TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Proposed Rulemaking

AGENDA REQUESTED: July 30, 2026

DATE OF REQUEST: July 10, 2026

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

CAPTION: Docket No. 2025-1920-RUL. Consideration for publication of, and hearing on, proposed amendments to sections 291.3, 291.142 and 291.143 of 30 TAC Chapter 291, Utility Regulations.

The proposed rulemaking would implement Senate Bill (SB) 740 and SB 1169, 89th Texas Legislature, 2025, which amended sections 13.412(g) and 13.4132 of the Texas Water Code to expand the types of entities TCEQ may appoint as temporary manager or receiver, allowing TCEQ to seek appointment of public utility agencies, municipally owned utilities, counties, water or sewer service corporations, or certain districts to serve as a receiver or temporary manager for an abandoned water or sewer utility. (Iryna Kushnirsky, Ruth Takeda; Rule Project No. 2026-009-291-OW)

Cari-Michel La Caille
Director

Michele Risko
Division Deputy Director

Gwen Ricco
Agenda Coordinator

Copy to CCC Secretary? NO ☒ YES ☐

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** July 10, 2026

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: *cml* Cari-Michel La Caille, Director
Office of Water

Docket No.: 2025-1920-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 291, Utility Regulations
Senate Bills (SBs) 740 and 1169 Implementation
Rule Project No. 2026-009-291-OW

Background and reason(s) for the rulemaking:
The rulemaking is needed to implement SBs 740 and 1169, 89th Regular Texas Legislature, 2025 which amended Texas Water Code (TWC), Chapter 13.

Scope of rulemaking:

A.) Summary of what the rulemaking would do:
The Texas Commission on Environmental Quality (TCEQ or commission) proposes this rulemaking to implement SBs 740 and 1169, 89th Texas Legislature, 2025.

B.) Scope required by federal regulations or state statutes:
SB 740, effective September 1, 2025, amended TWC, §13.412 to specify that a receiver appointed under this section may be a person, a municipally owned utility, a county, a public utility agency, or a district or authority created under Section 52, Article 59, or Section 59, Article 16, Texas Constitution. SB 740 also amended TWC §13.4132 to specify that a municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority may be authorized to temporarily manage and operate a utility. SB 740 also amended TWC §13.4132 to specify that, for purposes of this section, a reference to a "person" includes a municipally owned utility, a public utility agency, or a district or authority created under Section 52, Article 59, or Section 59, Article 16, Texas Constitution. These amendments expand the types of entities eligible to serve as temporary managers or receivers for abandoned water and sewer utilities.

SB 1169, effective September 1, 2025, amended Chapter 572, Local Government Code, by adding Subchapter D which specifies that for the purposes of this subchapter, a reference in Chapter 13, Texas Water Code, to a person includes a public utility agency. SB 1169 also authorizes the commission to request that the Attorney General bring suit to appointment a public utility agency as a receiver in the manner provided by TWC §13.412. SB 1169 also authorizes the commission to authorize a public utility agency to temporarily manage and operate a utility or water supply or sewer supply corporation in the manner provided by TWC §13.4132. SB 1169 also amended TWC, §13.002 to add a new definition of "public utility agency" and amend the definitions of "retail public utility" and "water and sewer utility" by adding "public utility agency" to both definitions.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:
TCEQ proposes the amendments under TWC:

- §13.002, Definitions
- §13.412, Receivership
- §13.4132, Operation of Utility that Discontinues Operation or Is Referred for Appointment of Receiver

Effect on the:
TCEQ staff does not expect any significant effect from this implementation and the expected rulemaking on the regulated community, the public, or TCEQ programs.

A.) Regulated community:
The rulemaking does not create new requirements or obligations for the regulated community, but agency expectation is that expanding the allowable entities eligible to serve as temporary managers and receivers for abandoned water and sewer utilities will provide more options for regulated communities.

B.) Public: Ensures that retail customers receive a higher quality, more affordable, or more reliable water or sewer service.

C.) Agency programs: This rulemaking will provide additional options for TCEQ when it is called upon to coordinate and appoint an outside party to run a water or sewer utility.

Stakeholder meetings
No stakeholder meetings are planned for this rulemaking. The rules will undergo the required 30-day public comment period and a public hearing will be held.

Public Involvement Plan
N/A

Alternative Language Requirements
Spanish language documents are required for this statewide rulemaking.

