

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§293.11, 293.12, 293.15, 293.32, 293.41, 293.59, 293.63, 293.81, and 293.91 without changes to the proposed text as published in the February 13, 2026, issue of the Texas Register (51 TexReg 978).

### **Background and Summary of the Factual Basis for the Adopted Rules**

During the 87th Texas Legislature (2021), House Bill (HB) 1410 was passed and requires amendments to 30 Texas Administrative Code (TAC) Chapter 293 to implement the enacted legislation.

During the 88th Texas Legislature (2023), HB 2815, HB 3437, HB 3507, Senate Bill (SB) 1397, and SB 938 were passed and require amendments 30 TAC Chapter 293 to implement the enacted legislation.

This rulemaking reflects changes to Local Government Code (LGC), §375.022 enacted in HB 2815, which allows a Municipal Management District (MMD) to request that a succeeding board of directors be elected under LGC, §375.0645 instead of being appointed under LGC, §375.064.

This rulemaking reflects changes to LGC, §375.025(c), enacted in HB 2815, which require MMDs to complete the Creation Notice Actions and Requirements described by and pursuant to Texas Water Code (TWC), §49.011.

This rulemaking reflects changes to TWC, §49.011(a), enacted in HB 2815, that adds LGC, §375, to the list of TWC Chapters (36, 50, 51, 54, 55, 58, 65, and 66) which define the required documentation for an application for creation of a district to be submitted to the commission.

This rulemaking reflects changes to TWC, §54.030(b), enacted in HB 2815, that repealed amendments to TWC, §54.030(b) in HB 2914, 86th Legislature, Regular Session, 2019. Rule amendments remove outdated references to HB 2914 from 30 TAC §293.15(a)(1) and delete 30 TAC §293.15(c) and its subsections. Bill revisions affect application requirements for the conversion of a district in 30 TAC Chapter 293 enacted in HB 2815.

This rulemaking reflects changes to TWC, §49.316, enacted in HB 2815, that requires a district that's being divided to submit the final order to the commission and file the order with the real property records of the county.

This rulemaking reflects changes to TWC, §57.059, enacted in HB 2815, that stipulates that a director of a Levee Improvement district must: “(1) be at least 18 years old; (2) own land subject to taxation in the district or be a qualified voter in the district; (3) if the director is elected, be a qualified voter of the precinct in the district established by the commissioners court under TWC, §57.058, from which the director is elected.”

This rulemaking reflects changes to TWC, §49.4645(a), enacted in SB 938, which adds El Paso County to the list of counties in which water districts can issue bonds to be supported by ad valorem taxes for recreational facilities.

This rulemaking reflects changes to TWC, §49.4645(a-1), enacted in HB 1410 (87th Legislative Session) that allows a district to have a debt to valuation ratio for recreational facilities of up to 3% (up from 1%) provided the district meets certain criteria.

This rulemaking reflects changes to TWC, §49.18, enacted in HB 2815, which adds Austin, Brazos, Liberty, Grimes, Wharton and Walker Counties to the list of counties with a maximum projected tax rate limit of \$1.50. It also adds Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, and Milam Counties to the list of counties with a maximum projected tax rate limit of \$1.20.

This rulemaking reflects changes to TWC, §49.273(d) and (e), enacted in HB 3507, which requires a district to advertise for projects with a value greater than \$150,000. Additionally, HB 3507 requires a district to solicit written competitive bids from at least three bidders for contracts over \$25,000 but not more than \$150,000. The district is not required to advertise for bids for contracts over \$25,000 but no more than \$150,000.

This rulemaking reflects changes to TWC, §49.011(b), enacted in SB 1397, that requires the commission to provide notice to each state representative and state senator who represents the area inside the proposed district.

This rulemaking reflects changes to TWC, §49.273(i), enacted in HB 3437, which allows a district to approve change orders that involve an increase or decrease of \$150,000 or less.

