

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

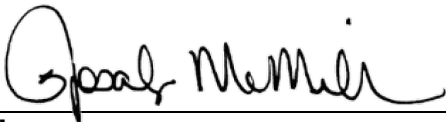
AGENDA REQUESTED: October 19, 2022

DATE OF REQUEST: September 30, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2022-0719-RUL. Consideration for publication of, and hearing on, proposed amendments to 30 Texas Administrative Code (TAC) Chapter 292, Special Requirements for Certain Districts and Authorities and 30 TAC Chapter 293, Water Districts.

The proposed rulemaking would remove 30 Texas Administrative Code (TAC) Sections 292.1(a)(5) and 292.13(5) regarding Special Requirements for Certain Districts and Authorities, revise 30 TAC Section 292.13(6) regarding Management Policies for River Authorities, and revise Section 293.59(k) relating to Economic Feasibility of Projects. The rulemaking will provide consistency with the repeal of Texas Water Code, Chapter 9 and abolishment of the Central Colorado River Authority from Senate Bill (SB) 3 (80th), SB 2262 (85th) and staff-initiated River Authority and Feasibility Tax Rate Revisions. (Justin Taack, Kayla Murray; Rule Project No. 2022-017-292-OW)



Director

Division Deputy Director

Agenda Coordinator

Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 30, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Josalyn McMillon, Acting Director *JM 8/26/22*
Office of Water

Docket No.: 2022-0719-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 292, Special Requirements for Certain Districts and Authorities
Chapter 293, Water Districts
Senate Bill (SB) 3 (80th) SB 2262 (85th) and Staff-Initiated River Authority and
Feasibility Tax Rate Revisions
Rule Project No. 2022-017-292-OW

Background and reason(s) for the rulemaking:

Staff is proposing to revise 30 Texas Administrative Code (TAC) Chapter 293 in response to a rule petition and stakeholder engagement. The rule petition was considered by the commissioners at the June 9, 2021, Agenda. The commissioners directed the executive director to initiate rulemaking to address the request contained in the rule petition. TCEQ staff solicited stakeholder input from districts located in Chambers County and received four letters filed in support of the changes requested in the rule petition.

In addition, this rulemaking would amend 30 TAC Chapter 292 to reflect the repeal of Texas Water Code (TWC), Chapter 9 made during the 80th Texas Legislature, Regular Session, 2007, in Senate Bill (SB) 3 by Senator Kip Averitt and to delete the reference to the Central Colorado River Authority. The Central Colorado River Authority was dissolved by the 85th Texas Legislature, Regular Session, 2017, in SB 2262 by Senator Charles Perry.

This rulemaking would also amend 30 TAC Chapter 292 to remove an outdated reference to Industrial Development Bonds and Pollution Control Bonds from the minimum requirements for administrative policies adopted by the boards of the authorities subject to Chapter 292. Industrial Development Bonds and Pollution Control Bonds are no longer used by these entities. The rulemaking would also amend 30 TAC Chapter 292 to update the reference to Historically Underutilized Businesses (HUB) requirements that must be included in the administrative policies of the authorities subject to Chapter 292.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The purpose of the rulemaking is to amend 30 TAC §293.59(k)(3)(A) to add Chambers County to list of counties subject to the \$1.50 projected feasibility tax rate limit; revise 30 TAC §293.59(k)(4)(A) to add Chambers County to the list of counties subject to the \$2.50 no-growth feasibility tax rate limit; and revise 30 TAC §293.59(k)(11)(c)(i) to add Chambers County to the list of counties for which exemptions to certain rule requirements do not apply.

This rulemaking would also amend 30 TAC §§292.1(a), 292.1(a)(5), 292.13(5), and 292.13(6)(B) for consistency with the repeal of TWC Chapter 9 and abolishment of the Central Colorado River Authority, and to amend Chapter 292 to remove outdated references to Industrial Development Bonds and Pollution Control Bonds and update the reference to HUB requirements that must be included in the administrative policies of the authorities subject to Chapter 292.