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

Would this rulemaking affect any current policies or require development of new policies?
No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
The Water Supply Division has not identified alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated Proposal Date: July 30, 2026
Anticipated Texas Register Publication Date: August 14, 2026
Anticipated Public Hearing Date: September 10, 2026
Anticipated Public Comment Period: August 15, 2026 to September 15, 2026
Anticipated Adoption Date: December 16, 2026

Agency Contacts:
Iryna Kushnirsky, Rule Project Manager, Water Supply Division
Ruth Takeda, Staff Attorney, Environmental Law Division
Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division

Attachments:
SB 740 (Enrolled)
SB 1169 (Enrolled)

cc: Chief Clerk, 2 copies
Executive Director's Office
Patrick Lopez
Jessie Powell
Kevin Patteson
Office of General Counsel
Iryna Kushnirsky
Ruth Takeda
Gwen Ricco

AN ACT

relating to certain proceedings by the Public Utility Commission of Texas regarding water or sewer service.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 12.013(b) and (d), Water Code, are amended to read as follows:

(b) In this section, "political subdivision" means municipalities [~~incorporated cities, towns or villages~~], counties, river authorities, water districts, and other special purpose districts.

(d) The utility commission's jurisdiction under this section relating to a municipality [~~incorporated cities, towns, or villages~~] shall be limited to water furnished by the municipality [~~such city, town, or village~~] to another political subdivision, other than another municipality, on a wholesale basis.

SECTION 2. Section 13.002, Water Code, is amended by adding Subdivision (16-a) to read as follows:

(16-a) "Public utility agency" means a public utility agency created under Chapter 572, Local Government Code.

SECTION 3. Section 13.043, Water Code, is amended by adding Subsection (f-1) and amending Subsection (j) to read as follows:

(f-1) Subsection (f) does not apply to a decision of a municipality regarding wholesale water or sewer service provided to another municipality.

(j) In an appeal under this section, the utility commission shall ensure that every appealed rate is just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. [~~For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.~~]

SECTION 4. Section 13.183, Water Code, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), (c-3), and (c-4) to read as follows:

(c) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority, by rule or ordinance, as appropriate, may adopt specific alternative ratemaking methodologies for water or sewer rates to allow for more timely and efficient cost recovery. Appropriate alternative ratemaking methodologies are the introduction of new customer classes, the cash needs method, and phased and multi-step rate changes. The regulatory authority may also adopt system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment. If the utility commission is the appropriate regulatory authority, the utility commission shall enter a final order on a request for a system improvement charge under this subsection not later than the 60th

day after the date the utility commission determines that a complete application for a system improvement charge has been filed. The utility commission may extend the deadline for not more than 15 days for good cause. The utility commission by rule shall establish a schedule that requires all utilities that have implemented a system improvement charge approved by the utility commission to make periodic filings with the utility commission to modify or review base rates charged by the utility. Overall revenues determined according to an alternative ratemaking methodology adopted under this section must provide revenues to the utility that satisfy the requirements of Subsection (a). The regulatory authority may not approve rates under an alternative ratemaking methodology unless the regulatory authority adopts the methodology before the date the rate application was administratively complete.

(c-1) The utility commission shall by rule:

(1) establish the information required for an application for a system improvement charge to be considered complete by the utility commission under this section, which must include the documentation listed in Subsection (c-2); and

(2) prescribe a standard form for an application to the utility commission for a system improvement charge under Subsection (c).

(c-2) An application for a system improvement charge under Subsection (c) may not be considered complete by the utility commission unless, to substantiate each claimed eligible cost of a utility's eligible plant that is not already included in the

applying utility's rates, the application includes:

(1) receipts;

(2) invoices;

(3) contracts; or

(4) other documentation of eligible costs.

(c-3) An application for a system improvement charge under Subsection (c) may not be considered complete by the utility commission before the 30th day after the date the application is filed with the utility commission.

(c-4) At the time an applicant files an application for a system improvement charge under Subsection (c) with the utility commission, the applicant shall provide a copy of the application to the Office of Public Utility Counsel. The utility commission shall allow the office to comment on the application not later than the 30th day after the date the application is filed. The utility commission shall provide to the office, at no cost and in electronic form, any data related to the application held by the commission. Information provided to the office under this subsection that is confidential and not subject to disclosure by the utility commission under Chapter 552, Government Code, or other law is confidential and not subject to disclosure by the office.

