

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §293.11, concerning Information Required To Accompany Applications for Creation of Districts; §293.12, concerning Creation Notice Actions and Requirements; §293.32, concerning Qualifications of Directors; §293.33, concerning Commission Appointment of Directors; §293.42, concerning Submitting of Documents; §293.44, concerning Special Considerations; §293.46, concerning Construction Prior to Commission Approval; §293.47, concerning Thirty Percent of District Construction Costs To Be Paid by Developer; §293.48, concerning Street and Water, Wastewater and Drainage Utility (Street and Utility) Construction by Developer; §293.51, concerning Land and Easement Acquisition; §293.54, concerning Bond Anticipation Notes (BAN); §293.59, concerning Economic Feasibility of Project; §293.88, concerning Petition for Authorization To Proceed in Federal Bankruptcy; §293.97, concerning Adoption of Fiscal Year and Operating Budget; §293.131, concerning Authorization for Dissolution of Water District by the Commission; and §293.143, concerning Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund.

The commission also proposes the repeal of §293.96, concerning Miscellaneous Reports to be Submitted to the Executive Director.

EXPLANATION OF PROPOSED RULES

The purpose of the proposed amendments to Chapter 293 is to establish new requirements relating to the administration of water districts and the commission's supervision over their actions under Chapters 49, 51, 53, and 65 of the Texas Water Code, as amended by House Bill (HB) 846 and HB 1069, 76th

Legislature, 1999. Specifically, the rule amendments would allow sewer service corporations to petition for conversion to a special utility district; clarify other rules related to district creation; update the qualifications for directors of fresh water supply districts; adopt procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopt procedures for expedited review of certain bond applications; revise provisions concerning reimbursement for district project costs; add provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allow developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revise rules related to bond feasibility analysis; increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repeal or delete unnecessary rules; and correct and clarify the rules.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water related districts and to approve the issuance and sale of bonds for district improvements in accordance with the Texas Water Code. Chapter 293, entitled "Water Districts," governs the creation, supervision, and dissolution of all general and special law districts and governs the conversion of districts into municipal utility districts. There are approximately 1,300 water districts in Texas which are overseen by the commission. Chapter 293 provides the rules which govern the review of bonds for engineering standards and economic feasibility of applications in order to assure that construction projects are designed and completed with the proper approvals, thereby ensuring quality service. The chapter is also important because it ensures that bond funds are used for the benefit of the residents of

the districts and that proceeds from bond issues are used to promote a district's intended purpose.

In 1989, after many water districts were found to be in financial distress or bankruptcy and could not meet debt obligations, the commission adopted its feasibility rules to protect the integrity of the water district bonds and to prevent further defaults. These proposed rules clarify provisions in order to further protect the integrity of the water district bonds.

Changes have also been proposed to amend Chapter 293 as a result of HB 846 and HB 1069. First, HB 846 amends provisions in Chapters 36, 49, and 53 of the Texas Water Code relating to the administration, management, operation, and authority of water districts and authorities. The proposed amendments to Chapter 293 implement provisions of HB 846 that authorize the commission to appoint directors to fill positions on district boards that have been vacated for more than 90 days, revise statutory provisions concerning types of expenses that districts may finance, and revise the qualifications for directors of fresh water supply districts. The other portions of HB 846 do not require changes to the commission's rules.

HB 1069 eliminates the requirement in Chapter 65 of the Texas Water Code that a water supply corporation (WSC) must have been providing service prior to January 1, 1985 in order to be eligible to convert to a special utility district (SUD). No changes to the commission's rules were necessary to implement this statutory change. HB 1069 also amends Texas Water Code, Chapter 65, to allow sewer service corporations, as well as water supply corporations, to convert to SUDs. There are currently approximately 900 WSCs operating in the state.

SECTION BY SECTION DISCUSSION

The following paragraphs describe the proposed amendments to and the repeal in Chapter 293.

The proposed amendments to §293.11(h) implement HB 1069, which amended Chapter 65 of the Texas Water Code to allow sewer service corporations, along with water supply corporations, to petition the commission for conversion to a special utility district. The proposed amendments also clarify the section.

Section 293.12(a) is proposed to be amended to specify that the commission may also approve the creation of single county water control and improvement districts if additional powers are requested that are not otherwise available from the county, as provided by Texas Water Code, §51.333. Section 293.12(b) is proposed to be amended to provide that notice of an application to create a district must be posted on a bulletin board used for posting legal notice in each county where the proposed district is to be located, not later than 30 days before the commission may act on the application. Additional changes are proposed in §293.12 for compatibility with *Texas Register* formatting requirements.

Section 293.32(a) is proposed to be amended to provide the qualifications for a director of a fresh water supply district under Texas Water Code, §53.063, as amended by HB 846, and to clarify the section.

The title of §293.33 is proposed to be amended from “Commission Appointment of Directors” to “Commission Appointment of Directors to Fill Vacancies” in order to specify that the section applies to the appointment of directors to fill vacancies on district boards. The procedures for the appointment of

directors at the time of a district's creation are provided in §293.11 and §293.13. Section 293.33 is proposed to be amended to provide the circumstances under which the commission may appoint directors to fill vacancies; to identify which procedures apply to a request for appointment of a director or directors as a result of the number of board members being reduced to less than a quorum; and to implement Texas Water Code, §49.105(c), as amended by HB 846, by adding procedures to request appointment of a director to fill a position that has been vacant for more than 90 days.

The title of §293.42 is proposed to be changed from "Submitting of Documents" to "Submitting of Documents and Order of Review" in order to more accurately reflect the subject matter of the section. Section 293.42(b) is proposed to be added to allow for the expedited review of bond applications that are submitted after the district meets certain criteria indicating its financial soundness and that fully comply with the commission's feasibility rules. Section 293.42(c) is proposed to be added to allow for the expedited review of non-developer bond applications for districts that are near full development and have a low tax rate. Proposed §293.42(d) provides that an application that does not meet the requirements for expedited review as initially submitted must be withdrawn and resubmitted with an additional filing fee in order to qualify for expedited review. Proposed §293.42(e) sets out the applicability of the expedited review processes to applications pending on the effective date of the rule changes.

The proposed amendments to §293.44(a)(3), relating to developer reimbursements from bond proceeds, would clarify language in the rule for ease of interpretation without changing the intent. If adopted, the proposed amendments to §293.44(a)(9) and (10) would add language to clarify that §293.47, relating to

developers' 30% contribution, applies. The proposed amendments to §293.44(a)(12) would clarify the criteria for determining what portion of the costs for combined lake and detention facilities a district may pay. The proposed amendment to §293.44(a)(13) would correct a grammatical error and clarify the rule so that all districts are allowed to fund a pro rata share of bridges and culverts which further the district's purposes. The existing rule allows only two types of districts created prior to September 1, 1989 to fund these costs. A new §293.44(a)(21) is proposed to be added to allow districts to finance certain costs associated with flood plain and wetlands regulation.