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B.) Scope required by federal regulations or state statutes:

The rulemaking is not required by federal regulations or state statutes.

The proposed revisions to Chapter 292 are necessary to reflect the repeal of TWC, Chapter 9 made during the 80th Texas Legislature, Regular Session, 2007, in SB 3 by Senator Kip Averitt and changes made during the 85th Texas Legislature, Regular Session, 2017, in SB 2262 by Senator Charles Perry.

C.) Additional staff recommendations that are not required by federal rule or state statute:

There are no additional staff recommendations.

Statutory authority:

The rulemaking would be proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

Effect on the:

A.) Regulated community:

The proposed rulemaking would allow current and future water districts located in Chambers County to be evaluated under higher feasibility tax rate limits in accordance with the TCEQ's rules regarding the economic feasibility of the issuance of bonds by water districts.

B.) Public:

The proposed rulemaking would subject residents of current and future districts in Chambers County to higher TCEQ feasibility tax rate limits; however, TCEQ does not have the jurisdiction to require actual tax rates of these districts to be levied at a certain amount. As a result, the fiscal impacts to the residents, if any, are unknown. The increase in the feasibility tax rates is to ensure a district can issue the amount of debt being requested and maintain a tax rate at or under those limits and is often not the actual tax rate levied.

C.) Agency programs:

There are no anticipated effects on agency programs.

Stakeholder meetings:

Through the Districts Section's Stakeholder Workgroup and letters sent to districts located in Chambers County, TCEQ staff solicited stakeholder input on the issues raised by the rule petition from all potentially affected districts located in Chambers County and the entire Stakeholder Workgroup. TCEQ received four letters filed in support of the changes requested in the rule petition. A public hearing will be held on December 7, 2022.

Potential controversial concerns and legislative interest:

There are no controversial issues associated with the changes being made to Chapter 292 and 293; however, there may be additional requests to add additional counties to the \$1.50 projected and \$2.50 no-growth feasibility tax rate limits. There is no known legislative interest regarding the addition to the number of counties that fall within the feasibility tax rate limit changes to Chapter 293; however, legislative members may show interest during the rulemaking process if the change is perceived as a tax rate increase. While it is unknown if there are any impacts to residents of current and future districts in Chambers County, the increase in the feasibility of tax rates is not a

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tax rate increase on the public, it is a TCEQ requirement to ensure a district can issue the amount of debt being requested and maintain a tax rate at or under those limits and is often not the actual tax rate levied.

Would this rulemaking affect any current policies or require development of new policies?

None.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

There are no known consequences or alternatives to the rulemaking related to the changes requested in the rule petition; however, if the changes to 30 TAC Chapter 292 are not made, TCEQ's rules will not reflect current statutes.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: October 19, 2022

Anticipated *Texas Register* publication date: November 4, 2022

Anticipated public hearing date: December 7, 2022

Anticipated public comment period: November 4, 2022 - December 4, 2022

Anticipated adoption date: March 2023

Agency contacts:

Justin Taack, Rule Project Manager, Water Supply Division, (512) 239-0418

Kayla Murray, Staff Attorney, Environmental Law Division, (512) 239-4761

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments:

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Justin Taack
Kayla Murray
Gwen Ricco

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §292.1 and §292.13.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking proposes to amend 30 Texas Administrative Code (TAC) Chapter 292 for consistency with the repeal of Texas Water Code (TWC), Chapter 9 and the abolishment of the Central Colorado River Authority. Additionally, this rulemaking proposes to amend Chapter 292 to remove or revise outdated references to Industrial Development Bonds and Pollution Control Bonds and Historically Underutilized Businesses (HUB) requirements.

Section by Section Discussion

Additional changes are proposed to clarify language and are considered non-substantive and not specifically addressed in the Section by Section Discussion of this preamble.

