

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§293.11, 293.32, 293.41, 293.63, 293.201, and 293.202.

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

The commission has the statutory responsibility 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 and 49 through 67. Additionally, commission oversight of district bonds may include review of compliance with bidding procedures allowed by Local Government Code, Chapter 271. The commission oversees approximately 1,300 active and approximately 500 inactive 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.

During the 80th Legislative Session, 2007, House Bill (HB) 576, HB 1127, HB 1886, HB 2984, HB 3378, HB 3770, and Senate Bill (SB) 657 were passed which amended TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 271. The proposed rulemaking would establish new requirements or revise existing requirements relating to the administration of water districts and the commission's supervision over districts' actions.

HB 576, 80th Legislative Session, 2007, amends TWC, §49.271(c) to require that a district must accept a bid bond as a bid deposit if a contract is over \$250,000.

HB 1127, 80th Legislative Session, 2007, amends TWC, §49.4645(a) to allow districts that are outside of planned community of at least 15,000 acres and within Montgomery County to issue bonds supported by taxes to fund recreational facilities.

HB 1886, 80th Legislative Session, 2007, amends Local Government Code, Chapter 271 to add Subchapter J to allow a local governmental entity, as defined in the bill, limited use of a design-build process to construct defined civil works projects.

HB 2984, 80th Legislative Session, 2007, amends TWC, §53.063 to revise the qualifications to be a supervisor on a board of a Fresh Water Supply District (FWSD), except for a FWSD located wholly or partly in Denton County.

HB 3378, 80th Legislative Session, 2007, amends TWC, §54.016 to add subsections (i) and (j) to allow a city with a certain population, when consenting to the creation of a district or annexation of land by a district, to require that a district's water system meets the fire flow requirements adopted by the city.

HB 3770, 80th Legislative Session, 2007, amends TWC, §54.234 to: allow a petitioner seeking creation of a municipal utility district (MUD) to also request road powers at the time of creation; delete the requirement to have taxing authority before acquiring road powers; delete the requirement for preliminary plan approval by the Texas Transportation Commission; and, define the types of roads that can be acquired, constructed, and financed by a MUD, and conveyed to a municipality, county, or state for operation and maintenance.

Senate Bill (SB) 657, 80th Legislative Session, 2007, amends: TWC, §49.271(c) to increase from \$25,000 to \$50,000 the threshold for which a bidder is required to submit a security deposit; TWC, §49.273(d), (e), and (f) to increase thresholds from \$25,000 to \$50,000 for the requirement to advertise and from \$15,000 to \$25,000 for the requirement to solicit at least three competitive bids; and, TWC, §49.273 to add subsection (m) to allow the board of a special law district to elect to contract in accordance with TWC §49.273, even if it conflicts with provisions in the district's special law.

#### SECTION BY SECTION DISCUSSION

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

The commission proposes to amend §293.11(a)(3)(B) to reflect that a city, in consenting to the creation of a district, may impose a restriction requiring that a district's system meet fire flow requirements. The commission proposes this change to implement TWC, §54.016(i), as added by HB 3378, 80th Legislative Session, 2007. The change made by HB 3378, 80th Legislative Session, 2007, to add TWC, §54.016(i) applies to a city with a population of 500,000 or more located within a county with a population of at least 1.4 million and with the county also having two or more cities with a population of at least 300,000.

The commission proposes to amend §293.11(d) to: add §293.11(d)(11) to reflect that a petitioner seeking creation of a MUD may also request that road powers be granted, and renumber existing §293.11(d)(11) as §293.11(d)(12). The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

##### *§293.32. Qualifications of Directors.*

The commission proposes to amend §293.32(a)(1) to reflect revised qualifications for a supervisor on a board of a FWSD, except for a FWSD located wholly or partly in Denton County. The commission proposes this change to implement TWC, §53.063, as amended by HB 2984, 80th Legislative Session, 2007.

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

The commission proposes to amend §293.41(e) to reflect that a district located outside of a planned community of at least 15,000 acres and wholly or partly within Montgomery County may issue bonds supported by taxes to fund recreational facilities. The commission proposes this change to implement TWC, §49.4645, as amended by HB 1127, 80th Legislative Session, 2007.

*§293.63. Contract Documents for Water District Projects.*

The commission proposes to amend §293.63(4) to reflect that a district must accept a bid bond, meeting all applicable requirements, as a bid deposit if a contract is over \$250,000. The commission proposes this change to implement TWC, §49.271(c), as amended by HB 576, 80th Legislative Session, 2007.

