

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: October 3, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2013-1382-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
Chapter 291, Utility Regulations
Chapter 293, Water Districts
HB 738, HB 1050, HB 1461, HB 2704, and SB 902: Utilities and Districts
Rule Project No. 2013-054-293-OW

Background and reason(s) for the rulemaking: In 2013, the 83rd Legislature passed House Bill (HB) 738, HB 1050, HB 1461, HB 2704, and Senate Bill (SB) 902, authored by Representative Myra Crownover, Representative Bill Callegari, Representative Jimmie Don Aycock, Representative Bill Callegari, and Senator Troy Fraser, respectively. The purpose of this adopted rulemaking is to implement the statutory changes from those bills.

HB 738, HB 1050, HB 2704, and SB 902 require amendments to Chapter 293, Water Districts, to reflect the legislative changes to the powers, duties, and administration of water districts, specifically in the areas of: municipal utility district (MUD) creation provisions; contracting; issuance of bonds and bond anticipation notes (BANs); audit filings; impact fees; and, recreational facilities.

HB 1461 requires conforming changes to Chapter 290, Public Drinking Water, and Chapter 291, Utility Regulations, to require retail public utilities notify their customers of water loss reported in the water loss audit filed with the Texas Water Development Board (TWDB) under Texas Water Code (TWC), §16.0121.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: The adopted rulemaking would amend Chapters 290 and 291 to ensure that retail public utilities notify their customers of the water loss reported in the water loss audit filed with the TWDB.

The adopted rulemaking would amend Chapter 293 to:

- redefine "recreational facility" to exclude a minor improvement or beautification project to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities;
- specify that, upon receipt of a petition to create a MUD, where all of the proposed district is to be located outside the corporate limits of a municipality, the executive

Re: Docket No. 2013-1382-RUL

- director shall notify the county commissioners court in which the proposed MUD is to be located of the petition's submission;
- clarify that the executive director's review of a district's bond issue is limited to bonds to finance a project for which the TCEQ has adopted rules requiring its review and approval;
 - clarify that the district's outstanding principal debt supported by ad valorem taxes for recreational facilities must not exceed 1% of the district's taxable value of property and that this limitation also applies to bonds supported by a contract tax and is based on the taxable value of property in the district(s) making payments under the contract;
 - specify that the central appraisal district's estimate of value may be used to establish the value of the district's taxable property for the issuance of recreational facility bonds;
 - clarify that a MUD may issue bonds supported by ad valorem taxes to pay for street or security lighting under the MUD's authorization to acquire road facilities or as a recreational facility;
 - specify that a district is not required to prorate the land costs of a water, wastewater, or drainage site (including a combined lake and detention site) between the secondary recreational facilities purpose and the primary water, wastewater, or drainage purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary purpose;
 - allow BANs to be issued for any purpose for which district bonds may be issued;
 - increase the amount of a contract for which a district's governing board is required to advertise the project or solicit written competitive bids;
 - allow a district to issue a change order so long as the change order aggregate does not increase the original contract's amount by more than 25%;
 - allow a special water authority to submit its annual audit report to the TCEQ not later than 160 days after the special water authority's fiscal year end;
 - define actual costs as it relates to impact fees to permit the inclusion of non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities; and
 - add storm water detention or retention facilities to the list of facilities that may be exempt from impact fees.

B.) Scope required by federal regulations or state statutes: There are no federal changes. The adopted rulemaking implements HBs 738, 1050, 1461, 2704, and SB 902.

C.) Additional staff recommendations that are not required by federal rule or state statute: The adopted rulemaking would also make non-substantive changes to update citations and terminology and conform with *Texas Register* requirements.

Re: Docket No. 2013-1382-RUL

Statutory authority: TWC, §§5.102, 5.103, 5.105, 12.081, and 13.041.

Effect on the:

A.) Regulated community:

HB 738—Creation of a proposed MUD may be delayed if comments are received from a county commissioners court.

HB 1050 and HB 2704—A district now has the authority to issue change orders up to 25% of the original contract price, which could result in a cost savings for a district since a larger change order may be issued instead of rebidding the project; however, any cost savings are unknown and expected to be minimal.

HB 1461—Retail public utilities will now be required to notify their customers of the water loss reported in the water loss audits filed with the TWDB under TWC, §16.0121. Retail public utilities could face an increased cost in adding this information to the customer bills or the utility's Consumer Confidence Report (CCR) after the water loss audit is filed; however, the financial impact is expected to be minimal.

