GMA. The EAA provided draft language for §293.23 to limit commission and review panel decisions and recommendations.

**The commission acknowledges this comment but made no changes to the rule in response to the comment. The commission believes the constraints and requirements placed on a petition requesting an inquiry outlined in §293.23, as amended here, sufficiently implement the TWC and the assigned commission and review panel responsibilities.**

*§293.32, Qualifications of Directors*

CEC commented that §293.32(a)(6) was confusingly worded and did not track the language in TWC, §54.103.

**The commission concurs that the rule should be made clearer. Accordingly, the rule has been revised to more closely track the language in TWC, §54.103.**

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

UDAC suggested creating a new subsection (o) in §293.59, to reflect that once a district with road powers issues bonds for road projects then the district would need to meet certain feasibility requirements for any subsequent bond issue, whether it included funding for roads or utilities. The comment also provided certain situations where the requirement would not apply.

**The criteria for the commission's review of bonds for roads was proposed in §293.202; however, the commission has withdrawn the proposed changes to §293.202 to further consider the issue. Therefore, the commission made no change in response to this comment.**

*§293.44, Special Considerations*

UDAC suggested language to specify that cost-sharing provisions under §293.44(a)(2) and (8) should not apply to a district funding road facilities. UDAC considered that cost sharing should be left only to what a cost-sharing agreement specifies.

**The criteria for the commission's review of bonds for roads was proposed in §293.202; however, the commission has withdrawn the proposed changes to §293.202 to further consider the issue. Therefore, the commission made no change in response to this comment.**

CEC commented that new §293.44(b)(7) should apply to all districts operating under TWC, Chapter 49, not just to districts operating under TWC, Chapters 51 or 54. Also, CEC commented that TWC,

§49.218(a) does not limit the purchase of capacity or capacity rights to only CCN areas. CEC suggested rule language to implement these suggestions.

**Section 293.44(b)(7) as published in the rule proposal was not consistent with provisions in TWC, §49.218(a). Accordingly, the rule has been modified to delete a reference to Chapter 51 and 54 districts and instead will apply to all districts operating under TWC, Chapter 49. Additionally, the rule has been modified to allow the purchase of capacity or capacity rights whether within a CCN or not. The revised §293.44(b)(7) accurately reflects provisions in TWC, §49.218(a).**

*§293.54, Bond Anticipation Notes (BAN)*

CEC commented that changes to §293.54 would essentially subject a BAN to the same requirements as a bond application, contrary to specific authorization in the TWC. CEC further stated that TWC, §49.154, only requires that a district have a bond application on file before issuance of a BAN.

**The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.**

CEC commented that the existing rule contains numerous safeguards, and, therefore, the proposed rule changes are unnecessary and should not be adopted.

**The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.**

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that generally a BAN should not be issued until a bond application is declared administratively complete.

**The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.**

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that instead of certificates by the district's engineer attesting to the completion and availability of certain items required under §293.59(k)(6) of the economic feasibility rules, the district's engineer, attorney, and financial advisor or tax assessor/collector attest to certain criteria prior to the issuance of BAN.

**The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.**

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that the 25% build-out requirement of §293.59(k)(7) should be met at the time BAN are issued, in lieu of meeting the requirement at a future date within anticipated application time frames.

**The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.**

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that certain requirements under §293.54 should not apply to a BAN issued for engineering and land costs for regional facilities, or emergency repairs to district facilities, including the requirement to have a bond application on file.

**The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.**

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

UDAC submitted draft language for §293.201(a) that specifies that the rule should reference that only portions of Texas Transportation Code, Chapter 441 apply, as well as specifying a definition for the term “district” and the term “commission.”

**The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.**

UDAC submitted draft rule language showing that proposed §293.201(b) incorrectly references TWC, §54.235, instead of TWC, §54.234.

**The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.**

UDAC suggested deleting the requirement to notify a city in whose extraterritorial jurisdiction (ETJ) or corporate limit a district is located of the request to the commission for road powers.

**The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.**

UDAC suggested deleting the reference in the preliminary engineering report requiring a listing of other entities that could provide road services, and modifying the reference requiring a certified copy of preliminary plans to require a preliminary layout of road facilities. UDAC also suggested deleting the requirement to have an order approving preliminary plans.

**The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.**

UDAC suggested rule language to specify that a feasibility analysis requirement should be added to support that the combined projected tax rate does not exceed applicable limits in the commission's economic feasibility rules under §293.59.