SECTION 5. Section 13.301(l), Water Code, is amended to read as follows:

(l) Notwithstanding any other provision of this section or Section 13.302, the utility commission by rule shall adopt a [~~an expedited~~] process to expedite an application for the acquisition of the stock or ownership interest under Section 13.302, or of

assets under this section, of a utility in receivership under Section 13.412, a utility in supervision under Section 13.4131, or a utility in temporary management under Section 13.4132, and, if applicable, its certificated service area, by a Class A or Class B utility. The applicant must have been appointed as a temporary manager or supervisor for the utility by the utility commission or commission or have been appointed as a receiver for the utility at the request of the utility commission or commission before filing the application [~~that allows a person appointed by the utility commission or commission under Section 13.4132 as a temporary manager of a utility, utility in receivership, or utility in supervision, who is also an operator of a Class A or Class B utility to apply for utility commission approval of the person's acquisition of the stock, ownership interest, or assets of the temporarily managed and operated utility, utility in receivership, or utility in supervision, its facilities, and, if applicable, its certificated service area~~]. The [~~expedited~~] process must:

(1) waive public notice requirements regardless of whether the applicant [~~person~~] elects to charge initial rates in accordance with Section 13.3011 or use a voluntary valuation determined under Section 13.305;

(2) require approval of the acquisition transaction if the transaction is considered to be in the public interest; and

(3) provide that:

(A) the applicant's [~~person's~~] appointment is considered sufficient to demonstrate adequate financial, managerial, and technical capability for providing continuous and

adequate service to the service area to be acquired and any areas currently certificated to the applicant [~~person~~]; and

(B) all used and useful invested capital and just and reasonable operations and maintenance costs incurred by the applicant [~~person~~] during the applicant's [~~person's~~] appointment as temporary manager and operator of the utility, utility in receivership, or utility in supervision to be acquired are considered to be a regulatory asset for the applicant [~~person~~] and are recoverable in the applicant's [~~person's~~] next comprehensive rate proceeding or system improvement charge application.

SECTION 6. Subchapter H, Chapter 13, Water Code, is amended by adding Section 13.3021 to read as follows:

Sec. 13.3021. SALES, TRANSFERS, AND MERGERS FOR CERTAIN RETAIL PUBLIC UTILITIES. (a) The utility commission by rule shall adopt an expedited process to authorize a municipally owned utility, a county, a water supply or sewer service corporation, a public utility agency, or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, to acquire the stock or ownership interest under Section 13.302, or assets under Section 13.301, of a utility in receivership under Section 13.412, a utility in supervision under Section 13.4131, or a utility in temporary management under Section 13.4132, and, if applicable, its certificated service area, in the manner provided by Sections 13.301 and 13.302.

(b) The municipally owned utility, county, water supply or sewer service corporation, public utility agency, district, or authority must have been appointed as a temporary manager or

supervisor for the utility by the utility commission or commission or as a receiver for the utility at the request of the utility commission or commission before filing an acquisition application under this section.

(c) The process must:

(1) be based on the expedited process adopted under Section 13.301(l), except for any aspects of the process that cannot be applied to an entity over which the utility commission does not have original rate jurisdiction;

(2) waive public notice requirements;

(3) require approval of the acquisition transaction if the transaction is considered to be in the public interest; and

(4) provide that the municipally owned utility's, county's, water supply or sewer service corporation's, public utility agency's, district's, or authority's appointment is considered sufficient to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area to be acquired and any areas currently certificated to the municipally owned utility, county, corporation, public utility agency, district, or authority.

SECTION 7. Section 13.412(g), Water Code, is amended to read as follows:

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may be a person, a municipally owned utility, a county, a water supply or sewer service corporation, a public utility agency, or a district or authority created under Section 52, Article III, or Section 59,

Article XVI, Texas Constitution, and may seek approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

SECTION 8. Section 13.4132, Water Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The utility commission or the commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a utility commission or commission meeting, may authorize a willing person, municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, to temporarily manage and operate a utility if the utility:

(1) has discontinued or abandoned operations or the provision of services;

(2) has been or is being referred to the attorney general for the appointment of a receiver under Section 13.412; or

(3) provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to:

(A) provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;

(B) provide a minimum pressure of 35 pounds per

square inch throughout the distribution system under normal operating conditions; or

(C) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

(a-1) For the purposes of this section, a reference to a person includes a municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

SECTION 9. (a) The Public Utility Commission of Texas shall adopt the rules required by Section 13.183(c-1), Water Code, as added by this Act, not later than September 1, 2026.