The commission proposes to amend §293.63(4) to reflect an increase in the threshold from \$25,000 to \$50,000 for which a bidder is required to submit a security deposit. The commission proposes this change to implement TWC, §49.271(c), as amended by SB 657, 80th Legislative Session, 2007.

The commission proposes to add §293.63(8) to reflect: an increase in the threshold from \$25,000 to \$50,000 for the requirement to advertise a district project; an increase in the threshold from \$15,000 to \$25,000 for the requirement to solicit at least three competitive bids; and a change in the notice

publication requirement from three to two consecutive weeks. The commission proposes this change to implement TWC, §49.273(d), (e), and (f), as amended by SB 657, 80th Legislative Session, 2007.

The commission proposes to add §293.63(9) to reflect that the board of a special law district may elect to contract in accordance with TWC, §49.273, even if it conflicts with provisions in the district's special law.

The commission proposes this change to implement TWC, §49.273(m), as added by SB 657, 80th Legislative Session, 2007.

The commission proposes to add §293.63(10) to reflect that a district with a population of more than 100,000 may use on a limited basis the design-build process to construct defined civil works projects.

The commission proposes this change to implement Local Government Code, Chapter 271, Subchapter J, as added by HB 1886, 80th Legislative Session, 2007. The changes made by HB 1886, 80th Legislative Session, 2007, to add Local Government Code, Chapter 271, Subchapter J, regarding districts would apply to less than one percent of the total number of water districts subject to Chapter 293.

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

The commission proposes to amend §293.201 to reflect that road powers may be obtained at the time of creation of a MUD in addition to the existing provision for obtaining road powers after creation, and state the eligibility of roads that can be acquired, constructed, and financed by a MUD, and conveyed to a municipality, county, or state for operation and maintenance. The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

*§293.202. Application Requirements for Commission Approval.*

The commission proposes to amend §293.202 to: place existing requirements under new subsection (a) and modifying those requirements to reflect that road powers in lieu of road utility district powers can be obtained; delete the requirement that a MUD have taxing authority to obtain road powers; and delete the requirement that preliminary plans be approved by the Texas Transportation Commission. The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

The commission proposes to amend §293.202 to add subsection (b) to reflect that road powers may be obtained at the time of creation of a MUD with applicable application requirements. The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The agency will implement the proposed rules utilizing existing agency resources.

During the 80th Legislature, Regular Session, HB 576, HB 1127, HB 1886, HB 2984, HB 3378, HB 3770, and SB 657 were passed to amend TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 271. The proposed rulemaking would revise existing requirements or establish new requirements required by this legislation relating to the administration of water districts and the commission's supervision over the actions of these local governments. Specifically, the proposed rulemaking would:

require the acceptance of bid bonds for contracts over \$250,000; allow certain districts in Montgomery County to issue tax supported bonds to fund recreational facilities; allow the construction of defined civil works projects under certain conditions; revise the qualifications for supervisors on the board of certain FWSDs except for those in Denton County; require water districts to adopt municipal fire flow requirements under certain conditions; allow the request of authorization to build roads under certain conditions at the time there is a request to create MUD; and increase the required threshold amounts for the solicitation of competitive bids and security deposits.

There are approximately 1,300 active water districts, which include 718 MUDs in the state. Additionally, staff estimates that it processes 50 MUD creations per year. The proposed rules are not expected to have a significant fiscal impact on these water districts because they are largely voluntary in nature. Water districts in Montgomery County can choose whether they wish to construct new recreational facilities. Municipalities can choose to consent to the creation of a water district or to a district's annexation of land. Provisions of the proposed rules that govern the conduct of purchasing decisions should provide districts with more efficient, protective administrative processes and save an estimated \$2,000 in advertising costs by not having to solicit bids on projects costing less than \$50,000. If a petitioner seeking creation of a MUD also requests road powers at the same time, then this could save a MUD that might later solicit the same road powers about \$30,100 to prepare and submit an application.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased local control of water district actions.

The proposed rules mainly affect local governments. However, a petition for the creation of a MUD may incur costs of approximately \$5,000 to solicit road powers at the same time. This is not expected to have a significant fiscal impact since it is expected that these costs would be recouped through the sale of homes or land in the development.

Businesses that might build recreational facilities in Montgomery County are expected to benefit from the proposed rules since districts in this county could decide to provide more recreational facilities to their constituents.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that might develop land and apply for MUD creation. Any costs incurred by small or micro-businesses that might develop land and submit an application for road powers at the time of applying for the MUD is expected to recoup application fees for road development when homes or land are sold. Small or micro-businesses building recreational facilities in Montgomery County are expected to benefit from increased business revenues since the proposed rules provide districts with more powers to build these facilities.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are needed to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the Texas Administrative Procedures Act. The act defines a "major environmental rule" as "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Texas Government Code §2001.0225(g)(3).