**The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.**

UDAC suggested modifying the requirement for a narrative statement as to whom the road facilities benefit to demonstrate that the proposed road facilities benefit the district.

**The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.**

UDAC suggested deleting the proposed rule allowing road powers to be obtained at the time of creation.

**The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.**

*§293.202, Application Requirements for Commission Approval*

CEC commented that adopting the new rule is outside of the commission's specific statutory authority and the commission did not cite to any specific statutory authority for §293.202. CEC also commented that the position taken in the new rule is contrary to a position previously taken by the commission in regards to reviewing bonds for road projects.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

CEC commented that the Attorney General's office has reviewed and approved the issuance of road bonds without commission review or approval. CEC stated that the Attorney General found that the issuance of those bonds met all legal requirements and that commission approval was not required. CEC also commented that the review of road bonds by the commission is not necessary because commission review would be duplicative where the Attorney General has adopted a feasibility requirement for such bonds.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

CEC also commented that if the commission did have the authority to review road bonds that §293.202 as proposed contains certain limitations that are contrary to other, more specific law pertaining to the road powers of general law districts. CEC cites three examples: TWC, §53.003 that allows FWSDs to fund all road facilities under Texas Transportation Code, Chapter 257, and other general laws applicable to road districts; Texas Transportation Code, §257.003(f), which allows the district to determine whether a particular road acquisition benefits the district; and, Texas Transportation Code, §441.101, regarding reimbursements for money spent for road or improvements, inside or outside the district.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested rule language to specify that the requirement to obtain commission approval of road bonds should not apply to a fresh water supply district that has road powers under TWC, §53.029(c).

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested rule language to specify that the rule should list specific provisions of §293.44 that are not applicable to bonds for road facilities.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested rule language to specify that provisions regarding shared facilities under §293.44(a)(2) and (8) should not apply to road facilities; that only provisions in a cost-sharing agreement should apply.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested deleting the requirement for a 30% developer contribution in regards to road facilities.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested deleting rule language that specifies the requirement for evidence of acceptance by the entity that is to operate and maintain facilities at the time of bond application.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested rule language to specify that the financial requirements under §293.47(a) should be met in order to issue bonds for road facilities.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested adding rule language to specify that an approval statement of the preliminary plans by the entity that is to operate and maintain the roads should be provided, as referenced in Texas Transportation Code, §§441.014 - 441.017.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

UDAC suggested deleting the provision regarding funding of mitigation costs related to roads and the provision limiting funding of roads outside a district to one mile from its boundary.

**The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.**

**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 Texas.

The adopted amendment implements TWC, §5.103.

**§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 5.701, 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, §293.12**

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §65.020 and §65.021, as amended by HB 1673, which provides that special utility districts may be created for specific purposes set out in a resolution; and, 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 Texas.

The adopted amendments implement TWC, §65.020 and §65.021, and TWC, §5.103.

**§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;

(E) a request specifying each purpose for which the proposed district is being created; and

(F) 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.

**§293.12. Creation Notice Actions and Requirements.**

(a) On receipt by the executive director of all required documentation associated with an application for creation of a district by the commission in accordance with Texas Water Code (TWC), Chapter 51, multi-county Water Control & Improvement Districts or single county Water Control and Improvement Districts requesting additional powers; Chapter 54, Municipal Utility Districts; Chapter 55, Water Improvement Districts; Chapter 58, multi-county Irrigation Districts; Chapter 59, Regional Districts; Chapter 65, Special Utility Districts; and Chapter 66, Storm Water Control Districts, the executive director shall notify the chief clerk that the application is administratively complete.

(b) For those applications described in subsection (a) of this section, the chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. The applicant shall cause the notice to be published as follows:

(1) notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district is proposed to be located with the last publication not later than the 30th day before the date on which the commission may act on the application, and

(2) not later than the 30th day before the date on which the commission may act on the application, the notice must be posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.

(c) For those applications described in subsection (a) of this section, the commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

(d) For a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, which includes transfer of the certificate of convenience and necessity, the applicant shall also, unless waived by executive director, mail copies of the notice to customers of the water supply corporation and other affected parties at least 120 days prior to approval. Such notice shall include the following:

(1) name and business address of the district;

(2) a description of the service area involved;

(3) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and

(4) a statement that if a hearing is granted, persons may attend the hearing and participate in the process.