### **Section by Section Discussion**

#### *§293.11, Information Required to Accompany Applications for Creation of Districts*

The commission amends §293.11(j)(1) by adding (G) allowing the succeeding board of directors of a MMD to be elected, rather than appointed, to implement changes made to LGC §375.022 and §375.0645 made by HB 2815.

*§293.12, Creation Notice Actions and Requirements*

The commission amends §293.12(a) to require the commission to notify the chief clerk that a creation application for a MMD is administratively complete. The commission deletes §293.12(g) relating to hearing requirements for Municipal Management Districts to implement changes to LGC, Chapter 375, Municipal Management Districts made by HB 2815 and to reorder the subsequent subsections. The commission adds new subsection (h) which requires the executive director to notify each state representative and state senator who represents an area inside the proposed district's boundaries that the petition has been filed to implement the statutory changes made by SB 1397.

*293.15, Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts*

The commission amends §293.15(b)(1) by removing outdated references to TWC, §54.030(b). Amendments made by HB 2914 of the 86th legislative session to TWC, §54.030(b) were repealed by HB 2815. The commission deletes existing language in §293.15(c) and §293.15(d) to remove outdated references to TWC, §54.030(b) which were repealed by HB 2815. Subsequent subsections were renumbered. The commission adds §293.15(b)(5) which requires evidence that the resolution on conversion was mailed to the Texas State Senator(s) and State Representative(s) who represent the area in which the district is located be included with application material.

*§293.32, Qualifications of Directors*

The commission adds new §293.32(a)(2) which requires the director of a levee improvement district created under TWC, Chapter 57: (A) to be at least 18 years old; own land subject to taxation in the district or be a qualified voter in the district; and if the director is elected, be a

qualified voter of the precinct in the district established by the commissioners court under TWC, §57.058 from which the director is elected. This addition is to implement the changes made to TWC, §57.059 by HB 2815. Subsequent paragraphs are renumbered.

*§293.41, Approval of Projects and Issuance of Bonds*

The commission amends §293.41(e) to add El Paso County to the list of counties in which water districts can authorize recreational debt supported by ad valorem taxes to implement changes made to TWC, §49.4645 made by SB 938. The commission also amends §293.41(e)(4) to remove language struck in TWC, §49.4645 made by SB 1410. The commission also amends §293.41(e)(5) to increase allowable recreational debt to valuation ratio from 1% to up to 3% if the district has a ratio of debt to certified assessed valuation of 10% or less, obtains an acceptable credit rating as defined in §293.47(b)(4) on its proposed bond issue, obtains a credit enhanced rating as defined in §293.57(b)(5) on its proposed bond issue, or has a contract with a political subdivision or an entity acting on behalf of a political subdivision under which the political subdivision or the entity agrees to provide to the district taxes or other revenues, as consideration for the district's development or acquisition of the facility to implement changes made to TWC, §49.4645 made by HB 1410, 87th Legislature.

*§293.59, Economic Feasibility of Project*

The commission amends §293.59(k)(3)(A) by adding Austin, Brazos, Grimes, Liberty, Wharton, and Walker Counties to the list of counties with a maximum tax rate limit of \$1.50 to implement changes made to TWC, §49.181 by HB 2815. The commission amends §293.59(k)(3)(B) by adding Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, and Milam Counties to the list of counties with a maximum tax rate limit of \$1.20 to implement changes made to TWC, §49.181 by HB 2815. The commission amends §293.59(k)(4)(A) by

adding Austin, Brazos, Grimes, Liberty, Wharton, and Walker Counties to the list of counties with combined no-growth maximum tax rate limit of \$2.50 to implement changes made to TWC, §49.181 by HB 2815. The commission amends §293.59(k)(4)(B) by adding Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, and Milam Counties to the list of counties with combined no-growth maximum tax rate limit of \$2.20 to implement changes made to TWC, §49.181 by HB 2815. The commission amends §293.59(k)(11)(C)(i) by adding Austin, Brazos, Grimes, Liberty, Walker, and Wharton Counties to the list of counties with a combined no-growth tax rate limit specifically attributable to water, sewage, drainage, recreational facilities, and roads of \$1.50 to implement changes made to TWC, §49.181 by HB 2815. The commission amends §293.59(k)(11)(C)(ii) by adding Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, and Milam Counties to the list of counties with a combined no-growth tax rate limit specifically attributable to water, sewage, drainage, recreational facilities, and roads of \$1.20 to implement changes made to TWC, §49.181 by HB 2815.