The proposed new §293.44(a)(22) and (23) implement amendments to Texas Water Code, §49.155 made by HB 846. The revised statute allows districts to pay for costs associated with requirements for federal stormwater permits and endangered species permits. The new §293.44(a)(22), as proposed, would provide that if a district finances costs associated with endangered species permits, the costs must be divided equally between the district and the developer, with the district's share further subject to the developer's 30% contribution under §293.47. The commission also invites comments on three alternative approaches to address this issue. The first would be to require that costs associated with endangered species permits be divided equally between the district and the developer, but with the district's share not subject to the developer's 30% contribution. The second alternative would be to allow a district to finance only that portion of endangered species permit costs attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees, with the district's share not subject to the developer's 30% contribution. This second alternative would be similar to the proposed new §293.44(a)(21). Finally, in response to stakeholder input, the commission invites comments on a third alternative, which would be

to allow a district to finance 100% of endangered species permit costs.

Section 293.44(b), relating to the reimbursement of project costs from bond proceeds, is proposed to be amended to add language clarifying how to calculate the value of facilities not constructed by a developer for resale to the district or facilities constructed by a developer in contemplation of resale to the district, but for which original cost documentation is not available. The commission also proposes to delete §293.44(b)(2), which requires that all wastewater permits necessary to serve the projected development be in place in order for a project to be considered feasible, as this requirement is duplicated in §293.59.

Section 293.46(3), relating to construction prior to commission approval, is proposed to be amended to encourage compliance with local and state requirements for plan approval by disallowing reimbursement of any additional costs associated with changes required by an agency having jurisdiction after construction is begun. An amendment to §293.46(5) is proposed to delete an unnecessary grandfather provision concerning construction contracts awarded prior to September 5, 1986.

Changes have been proposed throughout §293.47 to correct grammatical errors and for compatibility with *Texas Register* formatting requirements. The proposed amendments to §293.47(a), related to 30% of district construction costs to be paid by the developer, clarify that these rules apply to all districts except those specifically excluded by the rule and also clarify the exception for districts that have a ratio of debt to assessed valuation of 10% or less. The proposed amendments also add an exception to the

rule for those districts that have entered into an agreement with another political subdivision to receive significant revenues and that meet other criteria concerning buildout and tax rate. This proposal would help increase the financial integrity of district bonds by encouraging developers of in-city districts created after September 1, 1986, and of other commercial districts, to negotiate sales tax and other tax or revenue rebate agreements with the city or other local governments.

The proposed amendments to §293.47(b)(2) would clarify that the total debt used in calculating the 10% debt to assessed valuation ratio includes all bonds of the district, including bonds not approved by the commission, and would add a provision concerning the calculation of the ratio where more than one bond application is pending. The amendments proposed to be made to §293.47(b)(4) and (5) add Fitch IBCA to the list of acceptable investment firms that may rate a district's credit.

The proposed amendment to §293.47(c) updates the rule, which relates to requesting a conditional waiver to the 30% contribution, by deleting the reference to a bond application hearing. The currently applicable statute, Texas Water Code, §49.181, does not require a hearing for commission action on a bond application.

Section 293.47(g) is proposed to be amended to add flexibility to the rule by allowing a developer to satisfy the financial guarantee requirement for the developer's share of costs with an escrow of funds in the name of the district.

Section 293.48 is proposed to be amended to add flexibility to the rule by allowing a developer to

satisfy the financial guarantee requirement for street and utility construction with an escrow of funds in the name of the district or a deferral of reimbursement of bond funds owed. Additional changes are proposed in §293.48 to correct grammatical errors.

Modifications are proposed throughout §293.51 for consistency with *Texas Register* formatting, to correct grammatical errors, and to add appropriate catch lines at the beginning of the subsections for consistency throughout the section. The proposed amendments to §293.51(a) would require that the rights-of-way necessary for roadside ditches be dedicated as easements by the developer. Under the current rule, all sites for drainage channels must be dedicated as easements. The proposed amendments to §293.51(b) would specify the purposes for which a district may acquire land in fee simple, including allowing districts to purchase land for flood plain or wetlands mitigation, for certain drainage channels, and for buffer zones around water and wastewater plants. The rule amendments would also implement Texas Water Code, §49.155(a)(16), which was added by HB 846, by allowing districts to fund a portion of the cost for mitigation sites required for compliance with an endangered species permit.

Proposed amendments to §293.54 will correct grammatical errors. Additionally, §293.54(2) is proposed to be amended to clarify the basis of the opinion given by the district's financial advisor to support issuance of bond anticipation notes. Section 293.54(13) is proposed to be amended to add language providing that the requirement to obtain a street and road construction agreement prior to issuing bond anticipation notes does not apply if the district would otherwise be exempt when issuing bonds.

Changes in §293.59 are proposed to correct grammatical errors and for compatibility with *Texas Register* formatting requirements. The amendments to §293.59(k)(8) would require that for first bond issues supported by taxes, the developer or other landowner or lender's written agreement, waiving the right to reduce the land values used in the feasibility analysis supporting the proposed bonds, must be submitted at the time of filing the bond application rather than prior to the actual approval. The proposed amendments would further require that if such agreements are not voluntarily provided by the owners of developable property who are not receiving bond proceeds, and the value of the property is such that a reduction will significantly (defined as 10% of the current assessed value of the district for an individual and 20% cumulatively) impact the district's projected tax rates, the feasibility analysis used to support the bonds will be based on a reduced value for such properties. The proposed amendments to §293.59(k)(11) would clarify the commission's interpretation of the applicability of specific sections of the rule relating to financial guarantees required for a district's first bond issue. The proposed amendment to §293.59(l)(5)(B) is to correct a grammatical error.

The commission proposes to delete §293.59(m), concerning the feasibility analysis used by the commission when reviewing a benefit assessment bond application. The commission has not received a benefit assessment bond application since adopting this rule. Section §293.59 was adopted as a result of one particular bond application that was submitted by a partially developed district; however, the commission believes that the rule may prohibit some viable districts from using benefit assessment bonds that may be feasible even though they do not comply with the existing rule.

Sections 293.88(b), (c), and (d) are proposed to be amended to clarify that the commission does not

hold contested case hearings on applications by districts to proceed in federal bankruptcy. The applicable statute, Texas Water Code, §49.456, does not provide an opportunity for a contested case hearing. The commission's evaluation is limited to conducting a feasibility review of the district's financial condition to determine whether the district can meet its debts and other obligations through the full exercise of its powers. The commission considers these applications at a regular open meeting.