(b) Section 13.183(c), Water Code, as amended by this Act, and Section 13.183(c-2), Water Code, as added by this Act, apply only to an application for system improvement charges received by the Public Utility Commission of Texas on or after September 1, 2026. An application for system improvement charges received before September 1, 2026, is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 740 passed the Senate on March 24, 2025, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 26, 2025, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 740 passed the House, with amendments, on May 22, 2025, by the following vote: Yeas 144, Nays 0, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor

S.B. No. 1169

AN ACT

relating to the provision of water or sewer service by public entities operating jointly or concurrently.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 572.001(3), Local Government Code, is amended to read as follows:

(3) "Public entity" means a political entity or corporate body of this state, including a county, municipality, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, or a water supply or sewer service corporation.

SECTION 2. Section 572.012(a), Local Government Code, is amended to read as follows:

(a) Each participating public entity may:

(1) use the entity's money to plan, acquire, construct, own, operate, and maintain its interest in a facility;

(2) share in the facility;

(3) issue bonds and other securities to raise money for a purpose described by Subdivision (1) in the same manner and to the same extent and subject to the same conditions as would be applicable if the public entity had sole ownership of the facility;

(4) acquire, for the use and benefit of each participating public entity, land, easements, and property for a facility by purchase or by exercising the power of eminent domain;

[~~and~~]

(5) transfer or otherwise convey the land, property, or property interest or otherwise have the land, property, or property interest become vested in other participating public entities to the extent and in the manner agreed between the entities;

(6) make an acquisition described by Subdivision (4) through a purchase from a public or private entity; and

(7) for the use and benefit of each participating public entity, acquire by purchase a public utility, as defined by Section 13.002, Water Code, other than an affected county.

SECTION 3. Sections 572.051(2) and (3), Local Government Code, are amended to read as follows:

(2) "Obligation" means a [~~revenue~~] bond or note secured by a fee, a charge, an assessment, or other revenue of an agency available for that purpose.

(3) "Public utility agency" means an agency created under this subchapter by two or more public entities to acquire, plan, finance, construct, own, operate, or maintain facilities.

SECTION 4. Sections 572.052(c) and (d), Local Government Code, are amended to read as follows:

(c) A public utility agency is a:

(1) separate agency;

(2) political subdivision of this state; [~~and~~]

(3) political entity and corporate body; and

(4) retail public utility for the purposes of Chapter 13, Water Code.

(d) A public utility agency may not impose a tax but has all the other powers and obligations that are related to facilities and that are provided by law to a municipality that owns a facility, except as provided by Section 572.061.

SECTION 5. Section 572.053, Local Government Code, is amended to read as follows:

Sec. 572.053. CHANGES IN PUBLIC ENTITIES PARTICIPATING IN PUBLIC UTILITY AGENCY. (a) The public entities that participate in a public utility agency may by concurrent ordinances add a public entity to, or delete a public entity from, participation in the public utility agency.

(b) A participating public entity may withdraw from a public utility agency by providing an ordinance or resolution of the governing body of the participating public entity to the agency not later than the 180th day before the proposed date of withdrawal. A participating public entity may not withdraw from a public utility agency under this subsection if bonds, notes, or other obligations of the agency are secured by the revenues of the participating public entity, unless the agency adopts a resolution approving the withdrawal. Upon withdrawal, a participating public entity assumes the outstanding debt attributable to that entity from the agency on a prorated basis equal to that entity's benefit and has, without compensation from the agency, no further rights, duties, or obligations relating to the agency or ability to receive service from the facilities of the agency.

SECTION 6. Section 572.058(b), Local Government Code, is amended to read as follows:

(b) A public utility agency may:

(1) perform any act necessary to the full exercise of the agency's powers, including acts necessary to acquire, finance, own, operate, or manage a facility of the agency;

(2) enter into a contract, lease, or agreement, including an interlocal contract as authorized by Chapter 791, Government Code, with or accept a grant or loan from any of the following entities for the management and operation of an agency facility or the acquisition, construction, financing, maintenance, operation, provision, or receipt of a facility, service, or product [~~a~~]:

(A) a department or agency of the United States;

(B) a department, agency, or municipality or other political subdivision of this state; or

(C) a public or private corporation or person;

(3) sell, lease, convey, or otherwise dispose of all or a portion of any right, interest, or property the agency considers to be unnecessary for the efficient operation or maintenance of its facilities; and

(4) adopt rules to govern the operation of the agency and its employees, facilities, and service.