SB 902—SB 902 increases the contract amount for which a district must advertise and publish notice and also increases the maximum amount for which a district shall solicit bids. Water districts may receive a fiscal benefit from the increase in the threshold requirements; however, the financial benefits would vary depending on current procedures and are not anticipated to be significant. SB 902 also allows districts to fund the full cost of sites acquired for developing water, wastewater, or drainage facilities that also have a recreational facility component by specifying that a district would not be required to prorate the site cost between the utilities and recreational facilities. Water districts may incur additional debt or costs associated with funding the total land costs; however, these costs are unknown and expected to be minimal.

B.) Public:

HB 738—A county commissioners court may experience some cost to respond to TCEQ's notification of a MUD creation petition; however, those costs are unknown and expected to be minimal.

HB 1050 and HB 2704—A district now has the authority to issue change orders up to 25% of the original contract price, which could result in cost savings for the district's customers since a larger change order may be issued instead of the district rebidding the project; however, any cost savings are unknown and expected to be minimal.

HB 1461—Customers of retail public utilities will now receive notice of the utility system's water loss after the water loss audit has been filed with the TWDB under TWC, §16.0121.

Re: Docket No. 2013-1382-RUL

SB 902—The increase to bidding threshold requirements could result in cost savings for a district's customers as a larger project may be initiated without incurring bidding costs; however, any cost savings are unknown and expected to be minimal. Districts that fund the full costs of sites acquired for developing water, wastewater, or drainage facilities that also have a recreational facility component (not prorating land costs between utility and recreational functions) will incur more debt/costs associated with the land acquisition, which in turn would be passed on to the district's customers; however, those potential pass-through costs are unknown and expected to be minimal.

C.) Agency programs:

HB 738—The Water Supply Division will need to amend its procedures to include notification to the county commissioners court following the filing of a MUD creation petition.

HB 1050 and HB 2704—There are no anticipated effects on agency programs.

HB 1461—The Water Supply Division will need to reevaluate its online CCR generator tool to reflect this bill's passage.

SB 902—The Water Supply Division will need to amend RG-080, *Water District Financial Management Guide*, and RG-378, *Financial Reporting Requirements for Water Districts in Texas* to reflect this bill's passage.

Stakeholder meetings: The TCEQ did not hold a stakeholder meeting; however, a rule public hearing was held on June 26, 2014, in Austin, Texas.

Public comment: The comment period began on May 30, 2014, and closed on June 30, 2014. The commission received written and oral comments on this rulemaking.

Comments were received from the Honorable Hugh Coleman of Denton County; Allen Boone Humphries Robinson, L.L.P.; American Water Works Association - Texas Section; Austin Water Utility; City of Seguin (City); County Judges and Commissioners Association of Texas; Muller Law Group, P.L.L.C.; San Antonio Water System (SAWS); and Schwartz, Page & Harding, L.L.P.

The commenters were generally supportive of the proposed rules; however, they recommended revisions to the rule language. The comments are summarized in the Response to Comments sections of the preambles.

HB 1461—Austin Water Utility, American Water Works Association - Texas Section, and SAWS commented that the proposed changes to §290.272(h) and §291.87(e)(3) should be amended to reflect that the water loss audit results reported to customers of retail public utilities can be provided "on or with" the CCRs or customer bills. These commenters stressed that, for their customers and the public to receive the most benefit from this

Re: Docket No. 2013-1382-RUL

reporting and also to reduce confusion, utilities might also include a narrative explaining what the water loss audit results mean. In response to these comments, the commission has amended §290.272(h) and §291.87(e)(3) by replacing the word "in" with the phrase "on or with" to more closely reflect the amended statute.

Significant changes from proposal: There are no substantive changes from proposal to adoption.

Potential controversial concerns and legislative interest: None.

Does this rulemaking affect any current policies or require development of new policies? The Water Supply Division will modify its operating procedures to ensure the county commissioners court is notified if any part of a proposed MUD is to be located outside the corporate limits of a municipality.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? Without approval, Chapters 290, 291, and 293 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** May 30, 2014

Anticipated *Texas Register* adoption publication date: November 7, 2014

Anticipated effective date: November 13, 2014

Six-month *Texas Register* filing deadline: November 30, 2014

Agency contacts:

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Attachments

HBs 738, 1050, 1461, 2704, and SB 902

cc: Chief Clerk, 2 copies
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