§292.1, Objective and Scope of Rules

The commission proposes to amend §292.1(a) to account for the repeal of TWC, Chapter 9 made during the 80th Texas Legislature, Regular Session, 2007, in Senate Bill (SB) 3 by Senator Kip Averitt related to the development, management, and preservation of the water resources of the state; providing penalties. The commission also proposes to amend §292.1(a)(5) by deleting the reference to the Central Colorado River Authority and by renumbering the remaining subsections in this section. The Central Colorado River Authority was dissolved by the 85th Texas Legislature, Regular Session, 2017, in SB 2262 by Senator Charles Perry.

§292.13, Minimum Provisions

The commission proposes to amend §292.13(5) to remove an outdated reference to Industrial

Development Bonds and Pollution Control Bonds from the minimum requirements for administrative policies adopted by the boards of the authorities subject to Chapter 292. Industrial Development Bonds and Pollution Control Bonds are no longer used by these entities. The commission also proposes to amend §292.13(6)(B) to update the reference to HUB requirements that must be included in the administrative policies of the authorities subject to Chapter 292.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed

rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal regulations to comply with changes to state law. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended 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.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by SB 3 from the 80th Texas Legislature and SB 2262 from the 85th Texas Legislature and to delete or revise outdated references in the rule.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not 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 cost of complying with the proposed rules is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government

Code §2001.0225(a). The proposed rulemaking does not exceed a standard set by federal or state law. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not 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. Finally, the proposed rulemaking will be adopted pursuant to the commission's specific authority in Texas Water Code §5.013, which gives the commission continuing supervision over districts, and Texas Water Code §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section to this preamble.

Takings Impact Assessment

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to implement SB 3 from the 80th Texas Legislature relating to the development, management, and preservation of the water resources of the state, and SB 2262 from the 85th Texas Legislature relating to the dissolution of the Central Colorado River Authority and to delete or revise outdated references in the rule. The proposed rules would advance this purpose by making the commission's rules consistent with SB 3 and SB 2262 and by deleting or revising outdated references.

Promulgation and enforcement of these rules would constitute neither a statutory nor a constitutional taking of private real property. These rules would not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking would not burden nor restrict the owner's right to property. These provisions would not impose any burdens or restrictions on private real property. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on Wednesday December 7, at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Monday December 5, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Tuesday, December 6, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YmZkOGNiMTMtZGJiNy00OGNjLWFjMDYtZGNhOGNmMjlhMDg5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at:

<https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments

being submitted via the eComments system. All comments should reference Rule Project Number 2022-017-292-OW. The comment period closes on December 7, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Justin Taack, Water Supply Division, (512) 239-0418.

SUBCHAPTER A: GENERAL PROVISIONS

§292.1

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

The proposed amendment implements Senate Bill (SB) 3 from the 80th Texas Legislature, 2007, related to the development, management, and preservation of the water resources of the state; and it implements SB 2262 from the 85th Texas Legislature, 2017, relating to the dissolution of the Central Colorado River Authority.

§292.1. Objective and Scope of Rules.

(a) The commission has the continuing right of supervision of districts and authorities created under Article III, §52 and Article XVI, §59 of the Texas Constitution [The authorities identified in Texas Water Code (TWC), §9.010, shall report to the Texas Water Advisory Council as specified in TWC, §9.011]. This chapter shall govern the administrative policies of the following districts:

- (1) Angelina and Neches River Authority;

(2) Bexar-Medina-Atascosa Counties Water Control and Improvement District
Number 1;

(3) Brazos River Authority;

(4) Canadian River Municipal Water Authority;

(5) [(6)] Central Colorado River Authority;]

(5) [(6)] Colorado River Municipal Water District;

(6) [(7)] Dallas County Utility and Reclamation District;

(7) [(8)] Guadalupe-Blanco River Authority;

(8) [(9)] Gulf Coast Water Authority;

(9) [(10)] Lavaca-Navidad River Authority;

(10) [(11)] Lower Colorado River Authority;

(11) [(12)] Lower Neches Valley Authority;

(12) [(13)] Mackenzie Municipal Water Authority;

(13) [(14)] North Central Texas Municipal Water Authority;