SECTION 7. Subchapter C, Chapter 572, Local Government Code, is amended by adding Section 572.0581 to read as follows:

Sec. 572.0581. NO POWER OF EMINENT DOMAIN. Except as provided by Section 572.0585, a public utility agency does not have the power of eminent domain.

SECTION 8. Sections 572.061(d) and (e), Local Government

Code, are amended to read as follows:

(d) Notwithstanding Subsection (a), the Public Utility Commission of Texas has appellate jurisdiction over [~~the state reserves its power to regulate and control~~] the rates and charges of [~~by~~] a public utility agency in the manner provided by Section 13.043, Water Code.

(e) This [~~Until obligations issued under this subchapter have been paid and discharged, this~~] state pledges to and agrees with the purchasers and successive holders of [~~the~~] obligations issued under this subchapter that in any appeal proceeding regarding the public utility agency conducted under Section 13.043, Water Code, the Public Utility Commission of Texas [~~it~~] will [~~not limit or alter the powers of the agency to~~] establish [~~and collect~~] rates and charges that will produce revenue sufficient to pay for those items specified in Subsections (a) and (b) and any other obligations of the agency in connection with those items.

SECTION 9. Section 572.062, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) to read as follows:

(a) A public utility agency may:

(1) issue obligations, including anticipation notes, to accomplish the purposes of the agency; and

(2) finance or refund the acquisition, construction, expansion, and improvement of all or a portion of a facility relating to an agency purpose.

(b) Except as provided by Subsection (b-1), the [~~The~~] public utility agency may pledge to the payment of the obligations:

(1) the revenue of all or part of its facilities, including facilities acquired after the obligations are issued;

(2) revenues received from a public entity by contract as authorized by a concurrent ordinance;

(3) special assessments imposed by a public entity and provided by contract to the agency; or

(4) any other funds of the agency.

(b-1) Operation [~~However, operation~~] and maintenance expenses, including salaries and labor, materials, and repairs of facilities necessary to render efficient service, are a first lien on and charge against the pledged revenue.

(b-2) A public utility agency may not use a facility owned by the agency to secure or collateralize a new facility without the approval by resolution of each participating public entity participating in the joint financing of the new facility. This subsection does not apply to the use of revenue from a facility owned by the agency to secure or collateralize a new facility.

SECTION 10. Subchapter C, Chapter 572, Local Government Code, is amended by adding Sections 572.065 and 572.066 to read as follows:

Sec. 572.065. LIABILITY. Liability for the facilities and management of the public utility agency must be transferred to the agency on ownership of the facilities by the agency.

Sec. 572.066. INFRASTRUCTURE INVESTMENTS. A public utility agency may create a funding mechanism to jointly invest in and leverage funding for water infrastructure in Texas with the North American Development Bank.

SECTION 11. Chapter 572, Local Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. RECEIVERSHIP AND TEMPORARY MANAGEMENT

Sec. 572.101. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Utility" and "water supply or sewer service corporation" have the meanings assigned by Section 13.002, Water Code.

(3) "Utility commission" means the Public Utility Commission of Texas.

Sec. 572.102. APPLICABILITY; JURISDICTION. (a) For purposes of this subchapter, a reference in Chapter 13, Water Code, to a person includes a public utility agency.

(b) For purposes of this subchapter, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has over a utility under Chapter 13, Water Code.

Sec. 572.103. RECEIVERSHIP. (a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver that is a public utility agency in the manner provided by Section 13.412, Water Code, to collect the assets and carry on the business of a utility or water supply or sewer service corporation that:

(1) has abandoned operation of its facilities;

(2) informs the utility commission or the commission that the owner is abandoning the system;

(3) violates a final order of the utility commission or the commission;

(4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission;

(5) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(A) Chapter 7 or 13, Water Code; or

(B) Chapter 341, Health and Safety Code; or

(6) violates a final judgment issued by a court in a proceeding to enforce a provision of a permit issued by a groundwater conservation district under Chapter 36, Water Code.

(b) To facilitate the regionalization of water and sewer service, the utility commission shall prioritize an application submitted under Section 13.412(g), Water Code, by a public utility agency. The utility commission shall issue an order approving the acquisition proposed in the application not later than the 120th day after the date the utility commission determines the application is complete.

