

Effective: November 13, 2014

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Permanent Rule Adoption

2013-054-293-OW
HB 738, HB 1050, HB 1461, HB 2704, SB 902:
Utilities and Districts

Chapter 290
Public Drinking Water
Subchapter H

Chapter 291
Utility Regulations
Subchapter E

Chapter 293
Water Districts
Subchapters A, B, E, F, G, H, N

1. **Purpose.** This change transmittal provides the page(s) that reflect changes and additions to the Texas Commission on Environmental Quality (TCEQ or commission) Volume of Permanent Rules.
2. **Explanation of Change.** On October 22, 2014, the commission adopted the amendment to §290.272 *with change* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 3132) and was republished.

Also adopted was the amendment to §291.87 *with change* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4138) and was republished.

The commission adopted the amendments to §§293.1, 293.12, 293.41, 293.44, 293.51, 293.54, 293.63, 293.81, 293.94 and 293.171 *without changes* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4143) and were not republished. Sections 293.41, 293.44, and 293.51 were adopted *with changes* to the proposed text and were republished.

3. **Effect of Change.** 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 Texas Water Development Board.

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 municipal utility district (MUD), where all of the proposed district is to be located outside the corporate limits of a municipality, the executive 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 bond anticipation notes 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.

The rulemaking would also change order amount; exempt bonds issued by a public utility agency from executive director approval; alter eminent domain powers of a municipal utility district outside its boundary; modify the election qualifications for a fresh water supply district director; exempt bonds issued by certain multi-county districts from executive director approval; limit the time for certain municipalities to consent to certificates of public convenience and necessity (CCN) within the corporate limits or extraterritorial jurisdiction (ETJ) of the municipality and set conditions for granting the CCN without the municipality's consent; alter a city's ability to extend a CCN beyond its ETJ if a landowner elects to exclude property; add a provision that a CCN applicant or CCN holder that has land removed by landowner election is not required to provide service to the removed land for any reason; change the requirements for a release from a CCN; specify that having federal loans is not a bar to release; and add requirements for notice of utility rate changes.