(14) [(15)] North Harris County Regional Water Authority;

(15) [(16)] North Texas Municipal Water District;

(16) [(17)] Northeast Texas Municipal Water District;

(17) [(18)] Nueces River Authority;

(18) [(19)] Red River Authority of Texas;

(19) [(20)] Sabine River Authority;

(20) [(21)] San Antonio River Authority;

(21) [(22)] San Jacinto River Authority;

(22) [(23)] Sulphur River Basin Authority;

(23) [(24)] Sulphur River Municipal Water District;

(24) [(25)] Tarrant Regional Water District, a Water Control and Improvement
District;

(25) [(26)] Titus County Fresh Water Supply District Number 1;

(26) [(27)] Trinity River Authority of Texas;

(27) [(28)] Upper Colorado River Authority;

(28) [(29)] Upper Guadalupe River Authority;

(29) [(30)] Upper Neches River Municipal Water Authority; and

(30) [(31)] West Central Texas Municipal Water District.

(b) Nothing in this chapter shall be construed to relieve a district of its legal duties, obligations, or liabilities relative to its responsibilities as defined in its enabling legislation or in the TWC.

SUBCHAPTER B: ADMINISTRATIVE POLICIES

§292.13

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

The proposed amendment implements SB 3 from the 80th Texas Legislature, 2007, related to the development, management, and preservation of the water resources of the state; and it implements SB 2262 from the 85th Texas Legislature, 2017, relating to the dissolution of the Central Colorado River Authority.

§292.13. Minimum Provisions.

The following provisions shall be incorporated into the administrative policies adopted by the authorities subject to these rules.

(1) Code of Ethics. The administrative policies shall mandate compliance with the following standards:

(A) the Local Government Code, Chapter 171, relating to conflicts of interests with a business entity in which the official has a substantial interest.

(B) Texas Government Code, Chapter 573, relating to nepotism.

(C) for River Authorities, Texas Government Code, Chapter 572, relating to standards of conduct, personal financial disclosure, and conflict of interest.

(D) Article III, Section 52, of the Texas Constitution, relating to the prohibition on granting public money or things of value to any individual, association or corporation.

(2) Travel Expenditures. The administrative policies shall provide for reimbursing district officials for necessary and reasonable travel expenditures incurred while conducting business or performing official duties or assignments. The board may adopt additional policies which further define the criteria for necessary and reasonable travel expenditures and which provide procedures for the reimbursement of expenses.

(3) Investments. The administrative polices shall provide for compliance with the following statutes:

(A) Subchapter A, Chapter 2256, Government Code (the Public Funds Investment Act);

(B) Chapter 2257, Government Code (the Public Funds Collateral Act); and

(C) any other appropriate statutes which are applicable to the investment of the authority's funds.

(4) Professional Services Policy. The administrative policies shall provide for compliance with the following standards:

(A) Texas Government Code, Chapter 2254, Subchapter A (the Professional Services Procurement Act) which prohibits the selection of professional services based on competitive bids.

(B) A list shall be maintained of at least three qualified persons or firms for each area of professional service used by the authority. The pre-qualified persons or firms shall be sent a request for proposal for any contract award for a new project which is expected to exceed \$25,000.

[(5) Industrial Development Bonds and Pollution Control Bonds. The administrative policies shall reference any industrial development corporation associated with the authority and shall provide for compliance with the memorandum issued by the State Auditor on October 7, 1988 relating to the disclosure of industrial development and pollution control bonds.]

(5) [(6)] Management Policies. The administrative policies shall provide for the following:

(A) an independent management audit to be conducted every five years and submitted to the executive director. As an alternative, an internal audit office may be established which reports to the board of directors.