The commission proposes to repeal §293.96, which requires districts to file with the commission a certified copy of orders canvassing the results of maintenance tax elections and water and wastewater rate orders. These requirements are unnecessary, as the commission does not use the data filed.

Section 293.97(a) is proposed to be amended to specify that the district's fiscal year shall be used for accounting all the district's financial per annum statutory limitations, including the limitations on director fees and per diems under Texas Water Code, §49.060.

Proposed changes in §293.131 are for compatibility with *Texas Register* formatting requirements and to correct a statutory reference. Section 293.131(b) is proposed to be amended to clarify the procedures for the executive director to initiate dissolution of a district on the executive director's own motion and specify the application requirements for a petition for dissolution submitted by a party other than the executive director.

Section 293.143(b) is proposed to be amended to increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and

maintenance fund. Since the adoption of the 1989 water district regulations, the average water and wastewater bills have increased significantly, thereby justifying the change.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 293 are in effect, significant fiscal implications are anticipated for units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments implement certain provisions of HB 846, 76th Legislature, 1999 (an Act relating to the administration, management, operation and authority of water districts and authorities) and HB 1069, 76th Legislature, 1999 (an Act relating to the eligibility of a water supply or sewer service corporation to be converted into a special utility district).

The proposed rules would allow sewer service corporations to petition for conversion to a special utility district and establish new requirements relating to the administration, management, and authority of water districts and authorities.

The rules would allow districts to issue bonds to equally share with a developer the costs of complying with the requirements of an endangered species permit. The rules also allow districts to issue bonds to finance costs related to wetlands and flood plain mitigation. These costs have been paid by the developer in the past.

The permitting costs to comply with an endangered species permit is estimated to be \$100,000. The cost of mitigation of land for endangered species, wetland, and flood plain regulation is estimated to affect ten districts a year at \$2,000 to \$3,000 per acre, purchasing an average 200 acres per bond issue. The estimated cost to districts for complying with endangered species regulation is expected to be from \$250,000 to \$350,000 per bond issue.

The permitting costs for a water utility district to comply with wetland and floodplain regulation is estimated to be \$30,000. The cost of wetland and floodplain mitigation is estimated to be \$50,000 to \$100,000 per bond. These costs may now be paid by the district.

As a result, the anticipated costs to all affected water districts could be \$2.5 million to \$3.5 million per year.

PUBLIC BENEFIT

Mr. Grymkoski also has determined that for each year of the first five years the proposed amendments to Chapter 293 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be that the rules will be clarified and therefore easier to use. The rules would allow districts to issue bonds to equally share with a developer the cost of complying with the requirements of an endangered species permit. The rules also allow districts to issue bonds to finance the costs related to wetlands and flood plain regulation. These costs have been paid by the developer in the past.

It is estimated that developers will save half of the cost of complying with the requirements of an endangered species permit. The permitting costs to comply with an endangered species permit is estimated to be \$100,000 which may be shared equally by the district and the developer. The cost of mitigation of land for endangered species, wetland, and flood plain regulation is estimated to affect ten districts a year at \$2,000 to \$3,000 per acre, purchasing an average 200 acres per bond issue. The estimated cost for complying with endangered species regulation is expected to be from \$500,000 to \$700,000. These costs may now be shared equally by the district and the developer of the district, resulting in a estimated savings of \$250,000 to \$350,000 per bond issue.

It is also estimated that developers will save the costs of complying with wetland and floodplain regulations. The permitting costs for a water utility district to comply with wetland and floodplain regulation is estimated to be \$30,000. The cost of wetland and floodplain mitigation is estimated to be \$50,000 to \$100,000 per bond.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

No adverse fiscal implications are anticipated for any small business or micro-businesses as a result of implementing the proposed amendments. Persons, developers, small businesses, and micro-businesses affected by these rules may experience a cost savings of \$2,000 to \$3,000 per acre, to comply with endangered species permit requirements and costs related to the mitigation of flood plains and wetlands. In complying with endangered species permit requirements and costs related to the mitigation of flood plains and wetlands.

It is estimated that developers will save half of the cost of complying with the requirements of an endangered species permit. The permitting costs to comply with an endangered species permit is estimated to be \$100,000, which may be shared equally by the district and the developer. The cost of mitigation of land for endangered species, wetland, and flood plain regulation is estimated to affect ten districts a year at \$2,000 to \$3,000 per acre, purchasing an average 200 acres per bond issue. The estimated cost for complying with endangered species regulation is expected to be from \$500,000 to \$700,000. These costs may now be shared equally by the district and the developer of the district, resulting in a estimated savings of \$250,000 to \$350,000 per bond issue.

It is also estimated that developers will save the costs of complying with wetland and floodplain regulations. The permitting costs for a water utility district to comply with wetland and floodplain regulation is estimated to be \$30,000. The cost of wetland and floodplain mitigation is estimated to be \$50,000 to \$100,000 per bond.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific purpose of the proposed amendments to Chapter 293 is to establish new requirements relating to the administration of water districts and the commission's supervision over their actions under Chapters 49, 51, 53, and 65 of the Texas Water Code, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999. Specifically, the rule amendments would allow sewer service corporations to petition for conversion to a special utility district; clarify other rules related to district creation; update the qualifications for directors of fresh water supply districts; adopt procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopt procedures for expedited review of certain bond applications; revise provisions concerning reimbursement for district project costs; add provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allow developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revise rules related to bond feasibility analysis; increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repeal or delete unnecessary rules; and correct and clarify the rules. The proposed amendments are not anticipated to have an adverse effect in a material way on 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 and will specifically benefit a sector of the economy and the public by updating and clarifying the rules, making them easier to use; by reducing the costs related to the review of certain bond applications; and by further protecting and enhancing the financial integrity and operations of water districts.