(e) If a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, contains a request for approval of an impact fee, the applicant shall comply with the notice provisions of §293.173 of this title (relating to Impact Fee Notice Actions and Requirements).

(f) Regardless of whether a public hearing is held or not, for an application for creation of a special utility district in accordance with TWC, Chapter 65, the commission may only consider a purpose for which the district is being created that is specified in the resolution.

(g) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts are as follows.

(1) The chief clerk shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.

(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.

**SUBCHAPTER C: SPECIAL REQUIREMENTS FOR**

**GROUNDWATER CONSERVATION DISTRICTS**

**§§293.20, 293.22, 293.23**

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, Chapter 36, as amended by HB 1763, 79th Legislature, which revised notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts (GCD) and management planning and joint management planning requirements for GCD; and, 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 Texas.

The adopted amendments implement TWC, Chapter 36, and TWC, §5.103.

**§293.20. Records and Reporting.**

(a) Each groundwater conservation district created according to Texas Water Code (TWC), Chapter 36 shall comply with the statute. Districts created by special acts of the Texas Legislature must comply with all statutory requirements contained in the special act and with the provisions of TWC, Chapter 36 that do not conflict with the special act.

(b) Districts are required to submit to the executive director the following documents:

(1) a certified copy of the legislative act creating the district within 60 days after the district is created;

(2) a certified copy of the order of the district's board of directors canvassing the confirmation election and declaring the confirmation election results according to TWC, §36.017(e);

(3) a certified copy of the order of the district's board of directors changing the boundaries of the district, a metes and bounds description of the boundary change, and a detailed map showing the boundary change within 60 days after the date of any boundary change; and

(4) a written notification to the executive director of the name, mailing address, and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment according to TWC, §36.054(e).

(c) Each district is required under TWC, §36.1071 to adopt a comprehensive management plan and adopt rules that are necessary to implement the management plan. In accordance with TWC, §36.1072, the management plan must be adopted by the district and submitted to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required . The management plan is subject to approval by the executive administrator of the Texas Water Development Board or the Texas Water Development Board upon appeal. After approval, each district

must readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years.

(1) Each district must forward a copy of its approved groundwater management plan to the regional water planning group for the planning region in which the district is located and provide confirmation to the executive director that such action has been taken.

(2) Each district must forward a copy of its approved groundwater management plan to the other districts that are included with the district in a common groundwater management area and provide confirmation to the executive director that such action has been taken.

(3) Each district must provide a copy of an existing, new, or amended approved groundwater management plan to the executive director.

(d) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions related to noncompliance review under TWC, Chapter 36, Subchapter I and §293.22 of this title (relating to Noncompliance Review and Commission Action).

(e) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions.

**§293.22. Noncompliance Review and Commission Action.**

(a) Purpose. The purpose of this section is to set out procedures for commission review of groundwater conservation district (GCD) noncompliance with requirements of Texas Water Code (TWC), Chapter 36. This section provides a process for a GCD to achieve compliance, enforcement procedures if compliance is not achieved, and commission enforcement actions. A groundwater management plan noncompliance review and commission action are required under TWC as the result of a GCD's failure to:

(1) adopt a groundwater management plan in accordance with TWC, §36.1071 and §36.1072 and submit the plan to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required;

(2) achieve approval of a groundwater management plan, an amended groundwater management plan, or a readopted groundwater management plan from the executive administrator or the Texas Water Development Board as provided by TWC, §36.1072 and §36.1073;

(3) readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years after the date of management plan approval;

(4) forward a copy of its approved groundwater management plan to the other GCDs that are included with the district in a common groundwater management area (GMA);

(5) be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the district's performance as provided by TWC, §36.302; or

(6) adopt, implement, or enforce district rules to protect groundwater as evidenced in a report prepared by a commission-appointed review panel as provided by TWC, §36.108 and §293.23 of this title (relating to Petition Requesting Inquiry in Groundwater Management Area).

(b) Noncompliance review. The executive director shall investigate the facts and circumstances of any violations of this chapter or order of the commission under this chapter or provisions of TWC, §§36.301, 36.3011, and 36.302.

(1) The executive director may attempt to resolve any noncompliance set out in subsection (a) of this section with the district. After review of the facts and identification of noncompliance issues, the executive director may propose to resolve the issue with the district through a compliance agreement. The compliance agreement must clearly identify the noncompliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

(2) If the executive director proposes a compliance agreement, the district shall be provided a specified time frame not to exceed 60 days after the date of receipt of the compliance agreement, to consider and agree to the terms of the compliance agreement and schedule. If the district wants to negotiate the compliance agreement, it must contact the executive director within ten days of receipt of the compliance agreement so that the final compliance agreement can be considered by the district and its board of directors within the 60-day time frame.