*§293.63, Contract Documents for Water District Projects*

The commission amends §293.63(8) to raise the contract value that triggers the requirement to advertise projects from over \$75,000 to over \$150,000, as well as raise the contract value that triggers the requirement to solicit written competitive bids from over \$25,000 but not more than \$75,000 to over \$25,000 but not more than \$150,000 to implement changes made to TWC, §49.273 by HB 3507.

*§293.81, Change Order*

The commission amends §293.81(2) – (3) to revise the limit for change orders with no commission approval from \$50,000 to \$150,000 to conform with changes to TWC, §49.273 enacted in HB 3437.

*§293.91, Reporting by Districts*

The commission adds new §293.91(a)(7) to require submittal of an order dividing a district within 30 days after the date of adoption of the order dividing a district. This addition implements changes to TWC, §49.316, enacted in HB 2815.

**Final Regulatory Impact Determination**

The commission reviewed the rulemaking adoption 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 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 rulemaking adoption is to implement legislative changes enacted by: HB 1410 from the 87th Texas Legislature; and HB 2815, HB 3437, HB 3507, SB 938, and SB 1397 from the 88th Texas Legislature.

HB 1410 allows water districts to have a debt to valuation ratio between 1% and 3%, inclusive, if certain criteria are met.

HB 2815 revises the petition and notice requirements for the creation of MMDs; changes how the Commission evaluates the financial feasibility of projects for which a district seeks to issue bonds; changes the process for converting into, dividing, and consolidating Municipal Utility Districts (MUDs); and changes the eligibility requirements to be a district director.

HB 3437 increases the maximum dollar amount that an employee or official of a district may approve in a change order.

HB 3507 changes the threshold amounts that determine when a district may solicit bids and when a district must advertise contract letting in a newspaper.

SB 938 adds El Paso County to a list of counties in which water districts may issue bonds for recreational facilities.

SB 1397 requires that the commission provide notice of district application to each state senator and state representative who represents the area inside the proposed district's boundaries.

The adopted rules will substantially advance this purpose by amending the Chapter 293 rules to incorporate the new statutory requirements.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted 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 adopted rules is

not expected to be significant with respect to the economy.

Furthermore, the rulemaking adoption is not subject to TGC, §2001.0225 because it does not meet any of the four applicability requirements listed in TCG, §2001.0225(a). There are no federal standards governing the areas of construction finances, director qualifications, recreational facility bonds, and notice to state legislators, with respect to water districts. Second, the rulemaking adoption does not exceed an express requirement of state law. Third, the rulemaking adoption 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 rulemaking adoption will be adopted pursuant to the commission's specific authority in TWC, §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.

### **Takings Impact Assessment**

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules constitute a taking under TGC, Chapter 2007. The primary purpose of the rulemaking adoption is to implement legislative changes enacted by HB 1410 from the 87th Texas Legislature; and HB 2815, HB 3437, HB 3507, SB 938, and SB 1397 from the 88th Texas Legislature.

HB 1410 allows water districts to have a debt to valuation ratio between 1% and 3%, inclusive, if certain criteria are met.

HB 2815 revises the petition and notice requirements for the creation of MMDs; changes how

the Commission evaluates the financial feasibility of projects for which a district seeks to issue bonds; changes the process for converting into and dividing Municipal Utility Districts (MUDs); and changes the eligibility requirements to be a district director for Levee Improvement Districts.

