

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 17, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

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

Docket No.: 2022-0719-RUL

Subject: Commission Approval for Rulemaking Adoption
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:

The adopted rulemaking revises 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 will 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This rulemaking adoption also amends 30 TAC Chapter 292 to remove an outdated reference to Industrial Development Bonds and Pollution Control Bonds from the minimum requirements for administrative policies adopted by the boards of the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 adoption also amends 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 will do:

The adopted rulemaking amends 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 adoption amends 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 amends Chapter 292 to remove outdated references to Industrial Development Bonds and Pollution Control Bonds and updates 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 adopted 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 is adopted 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 adopted rulemaking will 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 adopted rulemaking will 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. A public hearing was held on December 7, 2022.

Public comment:

The commission held a public hearing on December 7, 2022. The comment period closed on December 7, 2022. The commission received comments from Chambers County Improvement District No. 2, Chambers County Improvement District No. 3, Chambers County Municipal Utility District No. 4, Masterson Advisors LLC (MALLC), Schwartz Page & Harding LLP, and Utility District Advisory Corporation (UDAC). All comments received were in support of the rulemaking without changes.

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Significant changes from proposal:

None.

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 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.

Will 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 adopted rulemaking schedule:

Texas Register proposal publication date: November 4, 2022

Anticipated *Texas Register* adoption publication date: March 24, 2023

Anticipated effective date: March 30, 2023

Six-month *Texas Register* filing deadline: April 7, 2023

Agency contacts:

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Attachments:

None.

cc: Chief Clerk, 2 copies
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