(3) If the district agrees with and signs the compliance agreement, the executive director shall monitor the district's implementation of agreement provisions within the agreed schedule. If the district accomplishes compliance within the agreed schedule, the executive director shall notify the district that it has achieved compliance and is no longer under review by the commission.

(c) Executive director recommendations filed with commission. If unable to resolve the violation under subsection (b) of this section, or if the facts of the noncompliance issue warrant, the executive director shall follow the procedures for commission enforcement actions set out in Chapter 70, Subchapter C of this title (relating to Enforcement). The executive director shall prepare and file a written report with the commission and the district and include any actions the executive director believes the commission should take under TWC, §36.303 and subsection (e) of this section.

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Executive Director's Preliminary Report). If the executive director's report

recommends dissolution of a district or of a board of directors or the placement of a district into receivership, the commission shall hold an enforcement hearing.

(1) The commission shall publish notice once each week for two consecutive weeks before the day of the hearing to receive evidence on the dissolution of a district or of a board of directors or the placement of a district into receivership in a newspaper of general circulation in the area in which the district is located with the first publication being 30 days before the day of hearing.

(2) The commission shall give notice of the hearing by first-class mail addressed to the directors of the district according to the last record on file with the executive director.

(e) Commission enforcement actions. In accordance with TWC, §§36.108, 36.301, and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with TWC, §36.305 and §36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the GCD in accordance with TWC, §36.3035;

(4) dissolving the district in accordance with TWC, §§36.304, 36.305, and 36.308; or

(5) recommending to the legislature in the commission's report concerning priority groundwater management areas required by TWC, §35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that has no outstanding bonded indebtedness.

(1) A district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. If a district is in more than one county, and has outstanding bond indebtedness, it may not be dissolved.

(2) Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(3) The commission shall file a certified copy of an order for the dissolution of a GCD in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the Secretary of State.

(g) Dissolution of board. If the commission enters an order to dissolve the board of a GCD, the commission shall notify the county commissioners court of each county which contains territory in the district. The commission shall appoint five temporary directors under TWC, §36.016, that shall serve until an election for a new board can be held under TWC, §36.017. However, district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

(h) Receivership. If the commission enters an order to request the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a district, the executive director shall forward the order and the request to the attorney general and provide any relevant commission correspondence. The executive director shall assist the attorney general as requested and shall continue to track the status of attorney general actions.

(i) Appeals. Appeals from any commission order issued under this section shall be filed and heard in the district court of any of the counties in which the district is located.

**§293.23. Petition Requesting Inquiry in Groundwater Management Area.**

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by a groundwater conservation district (GCD) or a person with a legally defined interest in the groundwater within the groundwater management area (GMA) requesting an inquiry related to joint groundwater management planning in the GMA; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.108 and §36.3011. Such petitions must be filed following the procedures prescribed by this section.

(b) Petition requesting commission inquiry. A GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if a district or districts refused to join in the GMA planning process or the GMA planning process failed to result in adequate planning. After the desired future conditions for the GMA have been adopted, a GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if the GMA planning process does not establish reasonable future desired conditions for the aquifers in the GMA.

(1) The petition must include documentation that demonstrates that joint planning meetings have been conducted by the presiding officers, or their designees, of each district located in whole or in part in the GMA. Documentation shall include:

(A) a certified copy of the board resolutions calling for the joint planning between the districts in the GMA;

(B) evidence that joint planning meeting notice was received by the districts in the GMA such as a return receipt for certified mail service;

(C) publishers' affidavits of joint planning meeting notice; and

(D) copies of joint planning meeting minutes and accepted handouts certified by the districts that attended the meetings.

(2) The petition must include a certified statement from the petitioning district's board of directors or from the person with a legally defined interest in the groundwater within the GMA that describes why the petitioner believes that adequate planning was not achieved in the GMA.

(3) The petition must provide evidence that:

(A) a district in the groundwater management area has failed to adopt rules;

(B) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the GMA established during the joint planning process;

(C) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(D) the groundwater in the groundwater management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(4) The petitioner shall provide a copy of the filed petition to all groundwater conservation districts within the groundwater management area within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within the petitioner's GMA.