HB 3437 increases the maximum dollar amount that an employee or official of a district may approve in a change order.

HB 3507 changes the threshold amounts that determine when a district may solicit bids and when a district must advertise contract letting in a newspaper.

SB 938 adds El Paso County to a list of counties in which water districts may issue bonds for recreational facilities.

SB 1397 requires that the commission provide notice of district application to each state senator and state representative who represents the area inside the proposed district's boundaries.

The adopted rules will substantially advance this purpose by amending the Chapter 293 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This rulemaking adoption will primarily affect districts,

especially in the areas of creations/conversions, projects, and authority; this will not be an effect on private real property. Therefore, the adopted rulemaking will not constitute a taking under TGC, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the rulemaking adoption and found that the sections proposed for amendments are neither identified in Coastal Coordination Act implementation rules, 31 TAC §29.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §29.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the Coastal Management Program.

### **Public Comment**

The commission held a public hearing on March 16, 2026. The comment period closed on March 17, 2026. The commission received comments from Allen Boone Humphries Robinson LLP (ABHR) and Haynes and Boone LLP (HBLLP). Both comments received were neither in support of nor against the rulemaking, rather, suggested changes to the proposed language.

### *Comment*

ABHR commented that the changes made to §293.12(g) did not implement the requirement enacted in SB 1397 stating the bill requires TCEQ to provide the “creation notice” to each state representative and state senator who represents an area inside the proposed District

boundaries.

*Response*

The commission responds that SB 1397 states: “The commission shall provide the *notice* to each state representative and state senator who represents an area inside the proposed district’s boundaries.” The bill language does not include a specific reference to a “creation notice;” therefore, no changes were made in response to this comment.

*Comment*

ABHR commented that the changes did not implement changes made by HB 2815 to repeal §54.103 and that this statutory change needs to be implemented in §293.32(a) by deleting §293.32(a)(6) and reordering subsequent numbers.

*Response*

The commission responds by stating that §293.32(a)(6) pertains to filling a vacancy of a district operating under TWC §54, while §54.103 pertains to the grant or denial of a certificate of operating authority and is irrelevant to §293.32(a)(6). No changes have been made in response to this comment.

*Comment*

ABHR commented that changes to §293.44 require an update to references of §293.44 in §293.44(b)(4) extending its reference to §293.41(e) to include §293.41(e)(7).

*Response*

The commission responds by concurring with the suggested comment; however, due to 30 TAC §293.44 not being part of the proposal publication for rulemaking, the suggested change is outside the scope of this rulemaking. The commission will consider the suggested change to 30 TAC §293.44 in a later rulemaking.

*Comment*

ABHR commented that amendments to TWC §49.455(c) amended by HB 2815 removed “and map or plat” from §49.455(c). ABHR suggests that §293.92(1)(K)(i) be amended to remove “and map or plat” as well.

*Response*

The commission responds by concurring with the suggestion; however, due to 30 TAC §293.44 not being part of the proposal publication for rulemaking, the suggested change is outside the scope of this rulemaking. The commission will consider the suggested change to 30 TAC §293.44 in a later rulemaking.

*Comment*

HBLLP commented that the changes to §293.15 removed the requirement for a district that wishes to convert to hold a public hearing pursuant to §54.032 and that transparency regarding these conversions is particularly important.

*Response*

The commission responds that the hearing and notice actions are still required under §§54.030 and 54.032 but take place prior to the applicant’s submittal of the conversion application to the commission. The requirement to submit proof of the notice and hearing to the commission is

deleted from §293.15 because the statute does not require evidence of the publication under §54.032 to be submitted to the commission. No changes have been made in response to this comment.

## **SUBCHAPTER B: CREATION OF WATER DISTRICTS**

### **§§293.11, 293.12, 293.15**

#### **Statutory Authority**

This rulemaking is adopted under Local Government Code (LGC), §§375.022, 375.025, and 375.0645 and Texas Water Code (TWC), §§49.011, 49.316, 49.4645, 49.181, 49.273, 54.030, and 57.059.