(B) compliance with the provisions and intent of Texas Government Code Chapter 2161 [§106, Contracting With Historically Underutilized Businesses of Texas, Article V, General Provisions of Texas House Bill 1, 72nd Legislature, First Called Session (1991)] relative to contracting with underutilized businesses and providing equal employment opportunities.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §293.59.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking proposes to amend 30 Texas Administrative Code (TAC) Chapter 293 as a follow-up to a rule petition and stakeholder engagement. The rule petition was considered by the Commissioners at the June 9, 2021, Agenda. The Commissioners directed the ED to initiate rulemaking to address the request contained in the rule petition. In addition, TCEQ staff solicited stakeholder input on the issues raised by the rule petition from all potentially affected districts located in Chambers County and received four letters filed in support of the changes requested in the rule petition.

Section by Section Discussion

Additional changes are proposed to clarify language and are considered non-substantive and not specifically addressed in the Section by Section Discussion of this preamble.

§293.59, Economic Feasibility of Project

The commission proposes to amend §293.59(k)(3)(A) to add Chambers County to the list of counties subject to the \$1.50 projected feasibility tax rate limit; and revise 30 TAC §293.59(k)(4)(A) to add Chambers County to the list of counties subject to the \$2.50 no-growth feasibility tax rate limit as a follow-up to a rule petition and stakeholder engagement. As discussed in the rule petition requesting this change, which was heard by the Commission on June 9, 2021, the proposed changes would increase the limit the combined projected tax rate and combined no-growth tax rate for a district's first and subsequent bond issues for districts located in Chambers County.

Fiscal Note: Costs to State and Local Government

Jené Bears, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule.

The fiscal implications to units of local government, specifically water districts within Chambers County, cannot be determined because the tax rate of a water district is set by the governing body of the district. The agency will use the combined projected tax rate and the no-growth tax rate to determine the economic feasibility of a proposed bond issue, bond amendment, and extension of time application for a bond issue. The proposed rulemaking allows the agency to consider a limit of \$1.50 for the combined projected tax rate and a limit of \$2.50 for the no-growth tax rate for these water districts.

Public Benefits and Costs

Ms. Bears determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be additional flexibility for the water districts in Chambers County, as requested by rule petition and stakeholder engagement with the agency.

The fiscal implications to businesses and individuals, specifically property owners within water districts in Chambers County, cannot be determined because the tax rate of a water district is set by the governing body of the district. The agency will use the combined projected tax rate and the no-growth tax rate to determine the economic feasibility of a proposed bond issue, bond amendment, and extension of time application for a bond issue. The proposed rulemaking allows the agency to consider a limit of \$1.50 for the combined projected tax rate and a limit of

\$2.50 for the no-growth tax rate for these water districts.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does alter an existing regulation relating to the agency's determination of the economic feasibility of a proposed bond issue, bond amendment, and extension of time application for a bond issue. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination [if full RIA not required]

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and 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 the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended 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.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the proposed rulemaking is to revise Texas Administrative Code §§293.59(k)(3)(A) and 293.59(k)(4)(A) to add Chambers

County to the counties subject to the \$1.50 projected feasibility tax rate limit and the \$2.50 no-growth feasibility tax rate limit in response to a rule petition and stakeholder input.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not 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 cost of complying with the proposed rules is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code §2001.0225(a). There are no federal standards governing the area of tax rate limits with respect to water districts. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not 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. Finally, the proposed rulemaking will be adopted pursuant to the commission's specific authority in Texas Water Code §5.013, which gives the commission continuing supervision over districts, and Texas Water Code §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

The commission invites public comment of the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section to this

preamble.

Takings Impact Assessment

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to ensure that Chambers County has the appropriate tax rate limit under the commission's bond review rules. The proposed rules would advance this stated purpose by revising the relevant rules in Chapter 293 of 30 Texas Administrative Code.

Promulgation and enforcement of these rules would constitute neither a statutory nor a constitutional taking of private real property. These rules would not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking would not burden nor restrict the owner's right to property. These provisions would not impose any burdens or restrictions on private real property. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on Wednesday December 7, at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Monday December 5, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Tuesday, December 6, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YmZkOGNiMTMtZGJiNy00OGNjLWFjMDYtZGNhOGNmMjIhMDg5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at:

<https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2022-017-292-OW. The comment period closes on November 8, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Justin Taack, Water Supply Division 512-239-0418.