(5) Any GCD that is within the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(c) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence is not sufficient to show that the items contained in subsection (b)(1), (2), or (3) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district located outside the groundwater management area that is the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.

(4) According to TWC, §36.108, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(d) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(e) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if the items contained in subsection (b)(1) - (3) of this section apply. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (e) of this title.

**SUBCHAPTER D: APPOINTMENT OF DIRECTORS**

**§293.32**

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §54.103, as amended by SB 693, which provides additional qualifications for municipal utility board members; and, 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 Texas.

The adopted amendment implements TWC, §54.103 and TWC, §5.103.

**§293.32. Qualifications of Directors.**

(a) Unless otherwise provided, an applicant for appointment as a director must be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(1) A director of a fresh water supply district created under Texas Water Code, Chapter 53 must be a registered voter of the district but need not own land subject to taxation in the district.

(2) A director of a regional district created for the purposes defined under Texas Water Code, §59.004 must be at least 18 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(3) A director of a special utility district created for the purposes defined under Texas Water Code, §65.012, must be a resident citizen of this state and either own land subject to taxation in the district, or be a user of the facilities of the district or be a qualified voter in the district.

(4) A director of a stormwater control district created for the purposes defined under Texas Water Code, §66.012, must reside within the boundaries of the proposed district but need not be a landowner or qualified voter within the district.

(5) A director of a groundwater conservation district must be a registered voter in the precinct that the person represents pursuant to Texas Water Code, §36.059(b).

(6) A person cannot be appointed to fill a vacancy on the board of a municipal utility district, under Texas Water Code, Chapter 54, if the person:

(A) resigned from that board:

(i) within two years preceding the vacancy date; or

(ii) on or after the vacancy date but before the vacancy is filled; or

(B) was defeated in a directors election held by that district in the two years preceding the vacancy date.

(7) A director shall not be a developer of property in the district, or be related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or other person providing professional services to the district.

(8) A director shall not be an employee of any developer of property in the district, or any director, manager, engineer, attorney, or other person providing professional services to the district, or a developer of property in the district in connection with the district or property located in the district.

(b) As used in this section, a developer of property in the district means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (See Texas Water Code, §49.052(d).)

**SUBCHAPTER E: ISSUANCE OF BONDS**

**§§293.41, 293.44, 293.51**

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §49.181(a), which provides that a district may not issue bonds, with certain exceptions, unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds; TWC, §49.181(a)(4), as amended by HB 828, which exempts certain refunding bonds from commission bond approval; TWC, §49.218(a), as amended by HB 1644, which authorizes districts to use bond proceeds to acquire a certificate of convenience and necessity, or contractual right to use capacity in facilities or acquire facilities; TWC, §54.209, as amended by HB 1208, which provides limitations on the use of eminent domain by municipal utility districts; and, 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 Texas.

The adopted amendments implement TWC, §49.181(a), TWC, §49.181(a)(4), TWC, §49.218(a), TWC, §54.209, and TWC, §5.103.

**§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;

(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; or

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection.

(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 capacity in or acquire facilities for water, sewer, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, sewer, drainage, or other 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 the providing entity has adopted a uniform service plan for such water, sewer, drainage, and other 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.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of convenience and necessity (CCN), contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection and Chapter 291, Subchapter G of this title (relating to Utility Regulations).

**§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. Districts operating under Texas Water Code, Chapter 54, except one affected by House Bill 2965, 76th Legislature, 1999, are prohibited from exercising the power of eminent domain outside the district’s boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility except a trail;

(3) a site for a trail on real property designated as a homestead as defined by Texas Property Code, §41.002; or

(4) an exclusive easement through a county regional park.

(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 sation, 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.

**SUBCHAPTER F: DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES**

**§293.69**

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, Chapters 51 and 54, as amended by HB 1644, which authorizes water control and improvement districts (WCID) and municipal utility districts (MUD) to enter into contracts with other districts or water supply corporations providing for the WCID or MUD to acquire facilities and then convey them to the other districts or WSC; and 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 Texas.

The adopted amendment implements TWC, Chapters 51 and 54, and TWC, §5.103.