The rulemaking adoption implements the following legislation: LGC, §375.022 in House Bill (HB) 2815; LGC, §375.0645(a) - (f) in HB 2815; LGC, §375.025(c) in HB 2815; TWC, §49.011(a) in HB 2815; TWC, §49.011(b) in SB 1397; TWC, §49.316(a) - (l) in HB 2815; TWC, §49.4645(a) in SB 938; TWC, §49.181(f-1)(1) and (2) in HB 2815; TWC, §49.273(d) and (e) in HB 3507; TWC, §49.273(i) in HB 3437; TWC, §54.030(b) in HB 2815; TWC, §57.059(a) in HB 2815; and TWC, §49.4645(a) and (a-1) in HB 1410 (87th Legislature).

#### **§293.11. Information Required to Accompany Applications for Creation of Districts.**

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) \$700 nonrefundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Texas

Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Texas Local Government Code, §42.042, have been followed;

(3) if city consent was obtained under paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing in this chapter shall prevent the commission from creating a district with less land than included in the city consent; and

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e) and (i);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting a creation petition and report to the appropriate commission regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts, are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and

(F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal district. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Texas Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §§49.052, 54.022, and 54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee;

(11) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land in the proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district; and

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than

one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board;

(E) a request specifying each purpose for which the proposed district is being created; and

(F) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of

convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement; and

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

(11) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(12) other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district that would be subject to assessment by the district. The petition shall include the following:

(A) a boundary description by metes and bounds, by verifiable landmarks, including a road, creek, or railroad line, or by lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District;"

(E) list of proposed initial directors and experience and term of each;

[and]

(F) a resolution of municipality in support of creation; and [.]

(G) if applicable, a request that the succeeding board of directors be elected in accordance with Texas Local Government Code §375.0645, instead of being appointed in accordance with Texas Local Government Code §375.064.

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Texas Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Texas Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee.

**§293.12. Creation Notice Actions and Requirements.**

(a) On receipt by the executive director of all required documentation associated with an application for creation of a district by the commission in accordance with Texas Water Code (TWC), Chapter 51, multi-county Water Control and Improvement Districts or single-county Water Control and Improvement Districts requesting additional powers; Chapter 54, Municipal Utility Districts; Chapter 55, Water Improvement Districts; Chapter 58, multi-county Irrigation Districts; Chapter 59, Regional Districts; Chapter 65, Special Utility Districts; [and] Chapter 66, Stormwater Control Districts[,]; and Texas Local Government Code, Chapter 375, Municipal Management Districts, the executive director shall notify the chief clerk that the application is administratively complete.

(b) For those applications described in subsection (a) of this section, the chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. The applicant shall cause the notice to be published as follows:

(1) notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district is proposed to be located with the last publication not later than the 30th day before the date on which the commission may act on the application; and

(2) not later than the 30th day before the date on which the commission may act on the application, the notice must be posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.

(c) For those applications described in subsection (a) of this section, the commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

(d) For a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, which includes transfer of the certificate of public convenience and necessity, the applicant shall also, unless waived by executive director, mail copies of the notice to customers of the water supply corporation and other affected parties at least 120 days prior to approval. Such notice shall include the following:

- (1) name and business address of the district;
- (2) a description of the service area involved;
- (3) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and
- (4) a statement that if a hearing is granted, persons may attend the hearing and participate in the process.

(e) If a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, contains a request for approval of an impact fee, the applicant shall comply with the notice provisions of §293.173 of this title (relating to Impact Fee Notice Actions and Requirements).

(f) Regardless of whether a public hearing is held or not, for an application for creation of a Special Utility District in accordance with TWC, Chapter 65, the commission may only consider a purpose for which the district is being created that is specified in the resolution.