Sec. 572.104. TEMPORARY MANAGEMENT. The utility commission or the commission, after providing to the utility or water supply or sewer service corporation notice and an opportunity to be heard by the commissioners at a utility commission or commission meeting, may authorize a public utility agency to temporarily manage and operate a utility or water supply or sewer service corporation in the manner provided by Section 13.4132, Water Code, if the utility or corporation:

(1) has discontinued or abandoned operations or the provision of services;

(2) has been or is being referred to the attorney general for the appointment of a receiver under Section 572.103;

(3) violates a final order of the utility commission or the commission; or

(4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission.

SECTION 12. Section 13.002, Water Code, is amended by adding Subdivision (16-a) and amending Subdivisions (19) and (23) to read as follows:

(16-a) "Public utility agency" means a public utility agency created under Chapter 572, Local Government Code.

(19) "Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, public utility agency, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(23) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, public utility agency, water supply or sewer service corporation, or [~~a~~] political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in

this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

SECTION 13. Section 13.043, Water Code, is amended by amending Subsections (b), (c), and (i) and adding Subsections (i-1) and (j-1) to read as follows:

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public

utility;

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users;

(5) a public utility agency; and

(6) [~~(5)~~] a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(c) An appeal under Subsection (b) must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (6) [~~(5)~~], within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b).

(i) The governing body of a municipally owned utility or a political subdivision, other than a public utility agency, within 60 days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The

governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

(i-1) The board of directors of a public utility agency, within 60 days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal the rates. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The board of directors of the public utility agency may provide the notice electronically if the agency has access to a ratepayer's e-mail address.

(j-1) Notwithstanding Subsection (j), in an appeal under this section of a rate charged by a public utility agency, the utility commission shall ensure that the rate complies with Section 572.061(e), Local Government Code.

SECTION 14. Section 13.242, Water Code, is amended by adding Subsection (e) to read as follows:

(e) The utility commission may by rule allow a public utility agency that includes a water supply or sewer service corporation as a participant in the agency to render retail water or sewer service without a certificate of public convenience and necessity.

SECTION 15. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate

effect, this Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1169 passed the Senate on April 29, 2025, by the following vote: Yeas 27, Nays 4.

Secretary of the Senate

I hereby certify that S.B. No. 1169 passed the House on May 7, 2025, by the following vote: Yeas 102, Nays 45, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §§291.3, 291.142 and 291.143.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes this rulemaking to implement Senate Bill (SB) 740 and SB 1169, 89th Texas Legislature, 2025.

SB 740, effective September 1, 2025, amended Texas Water Code (TWC), §13.412 to specify that a receiver appointed under this section may be a person, a municipally owned utility, a county, a public utility agency, or a district or authority created under Section 52, Article 59, or Section 59, Article 16, Texas Constitution. SB 740 also amended TWC §13.4132 to specify that a municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority may be authorized to temporarily manage and operate a utility. SB 740 also amended TWC §13.4132 to specify that, for purposes of this section, a reference to a "person" includes a municipally owned utility, a public utility agency, or a district or authority created under Section 52, Article 59, or Section 59, Article 16, Texas Constitution. These amendments expand the types of entities eligible to serve as temporary managers or receivers for abandoned water and sewer utilities.

SB 1169, effective September 1, 2025, amended Chapter 572, Local Government Code, by adding Subchapter D which specifies that for the purposes of Subchapter D, a reference to a person includes a public utility agency as assigned by Chapter 13, TWC. SB 1169 also authorizes the commission to request that the Attorney General bring suit to appoint a public utility agency as a receiver in the manner provided by TWC §13.412. SB 1169 also authorizes

the commission to authorize a public utility agency to temporarily manage and operate a utility or water supply or sewer supply corporation in the manner provided by TWC §13.4132. SB 1169 also amended TWC, §13.002 to add a new definition of "public utility agency" and amend the definitions of "retail public utility" and "water and sewer utility" by adding "public utility agency" to both definitions.

Section by Section Discussion

§291.3, Definitions of Terms

The commission proposes to add a new definition, "Public Utility Agency," to §291.3 based on the definition in TWC §13.002 as amended by SB 1169 and to renumber the subsequent definitions.

The commission proposes to amend the definitions in §291.3 of "retail public utility" and "water and sewer utility" by adding "public utility agency" to both definitions based on the definitions in Texas Water Code §13.002 as amended by SB 1169.

§291.142, Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver

The commission proposes to add new subsection (b) to §291.142 and to renumber the subsequent subsections because, for the purposes of this section, the definition of "person" in §291.3(9) now includes a municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, in accordance with TWC, §§13.412(g) and 13.4132 as amended by SB 740.