**§293.69. Purchase of Facilities.**

(a) A district shall not purchase facilities financed or constructed by a developer, investor owned utility or water supply corporation in contemplation of sale to the district or assume facility contracts from the developer or reimburse the developer, investor owned utility or water supply corporation for funds advanced to finance construction of facilities until the executive director has given written authorization to finalize the purchase or reimbursement. Prior to requesting authorization to purchase, the district shall require its engineer to inspect the facilities and provide a written report of

the condition of the facilities as they relate to the plans and specifications and note any deficiencies. A copy of the report must be submitted to the executive director along with the request for authorization to purchase. The executive director may inspect the facilities. Subject to the requirements contained in this subsection, the executive director shall issue his written approval or disapproval of such proposed purchase within 30 days after receipt of written request from a district or a district's authorized representative. If substantial deficiencies are found, the executive director may require the district to obtain an appraisal reflecting the adjusted value of the deficient facilities or deny purchase until repairs are made. The written approval shall be valid for 120 days.

(b) If the purchase of facilities or reimbursement of funds to the developer, investor owned utility or water supply corporation is not completed within 120 days after the date of the executive director's written approval, the district shall again obtain the written approval as provided herein.

(c) If the purchase is for existing facilities which have no active meters or connections (dormant), the following shall apply:

(1) water lines shall be flushed and disinfected to meet minimum standards as outlined in §290.44(f) of this title (relating to Sanitary Precautions and Disinfection);

(2) water lines must have been pressure tested within the two years prior to the purchase; and

(3) for wastewater lines, an infiltration, exfiltration, or low-pressure air test is recommended and may be required if the line has been dormant for the previous 12 months.

(d) The inspection of all underground lines should include a visual inspection above ground for depressions or sinkholes.

(e) The seller of the facilities shall be responsible for cleaning out all pipes, inlets or manholes, and outfalls which are not properly operating.

(f) The district shall not be responsible for the cost of repairs needed as a result of negligence or improper construction.

(g) Costs for testing of the facilities may be eligible for reimbursement by the district upon commission approval.

(h) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party; however, if the conveyance is to a municipality in whose limit or extraterritorial jurisdiction the district is located, the municipality assumes all costs of operation, repair, and maintenance, and the municipality has indicated in writing to the district that it waives any requirement for an inspection under this section, then this section is not applicable.

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

**§§293.111, 293.112, 293.113**

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, Chapters 51 and 54, as amended by HB 1644, which authorizes water control and improvement districts (WCID) and municipal utility districts (MUD) to enter into contracts with other districts or water supply corporations providing for the WCID or MUD to acquire facilities and then convey them to the other districts or WSC; and 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 Texas.

The adopted amendments implement and TWC, Chapters 51 and 54, and TWC, §5.103.

**§293.111. Water and Wastewater Service Lines and Connection.**

(a) All water districts which provide or propose to provide water and wastewater service shall:

(1) adopt regulations governing the construction of commercial and/or household service lines and connections to the district's water and wastewater system;

(2) complete and have operable water and wastewater lines and a treatment plant before any connections are authorized;

(3) establish an inspection program to ensure that all new commercial and household connections are made in accordance with accepted construction practices prior to authorizing covering (back fill) of the service line trench;

(4) require that the district's inspector certify in writing that the connection was installed in accordance with accepted construction practices and in compliance with the district's regulations governing this type of work;

(5) submit for the executive director's approval copies of its regulations, inspection procedures, method of certification, and method of financing;

(6) upon submission of each bond application, document to the executive director that a water and wastewater service connection inspection program is in force for all new connections and that certification by the district's inspector of compliance with district rules is on file in the district's records.

(b) Suggested regulations for wastewater systems may be obtained from the executive director upon request. Strict enforcement of such regulations will eliminate infiltration/inflow problems in service lines, sewage treatment plant overload and, as a result, reduce operation and maintenance costs.

(c) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party.

**§293.112. Water, Wastewater and Drainage Facilities.**

(a) All water districts that provide or propose to provide water or wastewater service to residential retail or commercial customers shall adopt rules that require inspection and repair of all damages to facilities the district is responsible for maintaining prior to initiation of service. The rules must, at a minimum:

(1) require that the district's operator or the district be notified prior to making any improvement or starting any construction on property within the district if such improvement, construction or equipment used in the construction will be within easements, rights-of-way or property where district facilities are located;

(2) require that an inspection be completed by the district's operator or the district to verify district facilities prior to starting construction;

(3) require that an inspection be completed by the district's operator or the district to verify district facilities after completion of construction; and

(4) require that any damages found be repaired to the satisfaction of the district or that reimbursement for repairs be made to the district before service is initiated.

(b) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party.

**§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.

(c) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party.