In addition, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result

of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” Specifically, the proposed rule amendments do not exceed a standard set by federal law nor exceed a requirement of a federal delegation agreement or contract, because no federal law or federal delegation agreement or contract applies to the proposed rulemaking. The proposed rule amendments were not developed solely under the general powers of the agency, but rather are also proposed under Texas Water Code, §5.235 and §49.011 and were specifically developed to implement Texas Water Code, §§49.060, 49.105, 49.154, 49.155, 49.158, 49.181, 49.195, 49.231, 49.321- 49.324, 51.063, 51.333, 65.001, 65.014, 65.015, and 65.022, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999, and do not exceed the express requirements of those state statutes. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ANALYSIS

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to adopt new requirements relating to the administration of water districts and the commission’s supervision over their actions under Chapters 49, 51, 53, and 65 of the Texas Water Code, particularly

as amended by HB 846 and HB 1069, 76th Legislature, 1999. The rules will substantially advance this specific purpose by allowing sewer service corporations to petition for conversion to a special utility district; clarifying other rules related to district creation; updating the qualifications for directors of fresh water supply districts; adopting procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopting procedures for expedited review of certain bond applications; revising provisions concerning reimbursement for district project costs; adding provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allowing developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revising rules related to bond feasibility analysis; increasing the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repealing and deleting unnecessary rules; and correcting and clarifying the rules. Promulgation and enforcement of these rules will not burden private real property because private real property is not subject to these rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.) and found that the proposal is a rulemaking identified in the Act's Implementation Rules, 31 TAC §505.11(b), relating to Actions and Rules Subject to the Coastal Management Program, or may affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC

§505.11(a)(6), and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and has found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rules include the goal to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. While these proposed rules do not specifically regulate location or type of development allowed, Chapter 293 provides requirements for developers and for water districts. Section §505.11 of 31 TAC provides the actions and rules that are subject to the CMP. Among the list is the creation of a special purpose district or approval of bonds to construct infrastructure on coastal barriers. As the proposed rules will be effective throughout the state, the CMP policy is applicable. CMP policies applicable to the proposed rules include the administrative policy requiring applicants to provide information necessary for an agency to make an informed decision on a proposed action listed in 31 TAC §505.11 and the standards related to the development of infrastructure on coastal barriers set out in 31 TAC §505.14(m).

The proposed rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The specific purpose of the rules is to adopt new requirements relating to the administration of water districts and the commission's supervision over their actions under Chapters 49, 51, 53, and 65 of the Texas Water Code, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999. The rules will substantially advance this specific purpose by

allowing sewer service corporations to petition for conversion to a special utility district; clarifying other rules related to district creation; updating the qualifications for directors of fresh water supply districts; adopting procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopting procedures for expedited review of certain bond applications; revising provisions concerning reimbursement for district project costs; adding provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allowing developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revising rules related to bond feasibility analysis; increasing the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repealing and deleting unnecessary rules; and correcting and clarifying the rules.

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

The commission seeks public comment on the consistency of the proposed rules.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on May 18, 2000 at 10:00 a.m. at the Texas

Natural Resource Conservation Commission Complex in Building F, Room 2210, located at 12100 Park 35 Circle. 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 and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments regarding this proposal and request for alternatives may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-044-293-WT. Comments must be received by 5:00 p.m., May 22, 2000. For further information or questions concerning this proposal, please contact Sam Jones, P.E., Manager, Utilities and Districts Section, (512) 239-6182, or Michelle Lingo of the Office of Environmental Policy, Analysis, and Assessment, (512) 239-6757.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties

under the laws of this state. The amendments to §293.12 are also proposed under Texas Water Code, §49.011, which requires the commission to establish by rule a procedure for public notice of applications for creation of general law water districts.

The proposed amendments to §293.11 implement Texas Water Code, §§65.001, 65.014, 65.015, and 65.022, as amended by HB 1069. The proposed amendments to §293.12 implement Texas Water Code, §49.011 and §51.333.

SUBCHAPTER B : CREATION OF WATER DISTRICTS

§293.11, §293.12

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

(a) - (g) (No change.)

(h) Creation applications for Chapter 65, Texas Water Code, 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 Texas Water Code, §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 [water supply] corporation, acting through its board of directors, has found that it is necessary and desirable for the [water supply] corporation to be converted into a district. The resolution shall include the following:

(A) - (E) (No change.)

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in [the] Texas Water Code, §65.001(10), to a special utility district shall conform to the legal description of the service area of the [water supply] corporation as such service area appears in the certificate of public convenience and necessity held [issued] by the

[commission or by the Public Utility Commission of Texas to the water supply] corporation. Any area of the [water supply] 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) - (5) (No change.)

(6) a certified copy of a certificate of convenience and necessity held by [issued by the commission or its predecessor agency to] 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) (No change.)

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

(A) (No change.)

(B) a vote by the membership in accordance with the requirements of Texas

Water Code, 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 [water supply] corporation to the special utility district upon dissolution.

(10) - (12) (No change.)

(i) - (j) (No change.)

§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 pursuant to Texas Water Code; [,] Chapter 36, Groundwater Conservation Districts; [,] 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 [paragraph] (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) (No change.)

(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) - (g) (No change.)

SUBCHAPTER D : APPOINTMENT OF DIRECTORS

§293.32, §293.33

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The proposed amendments to §293.32 implement Texas Water Code, §51.063, as amended by HB 846.

The proposed amendments to §293.33 implement Texas Water Code, §49.105, as amended by HB 846.

§293.32. Qualifications of Directors.

(a) Unless otherwise provided, [for] an applicant for appointment as a director [to receive consideration, the following qualifications shall apply.]

[(1) a person shall] 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 [the] 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 [the] 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 [the] 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 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.

(7) 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) (No change.)

§293.33. Commission Appointment of Directors to Fill Vacancies.

(a) The commission may appoint a director or directors to fill a vacancy or vacancies on the board of:

(1) a district that is subject to commission bond review under Texas Water Code, §49.181 if the number of directors is reduced to fewer than a majority or if a vacancy continues beyond the 90th day after it occurs, as provided by Texas Water Code, §49.105(c); and

(2) other districts where specifically provided by law.

(b) Requests for Appointment due to less than a quorum of board members shall be accompanied by the following:

(1) petition signed by a landowner within the district requesting appointment of a director [temporary directors] or directors to fill one or more vacancies on the board;

(2) evidence of each former director's failure or refusal to qualify or serve for each vacancy on the board to be filled;

(3) requests for consideration of appointment as director in the form shown in §293.34 of this title (relating to Form of Affidavit for Appointment as Director) for those persons desiring consideration as director for vacant positions;

(4) certified mail receipt verifying that notice of the application for appointment of directors was sent to the district's official address and each director as shown on the district's latest registration form;

(5) an application fee of \$100; and

(6) any other information as the executive director may require.

(c) The executive director or a landowner within the district may request appointment of a director to fill a vacancy that has not been filled by the remaining board members after the 90th day a position becomes vacant. Any request submitted by a landowner under this subsection shall include:

(1) evidence that the position has been vacant for more than 90 days;

(2) nomination of a candidate who meets the director qualifications as evidenced by

completion of the form shown in §293.34 of this title (relating to Form of Affidavit for Appointment as Director); and

(3) certified mail receipt verifying that a copy of the request to fill the vacancy was sent to the district's official address and each director as shown on the district's latest registration form.