[(g) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts In General, are as follows.]

[(1) The chief clerk shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.]

[(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:]

[(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two

consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;]

[ (B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.]

(g) [(h)] Upon receipt of a petition to create a district under TWC, Chapter 54, all of which is to be located outside the corporate limits of a municipality, the executive director shall notify the commissioners court of any county in which the proposed district is to be located that the petition has been filed.

(h) Upon receipt of a petition described in subsections (a) and (d), the executive director shall notify each state representative and state senator who represents an area inside the proposed district's boundaries that the petition has been filed.

**§293.15. Addition of Wastewater and/or Drainage Powers and Conversion of District into Municipal Utility Districts.**

(a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may be converted into a municipal utility district operating under the Texas Water Code (TWC), Chapter 54.

(b) The application for the conversion of a district shall be accompanied by the following:

(1) a [certified] copy of the resolution adopted by the board of directors in accordance with TWC, [§54.030(b) as amended by House Bill (HB) 2914, 86th Texas Legislature, 2019 and] §54.030(d) [. The resolution required by this paragraph may be submitted after the hearing required by TWC, §54.030(b) as amended by HB 2590, 86th Texas Legislature, 2019];

(2) a \$700 application fee;

(3) unless waived by the executive director, a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates; and

(G) total tax assessments on all land within the district; and

(5) evidence the resolution was mailed to each state senator and representative who represents the area in which the district is located;

(6) [(5)] other data and information as the executive director may require.

[(c) Prior to commission action on the application for conversion the following requirements shall be met with evidence of such compliance filed with the chief clerk:]

[(1) Notice of the conversion application filed with the commission shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks. The notice shall:]

[(A) set out the resolution provided in subsection (b)(1) of this section in full; and]

[ (B) notify all interested persons how they may offer comments to the commission for or against the proposal contained in the resolution.]

[(2) Notice of the hearing to be conducted by the district's board as required by TWC, §54.030(b) as amended by HB 2590, shall be given by publishing notice of the hearing in a newspaper with general circulation in the district. The notice shall be published once a week for two consecutive weeks. The notice shall:]

[ (A) set out the resolution adopted by the district in full; and]

[ (B) notify all interested persons how they may offer comments to the district's board for or against the proposal contained in the resolution.]

[(3) The district shall file its resolution requesting conversion with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with submitting its application for conversion to the commission.]

[(d) After the hearing required by TWC, §54.030(b) as amended by HB 2590, the resolution required by TWC, §54.030(d) shall be filed with the commission and mailed to each state senator and representative who represents the area in which the district is located.]

(c) [e] A special utility district formed pursuant to the TWC, Chapter 65, which applies for conversion to a district having taxing authority that provides water, wastewater, or other

public utility services, must comply with the requirements of Texas Local Government Code, §42.042.

(d) [(f)] Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may obtain additional wastewater and/or drainage powers.

(e) [(g)] The application for the addition of wastewater and/or drainage powers shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors requesting the commission to hold a hearing on the question of the addition of wastewater and/or drainage powers for the district;

(2) a \$700 application fee;

(3) unless waived by the executive director, a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates; and

(G) total tax assessments on all land within the district; and

(5) other data and information as the executive director may require.

(f) [(h)] Prior to the hearing for the addition of wastewater and/or drainage powers, the following requirements shall be met with evidence of such compliance filed with the chief clerk at or prior to the hearing:

(1) Notice of the hearing in a form issued by the chief clerk shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks with the first publication to be made not less than 14 days before the time set for the hearing. The notice shall:

(A) state the time and place of the hearing;

(B) set out the resolution adopted by the district in full; and

(C) notify all interested persons to appear and offer testimony for or against the proposed contained in the resolution.

(2) The district shall file its resolution requesting additional powers with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with submitting its application to the commission.