SUBCHAPTER E: ISSUANCE OF BONDS

§293.59

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

Therefore, the TWC authorizes rulemaking that amends §293.59(k), which relates to the projected tax rate and no-growth tax rate for proposed bond issuances.

§293.59. Economic Feasibility of Project.

(a) In addition to determining the engineering feasibility of a project, the commission shall also determine the economic feasibility of each proposed bond issue, bond amendment, and extension of time application for a bond issue. The staff of the commission shall use the following sections in making economic feasibility analysis. In its written recommendations to the commission, which analyze the particular application, the staff shall always address the economic feasibility.

(b) Economic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates. Utility rates that do not exceed the rates of the

largest city in the geographic area in which the district is located are conclusively deemed to be competitive. Economic feasibility is influenced by many factors and varies widely depending on economic conditions, the real estate market, the number of competing projects, and geographic location.

(c) Projected debt service tax rate is the tax rate required to meet the projected annual debt service requirement using projected assessed valuations and an appropriate tax collection rate. The projected annual debt service requirement shall include the previous and proposed debt. The projected debt service tax rate for any bond issue shall be shown in the cash flow table as a level or decreasing tax rate.

(d) No-growth debt service tax rate is the tax rate required to meet projected annual debt service requirements using the current assessed value and a 100% tax collection rate. The current value is determined by either:

(1) the most recent certificate of assessed valuation from the central appraisal district; or

(2) a certificate of estimated assessed valuation from the central appraisal district. Projected annual debt service requirements shall include the previous and proposed debt. The no-growth debt service tax rate for any bond issue shall be shown on the cash flow table as a level or decreasing tax rate.

(e) Combined no-growth tax rate is the sum of the following:

(1) no-growth debt service tax rate of the district;

(2) projected no-growth debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage, or recreational facilities that are smaller in size than a county, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct. (In other words, for road districts or road utility districts that are as large as one county commissioner's precinct, the road district tax is not counted.);

(3) an equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) city tax rate specifically attributable to water, sewage, drainage, and recreational facilities if the district is located within a city;

(5) current or proposed district or overlapping maintenance tax levy, if any;

(6) contract tax, if any; and

(7) less any equivalent tax rebate or other payments.

(f) Combined projected tax rate is the sum of the following:

(1) projected debt service tax rate of the district;

(2) projected debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage, recreational facilities, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct;

(3) an equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) city tax rate specifically attributable to water, sewage, drainage, and recreational facilities if the district is located within a city;

(5) current or proposed district or overlapping maintenance tax levy, if any;

(6) contract tax, if any; and

(7) less any equivalent tax rebate or other payment.

(g) A surcharge is a flat charge in addition to rates imposed on residents receiving water and/or wastewater service from resources of a city or other entity and supplied through district facilities. Surcharge revenues are placed in the district's debt service fund and are intended to be used to meet the debt service requirement on the district's bonds.

(h) For districts collecting surcharge revenues, the equivalent surcharge tax rate shall be calculated as follows.

(1) For residential development with similar house prices:

$$\text{equivalent tax rate} = \frac{\text{monthly surcharge} _ 12 _ 100}{\text{average house price}}$$

Figure 1: 30 TAC §293.59 (h)(1)

(2) For mixed-use development and diverse house prices:

$$\text{equivalent tax rate} = \frac{\text{total annual surcharge revenues at projected build out} _ 100}{\text{total assessed value of district at buildout}}$$

Figure 2: 30 TAC §293.59 (h)(2)

(3) For purposes of this calculation, no adjustments shall be made for projected collection rate of the surcharge, interest earnings on the surcharge account, or other factors.

(i) For districts receiving a rebate for taxes paid to a city or other entity for water, wastewater, drainage, recreational, or road service, the equivalent tax rebate shall be calculated as follows:

Figure 3: 30 TAC §293.59(i)

$$\frac{\text{total amount rebated by entity to district} \times 100}{\text{certified assessed value of district}}$$

(j) The assessed value is the appraised value after considering exemptions and special valuations and is the amount to which the tax rate is applied to determine the total tax levy.