The specific intent of the proposed rules contained herein is to amend the rules to be consistent with recent legislative enactments. Specifically, the proposed rules address the administration of water districts relating to the bidding requirements (HB 576), the use of tax bonds to fund recreational facilities (HB 1127), the ability of a government entity to use a design-build process to construct civil works projects (HB 1886), the qualifications of a FWSD's supervisors (HB 2984), a city conditioning consent on fire flow requirements (HB 3378), acquisition of road powers by a MUD (HB 3770), as well as other bidding requirements (SB 657). The commission has determined that none of the amendments made to implement

the foregoing legislation are made with the specific intent to protect the environment or reduce risks to human health from environmental exposure. Accordingly, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the act.

The commission invites public comment of the draft regulatory impact analysis determination during the public comment period.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to implement certain recently enacted legislation relating to the administration of districts. The proposed rules address the administration of water districts relating to the bidding requirements (HB 576), the use of tax bonds to fund recreational facilities (HB 1127), the ability of a government entity to use a design-build process to construct civil works projects (HB 1886), the qualifications of a FWSD's supervisors (HB 2984), a city conditioning consent on fire flow requirements (HB 3378), acquisition of road powers by a MUD (HB 3770), as well as other bidding requirements (SB 657). This rulemaking substantially advances this stated purpose by making the commission's rules consistent with the new statutory language. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action does not affect private real property.

Promulgation and enforcement of these proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed regulations do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict the owner's right to property. More specifically, these rules implement legislation addressing to the administration of districts relating to the bidding requirements (HB 576), the use of tax bonds to fund recreational facilities (HB 1127), the ability of a government entity to use a design-build process to construct civil works projects (HB 1886), the qualifications of a FWSD's supervisors (HB 2984), a city conditioning consent on fire flow requirements (HB 3378), acquisition of road powers by a MUD (HB 3770), as well as other bidding requirements (SB 657). These provisions do not impose any burdens or restrictions on private real property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require 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.

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

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 27, 2008, at 10:00 AM at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured to receive oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808.

Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2007-047-293-PR. The comment period closes March 31, 2008. Copies of the proposed rules can be obtained from the commission's Web site at

*[http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html)*. For further information, please contact Randy Nelson, Water Supply Division, at (512) 239-6160.

## **SUBCHAPTER B: CREATION OF WATER DISTRICTS**

### **§293.11**

#### STATUTORY AUTHORITY

This amendment is proposed under the authority of Texas Water Code (TWC), §54.016, as amended by House Bill (HB) 3378, which provides that when city consent is required for the creation of a district, the city may require the district's system to meet fire flow requirements; and TWC §54.234, as amended by HB 3770, which provides that a MUD can acquire road powers during the creation process; and TWC, §5.103 and §5.105, which provide the Texas Commission on Environmental Quality with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §§54.016(i), 54.234, and 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) and (i);

(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) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) [(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.

**SUBCHAPTER D: APPOINTMENT OF DIRECTORS**

**§293.32**

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code (TWC), §53.063, as amended by House Bill (HB) 2984, which provides revised qualifications for a supervisor on a board of a FWSD, except one located wholly or partly in Denton County; and, TWC, §5.103, and §5.105, which provide the Texas Commission on Environmental Quality (commission) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §53.063 and §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.]

(A) must be:

(i) a resident of this state;

(ii) an owner of taxable property in the district; and

(iii) at least 18 years of age; or

(B) if the district is located wholly or partly within Denton County 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**

#### **STATUTORY AUTHORITY**

The amendment is proposed under the authority of Texas Water Code (TWC), §49.4645, as amended by House Bill (HB) 1127, which provides that a district located outside of planned community of at least 15,000 acres and wholly or partly within Montgomery County may issue bonds supported by taxes to fund recreational facilities; and, TWC, §5.103, and §5.105 which provide the Texas Commission on Environmental Quality with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §49.4645 and §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, Montgomery (except for land within a planned community of at least 15,000 acres), 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.

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

**§293.63**

STATUTORY AUTHORITY

The amendment is proposed under the authority of the Texas Water Code (TWC), §49.271(c), as amended by House Bill (HB) 576, which provides that a district must accept a bid bond, meeting all applicable requirements, as a bid deposit if a contract is over \$250,000; and as amended by SB 657, which increases the threshold from \$25,000 to \$50,000 for which a bidder is required to submit a security deposit; and TWC, §49.273(d), (e), and (f), as amended by SB 657, which increases the threshold from \$25,000 to \$50,000 the requirement to advertise a district project, increases the threshold from \$15,000 to \$25,000 the requirement to solicit at least three competitive bids, and a change in the notice publication requirement from three to two consecutive weeks; and TWC, §49.273(m), as added by SB 657, which provides that the board of a special law district may elect to contract in accordance with TWC, §49.273 even if it conflicts with provisions in the district's special law; and, Local Government Code, Chapter 271, Subchapter J, as added by HB 1886, which provides that a district with a population of more than 100,000 may use on a limited basis the design-build process to construct defined civil works projects; and, TWC, §5.103 and §5.105, which provide the Texas Commission on Environmental Quality with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §49.271(c), and §5.103.