SUBCHAPTER E : ISSUANCE OF BONDS

§§293.42, 293.44, 293.46, 293.47, 293.48, 293.51, 293.54, 293.59

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. The amendments to §293.42 are also proposed under Texas Water Code, §5.235, which provides the commission authority to adopt rules to set fees for the processing of bond applications.

The proposed amendments to §293.42 implement Texas Water Code, §5.235 and §49.181. The proposed amendments to §§293.44, 293.46, 293.47, 293.48, and 293.51 implement Texas Water Code, §49.155, as amended by HB 846, and Texas Water Code, §49.181. The proposed amendments to §293.54 implement Texas Water Code, §49.154. The proposed amendments to §293.59 implement Texas Water Code, §49.181.

§293.42. Submitting of Documents and Order of Review.

(a) Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

(b) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 60 calendar days following submission of the application. In order to qualify for this expedited review, the district's bond counsel, engineer, and financial advisor must sign a certificate which is worded as shown on the form provided by the executive director. The certificate must state that the district's bond counsel, engineer, and financial advisor have reviewed the bond application, that the application is accurate and complete, that the application includes specific documents identified on the form, and that the district's financial status has reached the thresholds provided in §293.59 of this title (relating to Economic Feasibility of Project) as shown by its existing assessed valuation and completion of facilities. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. A bond applicant that seeks conditional approval on the basis of receiving an acceptable credit rating or credit enhanced rating as provided in §293.47(b)(4) and (5) and (c) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) may qualify for expedited review. A bond applicant that seeks approval on the basis of a ratio of debt to certified assessed valuation of 10% or less must provide evidence of that ratio as provided in §293.47(b)(3) of this title to qualify for the expedited review.

(c) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 45 calendar days following submission of the application. The bond application report required in §293.43(5) of this title (relating to Action of the Commission and Bond Proceeds Fee) does not apply to this type of application. If the executive director finds the documentation to be insufficient, the application will not be expedited and

an administrative review letter will be sent. In order to qualify for this expedited review, the applicant must submit a bond application that includes all of the other items listed in §293.43 of this title and the following:

(1) a certificate signed by the district's president, engineer, financial advisor, and bond counsel, which is worded as shown on the form provided by the executive director, which states that less than 20% of the total land area in the district is undeveloped with underground facilities, that the facilities contained in the bond application are for water plant facilities, wastewater treatment plant facilities, major lines to or between such facilities, remote water wells, or for any improvement necessary to serve development in the district as described in §293.83(c)(3) of this title (relating to District Use of Surplus Funds for any Purpose and Use of Maintenance Tax Revenue for Certain Purposes), that no funds are being expended for developer facilities as described in §293.47(d) of this title and no funds are being used to reimburse a developer as described in Texas Water Code, §49.052(d), that the district expects to have a no-growth tax rate of \$0.75 or less calculated in accordance with §293.59(d) of this title after issuance of the proposed bonds, and that the district is legally authorized to issue the bonds;

(2) a summary of costs of the projects to be built, rehabilitated, or repaired;

(3) a debt service schedule and related cash flow schedule showing a no-growth tax rate as defined in §293.59(d) of this title of \$0.75 or less;

(4) a certificate of assessed valuation or estimated assessed valuation as defined by §293.59(d) of this title reflecting a value sufficient to support the no-growth tax rate in paragraph (3) of this subsection; and

(5) copies of permits for all facilities, if required.

(d) A bond application that does not qualify for an expedited review pursuant to subsection (b) or (c) of this section may not become eligible for expedited review unless the applicant requests withdrawal of the pending application in writing and resubmits the filing fee and completed certificate in accordance with subsection (b) or (c) of this section. For the purposes of this subsection, a new receipt date will be assigned and the time requirements of subsection (b) and (c) of this section shall commence upon the date of submission of the signed certificate.

(e) If a complete bond application is pending on the effective date of this section, an applicant may qualify for expedited review under subsection (b) or (c) of this section only upon the submission of a complete response to all outstanding requests for additional information and a certificate stating that a complete application is on file in accordance with subsection (b) or (c) of this section.

§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) - (2) (No change.)

(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 pursuant to §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 [be determined by] the amount of the estimated district share, including any required developer contribution [; provided, however, that in instances where such clearing and grubbing construction contracts are let and awarded in the developer's name and the developer's aggregate share of such costs, including any required developer contribution, exceeds] does not exceed 50% of the total construction contract costs [, the competitive bidding statutes and/or regulations are not considered to be applicable].

(4) - (8) (No change.)

(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

pursuant to §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 pursuant to §293.47 of this title.

(11) (No change.)

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not be paid 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 [districts] share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title [(relating to Thirty Percent of District Construction Costs To Be Paid by Developer)].

(B) Districts [Drainage Districts and Levee Improvement Districts which were confirmed and operating pursuant to the Water Code, Chapters 56 and 57, respectively, prior to September 1, 1989,] 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 crossing must be located entirely or partially within the district's boundaries;]

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

(ii) [(iii)] 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;

(iii) [(iv)] 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 [(relating to Thirty Percent of District Construction Costs To Be Paid by Developer)].

(C) (No change.)

(14) - (20) (No change.)

(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 equally between the district and the developer unless unusual circumstances are present as determined by the commission. 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, "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 stormwater 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 stormwater permit" means a permit for stormwater discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by EPA and Texas Pollutant Discharge Elimination System permits issued by the commission.

(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 [current condition of the facilities and estimated cost of repair,] as evidenced by an on-site inspection.

[(2) In order for a proposed project to be considered feasible, the aggregate wastewater treatment capacity authorized under permits held by the applicant and /or developer should be adequate

to serve the projected buildout used in the projection of revenues and expenses.]

(2) [(3)] Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, pursuant to 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) [(4)] When a district proposes to obtain water or sewer service from a municipality, district, or other political subdivision and proposes to use bond proceeds to compensate the providing political subdivision for the water or sewer services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

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

(C) the district and the providing entity have entered into a contract which 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 which could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

§293.46. Construction Prior to Commission Approval.

The developer may proceed with financing or construction of water, wastewater, and drainage facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions. [:]

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

(3) All construction plans and specifications for proposed projects must be approved by all cities and agencies having jurisdictional responsibilities over the district prior to construction contract

award by the developer. Unless specifically approved by the commission during bond application review, a developer cannot be reimbursed for any additional costs resulting from changes required by the city or agency having jurisdictional responsibility after the construction contract is awarded or construction has begun.

(4) (No change.)