(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 Texas Water Code (TWC), §49.052(d).

(1) The district shall provide the current and projected tax rates of all entities levying or proposing to levy taxes on land within the district and a comparison of such taxes with the total tax levy on all competing projects in the same market area, as defined in the market study, if applicable, shall be provided.

(2) A cash flow analysis to determine the projected debt service revenue and projected tax rate shall be provided. It should include the following assumptions.

(A) Each ending debt service balance in the cash flow analysis will be not less than 25% of the following year's debt service requirement.

(B) Interest income will only be shown on the ending debt service balance for the first two years.

(C) A 90% tax collection rate shall be used in all the projected tax rate calculations and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(D) The projected tax rate shall be level or decreasing for the life of the bonds.

(3) The combined projected tax rate must not exceed the following:

(A) \$1.50 in Chambers, Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or

(C) \$1.00 in all other counties.

(4) The combined no-growth tax rate must not exceed the following:

(A) \$2.50 in Chambers, Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) \$2.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or

(C) \$2.00 for all other counties.

(5) The following apply to the central appraisal district certificate.

(A) If the valuations contained in the certificate of certified assessed valuation are at least 25% higher than those contained in the previous year's certified valuation, a written explanation from the district of such increase and a detailed calculation demonstrating how the value was derived shall be provided.

(B) In determining the projected or no-growth tax rates, a certificate of estimated assessed valuation may be used under the following conditions:

(i) the developer or landowner to receive bond proceeds shall certify, represent, and agree that it will not challenge and attempt to reduce its valuations below the values shown on the certificate for the life of the bonds;

(ii) if the valuation contained in the certificate of estimated taxable valuation is at least 25% higher than that contained in the most recent certified valuation, a written explanation from the district of such increase shall be provided;

(iii) if the estimated taxable valuation results in an exemption from §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) and the final certificate of taxable value is not sufficient for an exemption from that section, the developer will be obligated to refund to the district the difference in the bond issue requirement without developer contribution and with developer contribution plus interest at the bond interest rate to the district; and

(iv) developed land values will not be used in the commission's analysis for lots that do not have completed water, wastewater, and drainage facilities and roads constructed to county or city standards, as applicable, at the time of development.

(6) At the time of commission approval, the following shall apply:

(A) all underground water, wastewater, and drainage facilities to be financed with proceeds from the proposed bond issue or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, shall be at least 95% complete as certified by the district's engineer;

(B) all groundwater, surface water, waste discharge permits, or other permits needed to secure capacity to support the projected build-out shall have been obtained;

(C) sufficient lift station, water plant, and sewage treatment plant capacity, as applicable depending on the type of district, to serve the connections projected for a period of not less than 18 months shall be either 95% complete as certified by the district's engineer or available in existing plants in accordance with executed contracts for capacity in plant(s) owned by other entities (but in no event less than 50,000 gallons per day water plant and sewage treatment plant capacity);

(D) water supply, lift station, and wastewater treatment capacity needed to support the projected build-out used to support the feasibility of the subject bond application must be existing or funds for that capacity must be included in the bond issue or secured by a letter of credit or other acceptable guarantees approved by the executive director; and

(E) all street and road construction to provide access to the areas provided with utilities to be financed with proceeds from the proposed bond issue, or necessary to serve the projected build-out used to support the feasibility of the subject bond

issue, must be 95% complete as certified by the district's engineer. All streets and roads shall be constructed in accordance with city or county standards, as appropriate.

(7) At least 25% of the projected value of houses, buildings, and/or other improvements shown in the projected tax rate calculations must be completed prior to advertising for the bond issue. The projections used to satisfy this section shall also be used in the calculations required by paragraphs (2) and (3) of this subsection.