**§293.63. Contract Documents for Water District Projects.**

Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). The following specific requirements must apply.

(1) All contract documents shall be prepared in such a manner as to promote competitive bidding and to ensure that all bids are prepared on a common basis.

(2) The instruction to bidders section of the contract documents shall give special attention to the following items.

(A) The basis of award shall be clearly defined. If alternate proposals are to be considered, the instructions to bidders shall clearly state in which order the alternates will be considered in determining the most advantageous bid. If two or more contracts are to be awarded, the instructions to bidders shall clearly indicate if combined bids, or tied bids, will be allowed, or if each contract will be awarded separately.

(B) The contract should clearly provide that alternate bids will not be considered, unless specifically allowed by instructions to bidders and requested in the proposal form.

(C) Specific notice shall be given that qualifying statements or accompanying qualifying letters will be cause for rejection of the bid.

(D) Provision shall be made for prospective bidders to request additional information, explanations, or interpretations regarding contract documents prior to the bid opening. All requests and answers to all such requests shall be given in writing. Answers will be in addendum form to all prospective bidders.

(3) The district shall require the bidder to whom the district proposes to award the contract to submit a statement of qualifications. The statement shall include such data as the district may reasonably require to determine whether the contractor is responsible and capable of completing the proposed project.

(4) For contracts over \$50,000 [\$25,000] the district shall require bidders to submit certified or cashier's checks or a bid bond issued by a surety legally authorized to do business in this state in an amount of at least 2.0% of the total amount of the bid. For a contract greater than \$250,000 the district must accept a bid bond if it meets all requirements. If cashier's checks are required, the checks for all bidders except the three most qualified bidders shall be returned within three days of the bid opening.

(5) The district shall require that bidders submit, along with the bid, the name of the person, firm, or corporation that will execute payment and performance bonds.

(6) The district may establish criteria for acceptability of the surety company issuing payment and performance bonds including, but not limited to:

(A) authorization to do business in Texas; and

(B) authorization to issue payment and performance bonds in the amount required for the contract and:

(i) a rating of at least B from Best's Key Rating Guide; or

(ii) if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such performance and payment bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation. The district shall satisfy itself that such surety company and bonds meet such criteria.

(7) The district shall satisfy itself that all persons executing the bonds are duly authorized by the laws of the State of Texas and the surety company to do so.

(8) For contracts over \$50,000, a district's board shall advertise the project once a week for two consecutive weeks. For contracts over \$25,000 but not more than \$50,000, a district's board shall solicit written competitive bids on the project from at least three bidders. For contracts not more than \$25,000, a district's board is not required to advertise or seek competitive bids.

(9) A board of a special law district may elect to contract in accordance with the requirements in Texas Water Code, §49.273, even if those requirements conflict with provisions in the district's special law.

(10) A district with a population of more than 100,000 may utilize the design-build procedure for limited projects as provided in Local Government Code, Chapter 271, Subchapter J.

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

**§293.201, §293.202**

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code (TWC), §54.234, as amended by House Bill (HB) 3770, which provides that road powers may be obtained at the time of creation of a MUD in addition to the existing provision for obtaining road powers after creation, and to state the eligibility of roads that can be acquired, constructed, and financed by a MUD, and conveyed to a municipality, county, or state for operation and maintenance; and, TWC, §5.103 and §5.105, which provide the Texas Commission on Environmental Quality with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §54.234, as amended by HB 3770, and TWC, §5.103.

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

(a) Texas Water Code (TWC), §54.234, authorizes a municipal utility district, or any petitioner seeking the creation of a municipal utility district, [with the power to levy taxes] to petition the commission to acquire road [the] powers [granted under Texas Transportation Code, Chapter 441, to road utility districts] for eligible roads under TWC, §54.234(b), which are conveyed to this state, a county, or municipality for operation and maintenance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A petition for creation of a district submitted under §293.11(a) and (d) of this title (relating to Information Required to Accompany Applications for Creation of Districts) may also include a request for road powers, with information required under subsection (a)(4), and (7) - (9) of this section, to also be provided.