Background and reason(s) for the rulemaking:
The proposed rulemaking implements Senate Bill (SB) 1376, 86th Texas Legislature, 2019, which amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements. THSC, §361.425 and §361.426 require that governmental entities establish a recycling program, create procedures for a recycling program, and give preference in purchasing to products made of recyclable materials if applicable criteria are met.

The proposed rulemaking would add new rules that would apply to governmental entities pertaining to recycling practices, the creation of recycling programs, and purchasing preferences for products made of recycled materials. The proposed rules would also provide an exemption available to governmental entities, if compliance with the recycling program or purchasing preferences would create a hardship for the governmental entity.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:
The proposed rulemaking would amend Chapter 328 to add new Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to products made of recycled materials, and to create an exemption that would apply to certain governmental entities, if compliance with these rules would create a hardship.

B.) Scope required by federal regulations or state statutes:
The proposed rulemaking would implement SB 1376 and the requirements of THSC, §361.425 and §361.426.

C.) Additional staff recommendations that are not required by federal rule or state statute:
Although not specifically required by the legislation, it will be necessary for TCEQ to establish a program for governmental entities to request a hardship exemption.
Statutory authority:
The amendments would be proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426 which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

Effect on the:

A.) Regulated community:
Fewer governmental entities would be required to implement recycling programs. The proposed rulemaking would increase the opportunity for governmental entities to become exempt from implementing recycling programs or exempt certain recyclable materials from their recycling program.

B.) Public:
No public impacts are anticipated.

C.) Agency programs:
External Relations Division would complete rulemaking and updates to publication GI-030, The Texas School Recycling Guide.

The rules would not create a group of affected governmental entities who are not already affected by statute.

Stakeholder meetings:
The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:
There are no controversial concerns or legislative interest.

Will this rulemaking affect any current policies or require development of new policies?
The rulemaking would require development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
SB 1376 specifically requires rulemaking to implement this policy. There are no alternatives.
Key points in the proposal rulemaking schedule:

Anticipated proposal date: January 15, 2020
Anticipated Texas Register publication date: January 31, 2020
Anticipated public hearing date (if any): February 27, 2020
Anticipated public comment period: January 31, 2020 – March 3, 2020
Anticipated adoption date: June 10, 2020

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Attachments:
Senate Bill 1376

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