(5) Contract advertising and award and construction and installation of facilities shall be accomplished in the manner required by the general law for districts and in conformity with commission rules. If [For construction contracts awarded after the effective date of this subsection (September 5, 1986),] substantial compliance with statutory requirements is not achieved, reimbursement to a developer may be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6) - (8) (No change.)

§293.47. Thirty Percent of District Construction Costs to be [To Be] Paid by Developer.

(a) It has been determined by experience that some portion of the cost of district water, wastewater, and drainage facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to all districts

except [which have a ratio of debt (including proposed debt) to certified assessed valuation of more than 10%. This section does not apply to] :

(1) a district which has a ratio of debt (including proposed debt) to certified assessed valuation of 10% or less; provided, however, that any bond issue proposed to be exempted on this basis must include funds to provide sufficient capacity in facilities exempted in subsection (d) of this section to serve all connections upon which the feasibility is based or to be financed by the bond issue;

(2) a district which obtains an acceptable credit rating on its proposed bond issue pursuant to the provisions hereof; [or]

(3) a district which obtains a credit enhanced rating on its proposed bond issue and which the executive director, in his discretion, finds to be feasible and justified, based upon satisfactory evidence submitted by the district, without such developer contribution; or

(4) a district which has entered into a strategic partnership agreement, interlocal agreement, or other contract with a political subdivision or an entity created to act on behalf of a political subdivision under which the political subdivision or other entity has agreed to provide sales and use taxes or other revenues generated by a project to the district as consideration for the district's development or acquisition of water, wastewater, and drainage facilities and:

(A) water, sewer, drainage, and street and road construction are complete in

accordance with §293.59(k)(6)(A) - (E) of this title (relating to Economic Feasibility of Project);

(B) the projected value of houses, buildings, and/or other improvements are complete in accordance with §293.59(k)(7) of this title;

(C) the district can demonstrate a history of revenue generated by the project;

(D) the district's projected ad valorem tax rate necessary to amortize the district's debt at the district's current assessed valuation after accounting for the contract payments pledged to the district's debt would be equal to or less than the projected ad valorem tax rate for a district with an assessed valuation sufficient to qualify under paragraph (1) of this subsection; and

(E) the district's combined no-growth tax rate does not exceed the amounts prescribed in §293.59(k)(11)(C) of this title.

(b) For purposes of this chapter, the following definitions shall apply:

(1) (No change.)

(2) Debt includes all outstanding bonds of the district, all bonds approved by the commission and not yet sold (less such portions thereof for which the authority to issue such bonds has lapsed or been voluntarily canceled), all bonds of the district approved by other entities which are

exempt from commission approval and not yet sold, all proposed bonds with respect to which applications for project and bond approvals are presently on file and pending with the commission, and all outstanding bond anticipation notes which are not to be redeemed or paid with proceeds derived from such pending bond application(s). If more than one application for approval of project and bonds is pending, the ratio of debt to value shall be calculated consecutively with respect to each application in the order of filing of each application. For the purpose of this subsection, the amount of such outstanding bond anticipation notes shall be deemed to be the sum of:

(A) - (C) (No change.)

(3) (No change.)

(4) Acceptable credit rating is a rating of Baa₃ or higher from Moody's Investors Service, Inc., or BBB₋ or higher from Standard and Poors Corporation or BBB₋ or higher from Fitch IBCA, which rating is obtained by the district independent of any municipal bond guaranty insurance, guarantee, endorsement, assurance, letter of credit, or other credit enhancement technique furnished by or obtained through any other party.

(5) Credit enhanced rating is a rating of Aa or higher from Moody's Investors Service, Inc. or AA or higher from Standard and Poors Corporation, or AA or higher from Fitch IBCA, which rating is obtained by the district by virtue of municipal bond guaranty insurance, furnished by or obtained through any other party; provided, however, that such municipal bond guaranty insurance shall

be unconditional, irrevocable, and in full force and effect for the scheduled maturity of the entire bond issue; and provided, further, that payment of the premium on such municipal bond guaranty insurance shall not be made from district funds except through the establishment of the interest rate or premium or discount on such bonds.

(c) If a district anticipates receipt of a certified assessed valuation evidencing a debt ratio of 10% or less or an acceptable credit rating, or a credit enhanced rating, as provided in subsection (a) of this section, prior to the bond sale identified in the bond application being considered, the district may, at its discretion, request a conditional waiver to the developer cost participation requirements of this section as follows.

(1) At the time the district makes application for approval of its project and bonds, the district may include a written request for a conditional waiver of the 30% developer cost participation requirements of this section to be considered by the commission [at the time of the bond application hearing], which request shall specifically state on which basis the district requests such waiver. The waiver request shall be accompanied by a written statement from the district's financial advisor stating that, in his opinion, the district can reasonably be expected to qualify for either an acceptable credit rating or a credit enhanced rating, and that the district financing is feasible without the developer contribution.

(2) - (5) (No change.)

(d) - (f) (No change.)

(g) The developer must enter into an agreement with the district, secured by an escrow of funds in the name of the district, a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of utility construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the letter of credit to pay the developer's share of construction costs and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least 45 days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least 45 days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit (LOC)), must be valid for a minimum of one year from the date of issuance, and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

(h) - (k) (No change.)

§293.48. Street and Water, Wastewater and Drainage Utility (Street and Utility) Construction by Developer.

Except as otherwise provided, unless street and utility construction is completed within the area to be developed by the proposed bond issue, the developer must provide assurance to the satisfaction of the executive director, prior to advertisement for sale of the district's bonds, that such street and utility construction will be completed as hereinafter provided.

(1) The developer must enter into an agreement with the district, secured by an escrow of funds in the name of the district, a letter of credit, or a deferral of reimbursement of bond funds owed, specifying that if street and utility construction is not completed within a reasonable and specified period of time after the district sells its bonds, the district may award a contract for completion of the streets and utilities with financing to be accomplished by utilizing the letter of credit; provided, however, the district shall not proceed in such a manner until the executive director, after having given at least ten days' [days] written notice to both the district and the developer, has reviewed the matter, either on the petition of the district or on his own motion and has approved the district's awarding of the contract and utilization of the letter of credit; and provided further, the executive director may extend the time for the developer to complete the streets and utilities if the developer renews the letter of credit and adequately compensates the district for lost revenues and taxes resulting from failure to complete the streets and utilities within the specified time. In the event that the letter of credit has not been renewed or replaced 45 days prior to its expiration date, or in the event that the developer commences any proceeding, voluntary or involuntary, or any proceeding, voluntary or involuntary, is

commenced against the developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the developer, or any receiver is appointed for the developer, or the developer makes a general assignment for the benefit of creditors, the district shall have the immediate right to draw down the lesser of the current cost, as estimated by the district's engineer, to construct the streets and utilities, or the entire remaining balance of the letter of credit. The current estimated costs to construct the streets and utilities shall include construction contract amounts, engineering, surveying and testing fees, and a 10% contingency. The district shall deposit such funds in a separate account and shall not commit or expend such funds until the executive director has authorized use of the funds as provided in this subsection. Within 30 days after final completion of the streets and utilities, the district shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the developer or his designee. A district shall not allow any letter of credit to expire, except upon completion of the paving in substantial compliance with the agreement or written approval of the executive director. A copy of the street and utility construction agreement meeting the criteria specified in §293.57 of this title (relating to Form of Street and Utility Construction Agreement), the letter of credit, and any amendments or renewals thereof shall be submitted to the executive director within ten days after their execution or receipt by the district. The letter of credit must be from a financial institution meeting the qualifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit).