**SUBCHAPTER D: APPOINTMENT OF DIRECTORS**

**§293.32**

**Statutory Authority**

The rulemaking is adopted under Local Government Code (LGC), §§375.022, 375.025, and 375.0645 and Texas Water Code (TWC), §§49.011, 49.316, 49.4645, 49.181, 49.273, 54.030, and 57.059.

The rulemaking adoption implements the following legislation: LGC, §375.022 in House Bill (HB) 2815; LGC, §375.0645(a) - (f) in HB 2815; LGC, §375.025(c) in HB 2815; TWC, §49.011(a) in HB 2815; TWC, §49.011(b) in SB 1397; TWC, §49.316(a) - (l) in HB 2815; TWC, §49.4645(a) in SB 938; TWC, §49.181(f-1)(1) and (2) in HB 2815; TWC, §49.273(d) and (e) in HB 3507; TWC, §49.273(i) in HB 3437; TWC, §54.030(b) in HB 2815; TWC, §57.059(a) HB 2815; and TWC, §49.4645(a) and (a-1) in HB 1410 (87th Legislature).

**§293.32. Qualifications of Directors.**

(a) Unless otherwise provided, an applicant for appointment as a director must be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(1) A director of a fresh water supply district created under Texas Water Code (TWC), Chapter 53:

(A) must be:

(i) a resident of this state;

(ii) an owner of taxable property in the district; and

(iii) at least 18 years of age; or

(B) must be a registered voter of the district.

(2) A director of a levee improvement district created under TWC, Chapter 57

must:

(A) be at least 18 years old;

(B) own land subject to taxation in the district or be a qualified voter in the district; and

(C) if the director is elected, be a qualified voter of the precinct in the district established by the commissioners court under TWC, §57.058 from which the director is elected.

(3) [(2)] A director of a regional district created for the purposes defined under TWC, §59.004 must be at least 18 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(4) [(3)] A director of a special utility district created for the purposes defined under TWC, §65.012, must be a resident citizen of this state and either own land subject to

taxation in the district, or be a user of the facilities of the district or be a qualified voter in the district.

(5) [(4)] A director of a stormwater control district created for the purposes defined under TWC, §66.012, must reside within the boundaries of the proposed district but need not be a landowner or qualified voter within the district.

(6) [(5)] A director of a groundwater conservation district must be a registered voter in the precinct that the person represents pursuant to TWC, §36.059(b).

(7) [(6)] A person cannot be appointed to fill a vacancy on the board of a municipal utility district, under TWC, Chapter 54, if the person:

(A) resigned from that board:

(i) within two years preceding the vacancy date; or

(ii) on or after the vacancy date but before the vacancy is filled; or

(B) was defeated in a directors election held by that district in the two years preceding the vacancy date.

(8) [(7)] A director shall not be a developer of property in the district, or be related within the third degree of affinity or consanguinity to a developer of property in the

district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or other person providing professional services to the district.

(9) [(8)] A director shall not be an employee of any developer of property in the district, or any director, manager, engineer, attorney, or other person providing professional services to the district, or a developer of property in the district in connection with the district or property located in the district.

(b) As used in this section, a developer of property in the district means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (See TWC, §49.052(d).)

## **SUBCHAPTER E: ISSUANCE OF BONDS**

### **§293.41, §293.59**

#### **Statutory Authority**

The rulemaking is adopted under Local Government Code (LGC), §§375.022, 375.025, and 375.0645 and Texas Water Code (TWC), §§49.011, 49.316, 49.4645, 49.181, 49.273, 54.030, and 57.059.

The rulemaking adoption implements the following legislation: LGC, §375.022 in House Bill (HB) 2815; LGC, §375.0645(a) - (f) in HB 2815; LGC, §375.025(c) in HB 2815; TWC, §49.011(a) in HB 2815; TWC, §49.011(b) in SB 1397; TWC, §49.316(a) - (l) in HB 2815; TWC, §49.4645(a) in SB 938; TWC, §49.181(f-1)(1) and (2) in HB 2815; TWC, §49.273(d) and (e) in HB 3507; TWC, §49.273(i) in HB 3437; TWC, §54.030(b) in HB 2815; TWC, §57.059(a) in HB 2815; and TWC, §49.4645(a) and (a-1) in HB 1410 (87th Legislature).