§291.143, Operation of a Utility by a Temporary Manager

The commission proposes to add new subsection (b) to §291.143 and to renumber the subsequent subsections because, for the purposes of this section, the definition of "person" in §291.3(9) now includes a municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, in accordance with Texas Water Code §§13.412(g) and 13.4132 as amended by SB 740.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is 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

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, specifically SB 740 and SB 1169 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

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 Communities Impact Assessment

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 amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. 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.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code (TGC) § 2001.0225 and determined that the rulemaking is not subject to § 2001.0225. A "Major environmental rule" means a rule with a specific intent 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.

First, the rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement legislation enacted in 2025 which amended sections 13.415(g) and 13.4132 of the TWC, to expand the

types of entities TCEQ may appoint as temporary manager or receiver, allowing TCEQ to seek appointment of public utility agencies, municipally owned utilities, counties, water or sewer service corporations, or certain districts to serve as a receiver or temporary manager for an abandoned water or sewer utility.

Second, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the 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. It is not anticipated that the cost of complying with the rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs. It is also not anticipated that the amendments will adversely affect the environment or adversely affect the public health and safety of the state or a sector of the state.

Finally, the rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in TGC §2001.0225(a). Section 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 the preceding four applicability requirements because this rulemaking: does not

exceed any standard set by federal law for public drinking water systems; does not exceed any express requirement of state law; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but under TWC §13.041, which establishes the utility commission's and commission's authority to adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules to implement SB 740 and 1169, 89th Legislative Session. (2025). SB 740 amended TWC §§13.412 and 13.4132 by specifying that a "person" for purposes of who may be appointed as temporary manager of a water or sewer utility that ceases operation or is referred for appointment of a receiver includes a municipally owned utility, a county, a public utility agency, or a district or authority created under Section 52, Article 59, or Section 59, Article 16, Texas Constitution. SB 1169 amended TWC, §13.002 by adding the new

definition of “Public Utility Agency” and amending the definitions of “retail public utility” and “water and sewer utility” by adding “public utility agency” to both definitions. SB 740 also modified §§13.412 and 13.4132 through enactment of Subchapter D in Chapter 572 of the Texas Local Government Code. These amendments expand the types of entities eligible to serve as temporary managers or receivers for abandoned water and sewer utilities.

The commission’s analysis indicates that TGC, Chapter 2007, does not apply to these rules based upon exceptions to applicability in TGC§ 2007.003(b). The rulemaking is an action that is taken to fulfill obligations mandated under state law for all of the proposed rules. The rulemaking also relates to emergency orders that are issued in response to a real and substantial threat to public health and safety, that are designed to significantly advance the public health and safety purpose, and that do not impose a greater burden than is necessary to achieve the public health and safety purpose. TGC § 2007.003(b)(4) and (13).

First, the rulemaking is an action taken to fulfill obligations under state law. The entities defined as “person” for purposes of appointing a temporary manager have been expanded under the modification of TWC, §§13.412 and 13.4132.

Second, the rulemaking relates to emergency orders, which are actions taken in response to a real and substantial threat to public health because they ensure the continuity of operation of public drinking water systems through appointment of temporary managers for a water system. The rules effecting the broadened definition of “person” do not impose a greater burden than is necessary to achieve the public health and safety purpose of ensuring continued operation of public drinking water systems with appropriate governmental regulation by means of required

emergency orders. TGC §2007.003(b)(13).

Further, the commission has determined that promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The rules require compliance regarding an emergency order appointing a temporary manager or receiver as now established under state law, which is meant to ensure public health and safety. Therefore, the rules would not constitute a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

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

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 hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 10, 2026 at 2:00 p.m. CDT 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 at 1:30 PM.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 8, 2026. 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 September 9, 2026, 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 they may do so at no cost at:
https://events.teams.microsoft.com/event/648e7428-31b1-4bee-a5a4-ff44b63f7c8a@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

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://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2026-009-291-OW. The comment period closes at 11:59 p.m. CDT on September 15, 2026. 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 Iryna Kushnirsky, Emergency Response and Preparedness Section, (512) 239-1471.