(2) - (4) (No change.)

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, and drainage facilities easements. All easements required within a district's boundaries for water lines, sanitary sewer lines, storm sewer lines, [drainage channels,] sanitary control at water plants, [and] noise and odor control at wastewater treatment plants, and the right of way necessary for a drainage swale or ditch constructed generally along a street or road right of way in lieu of a storm sewer, 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. [Plants, Lift or Pump Stations, Detention Ponds, and Levee Sites. All land needed by a district for plants, lift or pump stations, detention/retention ponds, or levees] A district may acquire the following [be acquired] in fee simple [or by easement] from any person, including the developer, in accordance with this section, 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; [.]

(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 equally between the district and the developer unless unusual circumstances are present as determined by the commission.

(c) Price of land acquisition. If a district acquires such a site, as described in subsection (b) of this section, 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, he 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 site must contain a request by the district to acquire the site in such manner and must explain the reason the seller is unable to provide price and carrying cost records. 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) [(c)] Joint stormwater detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer, payment to the developer shall be limited to that cost that is associated only with the drainage 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.

(e) [(d)] 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 (b) of this section and such purchase price shall be subject to the provisions of §293.47 of this title [(relating to Thirty Percent of District Construction Costs To Be Paid by Developer)] unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title.

(f) [(e)] 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) [(f)] Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station, detention pond, drainage channel, or levee 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) [(g)] 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.

§293.54. Bond Anticipation Notes (BAN).

A district may issue bond anticipation notes for any purpose for which bonds of the district have previously been voted or may be issued for the purpose of refunding previously issued bond anticipation

notes. All bond anticipation notes issued by a district shall conform to the following requirements. [:]

(1) (No change.)

(2) The financial advisor of the district renders a written opinion to the district to the effect that, based on the projections contained in the bond application report, the district can be reasonably expected to sell its bonds, under [then] prevailing market conditions existing at the time of the sale of the bond anticipation note, in a principal amount at least sufficient to redeem and pay the principal of, and accrued interest on, the BAN on or prior to their stated maturity date.

(3) - (12) (No change).

(13) Prior to the issuance of the BANs [BAN's], the developer and district shall enter into a street and road construction agreement as required by §293.48 of this title (relating to Street and Water, Wastewater and Drainage Utility (Street and Utility) Construction by Developer [Street and Road Construction by Developer]), unless exempted or inapplicable pursuant to §293.59(k)(11) of this title (relating to Economic Feasibility of Project).

§293.59. Economic Feasibility of Project.

(a) - (j) (No change.)

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

(1) - (7) (No change.)

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

analysis of the bond issue will be based on a reduced value for such property if not already on the tax rolls at a minimal value.

(9) - (10) (No change.)

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

(A) - (C) (No change.)

(D) for [For] the immediately preceding exceptions in subparagraph (A) or (C) of this paragraph, the developer shall provide a guarantee for its 30% share of utilities, if required pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer), in the form and manner required by §293.47(g) of this title [subsection (g) thereof. For the immediately preceding exceptions in subparagraph (B) or (C) of this paragraph, the developer shall provide a paving guarantee pursuant to §293.48 of this title (relating to Street and Utilities Construction by Developer)]; [.]

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

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

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

(l) For a district's second and subsequent bond issues, all of the foregoing of subsection (k) of this section shall apply, and the following shall apply except that paragraphs (2), (3), (4), and (5) of this subsection only apply to districts that have a developer as defined by Water Code, §49.052(d) or to districts which fail to meet the criteria set out in subsection (k)(11) of this section.

(1) - (4) (No change.)

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

(A) (No change.)

(B) the district anticipates receiving an acceptable credit rating as defined in §293.47(b)(4) of this title [(relating to Thirty Percent of District Construction Costs To Be Paid by Developer)] or a credit enhanced rating as defined in §293.47(b)(5) of this title [paragraph (5) of this

subsection], and such rating must be obtained prior to the sale of bonds; or

(C) (No change.)

[(m) Except for districts whose primary purpose is to provide service for agricultural uses, the economic feasibility of bond issues supported by benefit assessments shall be analyzed by converting the assessment to an equivalent tax rate per unit of assessment. The calculated equivalent tax rate shall be added into the combined no-growth tax rate defined in subsection (e) of this section and the combined projected tax rate defined in subsection (f) of this section. The commission may compare these equivalent tax rates to those listed in subsection (k) (3) and (4) of this section.]

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

(n) [(o)] A district may request a variance if it does not meet the guidelines contained in subsections [subsection] (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The commission shall not grant a variance to the maximum combined projected tax rate or the maximum combined no-growth tax rate specified in subsection (k) of this section for districts that have

a developer and the district is financing 100% of construction costs pursuant to criteria set out in §293.47(a) of this title which would otherwise require 30% developer participation. In determining whether to grant a variance, the following factors shall be considered:

- (1) the degree of variation from the guidelines;
- (2) the past history of the district with respect to its projections versus actual buildout and compliance with commission rules;
- (3) the past history of the developer and related or affiliated entities with respect to its projections versus actual buildout and its compliance with commission rules and agreements with the district and other districts in which it developed land;
- (4) other factors peculiar to the district, such as the area in which situated, economic factors, the adjoining competitive developments, and their status;
- (5) the financial resources of the developer and its lender and any special commitments, obligations, or expenditures for the project;
- (6) past history of the market area in which the project is located; and
- (7) other factors which may affect the feasibility of the project.

SUBCHAPTER G : OTHER ACTIONS REQUIRING COMMISSION

CONSIDERATION FOR APPROVAL

§293.88

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The proposed amendments to §293.88 implement Texas Water Code, §49.456.

§293.88. Petition for Authorization to Proceed in Federal Bankruptcy.

(a) (No change.)

