

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §11.1 and §11.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 3560, 80th Legislature, 2007, relates to the transfer of the powers and duties of the Texas Building and Procurement Commission to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. This proposed rulemaking is necessary to update the Texas Commission on Environmental Quality (TCEQ) rules to reflect this transfer of responsibilities.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the rules to be consistent with Texas Register requirements and agency guidelines.

The proposed amendments to §11.1, Historically Underutilized Business Program and §11.3, Bid Opening and Tabulation, would change the name of the referenced agency from the Texas Building and Procurement Commission to Texas Comptroller of Public Accounts, Texas Procurement and Support Services.

In proposed §11.1, the opening paragraph relating to the commission adopting by reference the rules of the Texas Comptroller of Public Accounts is now designated as subsection (a) and an old Texas Register reference was removed. Added is proposed subsection (b) that references Texas Government Code, §2161.003.

In proposed §11.3(a) references to 1 TAC §113.5(b) and an old Texas Register citation are proposed to be deleted. In proposed subsection (c), relating to the location of copies of the rule, is removed.

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 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 proposed rules are administrative in nature and update agency rules concerning Historically Underutilized Businesses (HUBs) for administrative changes made by HB 3560, 80th Legislature, Regular Session. The legislation transferred certain procurement provisions from the Texas Facilities Commission (TFC) to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. The proposed rules update the agency's procurement provisions to reflect the change of the state oversight agency to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services and refer to the appropriate legal citations. There will be no changes in the manner in which the agency conducts procurement operations, and no fiscal implications are anticipated for the agency or local governments.

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 consistent with state law.

The proposed rules are administrative in nature and will not affect the manner in which the agency

conducts procurement operations. Individuals and businesses will not be affected by the update in agency rules since any changes reflect the correct state oversight agency and legal citations. Entities that sell to the state must comply with state procurement laws to be an eligible vendor.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules, which are administrative in nature and reflect current legal citations that now govern state procurement actions.

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 implement state law and, because of their administrative nature, 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.

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 proposed rulemaking is not subject to

§2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act.

The intent of the proposed rulemaking is to implement HB 3560 and to update agency names and references to the rules. The changes are not expressly to protect the environment and reduce risks to human health and the environment. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to implement legislation and to update agency names and correct references to rules.

The proposed rules will substantially advance this stated purpose. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property.

Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on June 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, 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 through the eComments system. All comments should reference Rule Project Number 2008-009-011-AS. The comment period closes June 22, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Wendy Cox or Joe McGill, Administrative Support Services Division, (512) 239-1006.

SUBCHAPTER A: HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

§11.1

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The proposed amendment implements House Bill 3560, 80th Legislature, 2007.

§11.1. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services [Texas Building and Procurement Commission] in 34 TAC §§20.11 - 20.22 and §§20.26 - 20.28 [1 TAC §§111.11 - 111.22 and §§111.26 - 111.28] (relating to Historically Underutilized Business Program)[, as amended through the November 5, 2004, issue of the Texas Register (29 TexReg 10249)].

(b) The adoption of this rule is required by Texas Government Code, §2161.003, 76th Legislature, 1999.

SUBCHAPTER C: BID OPENING AND TABULATION

§11.3

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The proposed amendment implements House Bill 3560, 80th Legislature, 2007.

§11.3. Bid Opening and Tabulation.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services [Texas Building and Procurement Commission] in 34 TAC §20.35(b) [1 TAC §113.5(b)] (relating to Bid Submission, Bid Opening, and Tabulation)[, as amended through the September 8, 2000, issue of the Texas Register (25 TexReg 8848)].

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d), 75th Legislature, 1997.

[(c) Copies of the rule are filed in the Texas Commission on Environmental Quality's (TCEQ) Library, located at 12100 Park 35 Circle, Building A, Austin, and at all TCEQ regional offices.]