SUBCHAPTER A: GENERAL PROVISIONS

§291.3

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC) §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC §5.103, which establishes the commission's authority to adopt any rules necessary to carry out its powers and duties; TWC §5.105, which establishes the commission's authority to establish and approve general policy by rule; TWC §5.507, which establishes the commission's authority to issue an emergency order for operation of a utility that discontinues operation or is referred for appointment of a receiver; and TWC §13.041, which establishes the utility commission's and commission's authority to adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

The proposed rulemaking implements legislation enacted by the 89th Texas Legislature in 2025: TWC, §§13.412 and 13.4132, amended in Senate Bill (SB) 740; TWC, §13.002, amended in SB 1169; and TWC, §§13.412 and 13.4132, modified in SB 1169 by Texas Local Government Code, Chapter 572, Subchapter D.

§291.3. Definitions of Terms.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county to which Texas Local Government Code, Chapter 232, Subchapter B, applies.

(2) Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Department of Insurance, Division of Workers' Compensation, and institutions for higher education) which makes rules or determines contested cases.

(3) Certificate of Convenience and Necessity--A permit issued by the Public Utility Commission of Texas which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.

(4) Code--The Texas Water Code.

(5) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

(6) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(7) Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(8) Nonfunctioning system--A retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §291.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §291.143 of this title (relating to Operation of a Utility by a Temporary Manager).

(9) Person--Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

(10) Potable water--Water that is used for or intended to be used for human consumption or household use.

(11) Public utility--The definition of public utility is that definition given to "Water and sewer utility" in this section.

(12) Public Utility Agency--public utility agency created under Chapter 572, Local Government Code.

(13)[(12)] Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(14)[(13)] Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(15)[(14)] Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, public utility agency, political subdivision, or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(16)[(15)] Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in Texas Water Code, §15.602.

(17)[(16)] Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the Texas Water Code to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(18)[(17)] Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, public utility agency, water supply or sewer service corporation, or [a] political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(19)[(18)] Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

(20)[(19)] Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

SUBCHAPTER J: ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

§291.42 and §291.43

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC) §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC §5.103, which establishes the commission's authority to adopt any rules necessary to carry out its powers and duties; TWC §5.105, which establishes the commission's authority to establish and approve general policy by rule; TWC §5.507, which establishes the commission's authority to issue an emergency order for operation of a utility that discontinues operation or is referred for appointment of a receiver; and TWC §13.041, which establishes the utility commission's and commission's authority to adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

The proposed rulemaking implements legislation enacted by the 89th Texas Legislature in 2025: TWC §§13.002 and 13.4132, amended in Senate Bill (SB) 740; TWC §13.002, amended in SB 1169; and TWC §§13.412 and 13.4132, modified in SB 1169 by Texas Local Government Code Chapter 572, Subchapter D.

§291.142. Operation of Utility That Discontinues Operation or Is Referred for Appointment

of a Receiver.

(a) The commission or the executive director, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that:

(1) has discontinued or abandoned operations or the provision of services;

(2) is being referred to the attorney general for the appointment of a receiver under Texas Water Code (TWC), §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities;

(B) having violated a final order of the commission;

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; or

(D) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(i) TWC, Chapter 7;

(ii) TWC, Chapter 13;

(iii) Texas Health and Safety Code, Chapter 341; or

(3) provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to:

(A) provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;

(B) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(C) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

(b) For the purposes of this section, the definition of "person" also includes a municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(c)[(b)] The commission or the executive director may appoint a person under this section by emergency order under Chapter 35 of this title (relating to Emergency and

Temporary Order and Permits; Temporary Suspension or Amendment of Permit Conditions). A corporation may be appointed a temporary manager.

(d)[(c)] Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(e)[(d)] This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

§291.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under Texas Water Code (TWC), §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC, §13.412.

(b) For the purposes of this section, the definition of "person" also includes a municipally owned utility, county, water supply or sewer service corporation, public utility agency, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(c)[(b)] A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(d)[(c)] Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(e)[(d)] The term of an emergency order issued to appoint a temporary manager may not exceed 360 days. The emergency order may be renewed:

(1) once for a period not to exceed 360 days, or

(2) if the utility is undergoing a sale, transfer, merger, consolidation, or acquisition required to be reported to the Public Utility Commission under Tex. Water Code §13.301, until the sale, transfer, merger, consolidation, or acquisition process is complete.

(f)[(e)] The temporary manager shall serve a term not to exceed 360 days, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission under subsection (d) of this section;

(3) the temporary manager is discharged from his responsibilities by the commission; or

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general.

(g)[(f)] Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(h)[(g)] Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(i)[(h)] The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(j)[(i)] The temporary manager shall report to the executive director on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the executive director.

(k)[(j)] During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.