(b) The chief clerk shall mail written notice to all creditors shown in the district's application, all developers and their lien-holders and the top ten taxpayers shown in the district status report, the city in whose corporate limits or extraterritorial jurisdiction the district is located, if any, and the county in which the district is located. The chief clerk shall publish notice of the application at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the district is located. The chief clerk shall also publish notice of the application once in the Texas Bond Reporter of Austin, The Daily Bond Buyer, The Weekly Bond Buyer, or The Wall Street Journal.

Such notices shall be mailed or published within 30 days of the date an administratively complete application is received by the executive director. The commission shall not act on the application before [No hearing on the application shall be held less than] 30 days after such notices are given, mailed, or published.

(c) If, after [hearing and] consideration of all evidence, the commission determines that the district cannot, through the full exercise of its rights and powers under the law of this state, reasonably expect to meet its debts and other obligations as they mature, the commission may authorize the district to proceed in bankruptcy.

(d) If [, after hearing,] the commission determines that the district can, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debt and other obligations as they mature, the commission shall deny the district's application and shall order the district to adopt specific measures to generate sufficient revenues to meet its obligations. The commission shall also require the district to submit periodic reports on the implementation of the measures required by the commission and its current financial condition.

(e) (No change.)

SUBCHAPTER H : REPORTS

§293.96

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The proposed repeal implements Texas Water Code, §5.103 and § 5.105.

§293.96. Miscellaneous Reports To Be Submitted to the Executive Director.

SUBCHAPTER H : REPORTS

§293.97

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The proposed amendment to §293.97 implements Texas Water Code, §§49.060, 49.158, and 49.195.

§293.97. Adoption of Fiscal Year and Operating Budget.

(a) Fiscal year. Within 30 days after a district becomes financially active, the governing board of that district shall adopt a fiscal year by a formal board resolution and so note it in the district's minutes. The president or chairman of the governing board, a member of the board designated by the presiding officer, or the attorney representing the district shall notify the executive director of the adopted fiscal year within 30 days after adoption. The fiscal year adopted and used for reporting the district's annual financial report shall be used to account for all the district's financial per annum statutory limitations.

(b) Operating budget [Budget]. Prior to the start of a fiscal year, the governing board of each active district shall adopt an operating budget for the upcoming fiscal year. The adopted budget and

any subsequent amendments shall be passed and approved by a resolution of the governing board and shall be made a part of the governing board minutes. Budget amendments may be made from time to time in the discretion of the governing board. The adopted budget is not a spending limitation imposed by the commission. However, the governing board may adopt rules to limit the spending authority of the district officers in relation to the budget. A comparison of the actual operating results to the adopted budget, as amended, shall be presented in the annual report of each district. The budgetary comparison statement shall be included either within the audited financial statements or within a supplementary section.

SUBCHAPTER L. DISSOLUTION OF DISTRICTS

§293.131

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The proposed amendment to §293.131 implements Texas Water Code, §§49.321- 49.324.

§293.131. Authorization for Dissolution of Water District by the Commission.

(a) Texas Water Code, §§36.304 - 36.310 authorize [Chapter 36 of the Texas Water Code §§306.301 - 306.310 authorizes] the commission to dissolve any district as defined in Texas Water Code, §36.001(1), a groundwater conservation district, which is not operational as determined under Texas Water Code, §36.302 and has no outstanding bonded indebtedness.

(1) - (3) (No change.)

(b) Texas Water Code, Chapter 49, Subchapters I and K, §§49.321- 49.327 authorize the commission to dissolve any district as defined in Texas Water Code, §49.001(1), which is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

(1) (No change.)

(2) If the dissolution is initiated by a party other than the executive director, the application must include:

(A) a petition on the part of the party requesting dissolution including a statement of the reasons that a dissolution is desirable or necessary;

(B) a statement that the district has been financially dormant for the preceding five-year period for water districts and has performed no functions for the five preceding years and has no outstanding bonded indebtedness;

(C) certified copies of dormancy affidavits submitted pursuant to Texas Water Code, §49.197, for five years for water districts preceding the year in which the application is submitted;

(D) evidence that the district has no outstanding bonded indebtedness may be filed as prepared testimony with the application and may consist of statements or testimony from the district's attorney, engineer, or officer and shall include an affidavit of the state comptroller of public accounts certifying that the district has never registered any bonds with the comptroller;

(E) list of assets and liabilities of the district;

(F) evidence that all landowners who have not signed the petition have been notified by mail of the dissolution request. A certified tax roll for the district and certificate of mailing executed by the postmaster would be sufficient evidence;

(G) a filing fee in the amount of \$100; and

(H) additional data and information as the executive director or commission may deem necessary or pertinent to the application.

[(2) The application must include a petition on the part of the party requesting dissolution including a statement of the reasons that a dissolution is desirable or necessary, and contain a statement that the district has been financially dormant for the preceding five-year period for water districts and has performed no functions for the five previous preceding years and has no outstanding bonded indebtedness.]

[(3) If the petition is submitted by a landowner, a director of the district, or other interested party, the application must contain certified copies of dormancy affidavits submitted pursuant to Water Code §49.197, for five years for water districts preceding the year in which the application is submitted.]

[(4) Evidence that the district has no outstanding bonded indebtedness may be filed as prepared testimony with the application and may consist of statements or testimony from the district's

attorney, engineer, or officer and shall include an affidavit of the state comptroller of public accounts certifying that the district has never registered any bonds with the comptroller.]

[(5) Applications shall include a list of assets and liabilities of the district.]

(3) [(6)] The executive director may initiate procedures to dissolve a district without financial dormancy affidavits on file if:

(A) the [The] district has failed to comply with the reporting requirements of this chapter for the previous five-year [five year] period;

(B) attempts to contact directors, interested parties, or anyone with knowledge of district's financial activity have failed; and[,]

(C) the state comptroller of public accounts has submitted a certificate certifying that the district has never registered any bonds with the comptroller.

SUBCHAPTER M : APPLICATION FOR APPROVAL OF STANDBY FEES

§293.143

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The proposed amendment to §293.143 implements Texas Water Code, §49.231.

§293.143. Application Requirements for Standby Fees to be [To Be] Used to Supplement the Operation and Maintenance Fund.

(a) (No change.)

(b) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenue to supplement the operation and maintenance fund:

(1) (No change.)

(2) the operation and maintenance fund is operating at a deficit or is projected to operate at a deficit within the three years in which the standby fees are to be levied with:

(A) rates for the first 10,000 gallons of water and wastewater usage for residential users (or equal or greater amounts for other users) which exceed \$40 [\$30]; or

(B) rates for the first 10,000 gallons of usage for residential users (or equal or greater amounts for other users) which exceed \$27 [\$22.00] if the district is a provider of only water or wastewater service.

(c) - (f) (No change.)