(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 that permanently waives the right to claim agricultural, open-space, timberland, or inventory valuation for any land, homes, or buildings that 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 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) One or more of the requirements in paragraphs (1) - (8) of this subsection may be waived for good cause by commission order if all of the facilities proposed under a bond issue application are essential because of valid orders, permits, or actions against the district by a governmental agency or court. If only a portion of the bond issue is for facilities essential because of valid orders, permits, or actions against the district by a governmental agency or court and if a waiver of any of the requirements is requested, all nonessential projects may be deleted from the bond issue if not feasible under the other provisions of these rules.

(10) A current market study is required for districts using growth projections to support the feasibility of the bond issue. The market study will meet the guidelines set out in the Bond Application Report Format. The market study provided will specifically address the projected building program for the three years subsequent to filing of the bond application and the period of projected build-out shown in the bond application and the competing projects in the surrounding market area. The study must contain a detailed description of the proposed development and the houses, buildings, and other improvements that are proposed.

(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) the no-growth tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed \$1.30; the no-growth tax rate of a district providing major water and sewage facilities that it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed \$1.30, and the combined no-growth tax

rate does not exceed \$2.00; and, the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district;

(B) the district has an acceptable credit rating as defined in §293.47(b)(4) of this title

or a credit enhanced rating as defined in paragraph (5) of this subsection; or

(C) the district is providing water, wastewater, and drainage facilities and the combined no-growth tax rate of all overlapping entities specifically attributable to water, sewage, drainage, recreational facilities, and roads if the entity is a special district encompassing less than one county commissioner's precinct, if any, does not exceed the following:

(i) \$1.50 in Chambers, Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(ii) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or

(iii) \$1.00 in all other counties.

(D) for the exceptions in subparagraph (A) or (C) of this paragraph, the developer shall provide a guarantee for its 30% share of utilities, if required under §293.47 of this title, in the form and manner required by §293.47(g) of this title;

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

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

(I) For a district's second and subsequent bond issues, subsection (k) of this section shall apply, and the following shall apply except that only paragraph (1) of this subsection applies to districts that do not have a developer as defined by TWC, §49.052(d), or to districts that meet the criteria set out in subsection (k)(11) of this section.

(1) A 90% tax collection rate shall be used in the projected tax rate calculations unless the district demonstrates that its historical collection rate is higher, and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(2) The water, wastewater, and drainage facilities financed by the district under previous bond issues and all road and street construction to serve such connections shall be at least 95% complete as certified by the district's engineer.

(3) Sufficient lift station, water plant, and sewage treatment plant capacity to serve the connections shown in the tax rate calculations submitted in prior bond issues shall be at least 95% complete as certified by the district's engineer, unless the district is a participant in a regional surface water or wastewater plant, a permit sufficient for the expansion has been issued, and either:

(A) funds are available to finance such capacity and any additional capacity necessary for a feasible expansion;

(B) sufficient capacity is contractually available to serve all such prior connections; or

(C) the plant is under construction with sufficient capacity to serve all such prior connections.

(4) Houses and/or buildings equal to 75% of the projected buildout used in the projected tax rate calculations contained in all prior bond issues shall be completed and may be located on either:

(A) the area developed from the proceeds of the prior bond issues; or

(B) a combination of the area developed from the proceeds of prior bond issues, the proposed bond issue, and future bond issues.

(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) disregarding those areas that had growth projected and were financed in previous bond issues, at least 50% of the value of the houses and/or buildings shown in the build-out schedule and used in the projected tax rate calculations supporting the subject bond issue must be existing;

(B) the district anticipates receiving an acceptable credit rating as defined in §293.47(b)(4) of this title or a credit enhanced rating as defined in §293.47(b)(5) of this title, and such rating must be obtained prior to the sale of bonds; or

(C) the district has a ratio of debt to assessed valuation as provided in §293.47(a)(1) of this title.

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

(n) A district may request a variance if it does not meet the guidelines contained in subsections (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 under the 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 build-out and compliance with commission rules;
- (3) the past history of the developer and related or affiliated entities with respect to its projections versus actual build-out 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 that may affect the feasibility of the project.