#### **§293.41. Approval of Projects and Issuance of Bonds.**

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies;

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection;

(5) bonds issued by a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by subsection (d)(1)(E) of this section; or

(6) bonds issued by a district to finance a project for which the commission has not adopted rules requiring review and approval.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to:

(1) a district if:

(A) the boundaries include one entire county;

(B) the district was created by a special act of the legislature; and

(i) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(ii) the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(iii) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(C) the district is a special water authority as defined by TWC, §49.001(8);

(D) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a

municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(E) the district:

(i) is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(ii) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(iii) has at least 5,000 active water connections; or

(F) the district:

(i) is a conservation and reclamation district created under the Texas Constitution, Article 16, §59, that includes territory in at least three counties; and

(ii) has the rights, privileges, and functions applicable to a river authority under TWC, Chapter 30; or

(2) a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by paragraph (1)(E) of this subsection.

(e) A district located within Bastrop, Bexar, Brazoria, El Paso, Fort Bend, Galveston, Harris, Montgomery (except for a district all or part of which is located in Montgomery County and includes land within a planned community of at least 15,000 acres, of which a majority of the developed acreage is subject to restrictive covenants containing ad valorem assessments), Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a licensed professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting, except for a district operating under TWC, Chapter 54, pursuant to TWC, §54.236, as amended.

(4) Except as provided in subsection (5), a [A] district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities may not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt [or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller. If supported by contract taxes under TWC, §49.108, the outstanding principal debt (bonds, notes, and other obligations) may not exceed an amount equal to 1% of the value of the taxable property in the district or districts making payments under the contract]. An estimate

of the value provided by the central appraisal district may be used to establish the value of the taxable property in the district or districts.

(5) A district's outstanding bonds, notes, and other obligations, supported by ad valorem taxes, for recreational facilities may exceed 1% but not 3% of the taxable value of property in the district or, if supported by contract taxes under TWC, §49.108, the taxable value of property in the districts making payments under the contract, if the district:

(A) has a ratio of debt to certified assessed valuation of 10% or less;

(B) obtains an acceptable credit rating as defined in §293.47(b)(4) of this title on its proposed bond issue;

(C) obtains a credit enhanced rating as defined in §293.47(b)(5) of this title on its proposed bond issue; or

(D) has a contract with a political subdivision or an entity acting on behalf of a political subdivision under which the political subdivision or the entity agrees to provide to the district taxes or other revenues, as consideration for the district's development or acquisition of the facility, including a contract under TWC, §49.108.

(6) [(5)] A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section

that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(7) [(6)] Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a licensed professional engineer, or any other design professional allowed by law to engage in landscape architecture.

**§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:

**Figure 1: 30 TAC §293.59 (h)(1) (No change.)**

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

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

**Figure 2: 30 TAC §293.59 (h)(2) (No change.)**

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

(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) (No change.)**

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

(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 Austin, Brazos, Grimes, Liberty, Walker, Wharton, Chambers, Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) \$1.20 in Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, Milam, 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 Austin, Brazos, Grimes, Liberty, Walker, Wharton, Chambers, Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) \$2.20 in Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, Milam, 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 Austin, Brazos, Grimes, Liberty, Walker, Wharton, Chambers, Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(ii) \$1.20 in Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, Milam, 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.

(l) 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 will 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.

**SUBCHAPTER F: DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND  
PURCHASE OF FACILITIES**

**§293.63**

**Statutory Authority**

The rulemaking is adopted under Local Government Code (LGC), §§375.022, 375.025, and 375.0645 and Texas Water Code (TWC), §§49.011, 49.316, 49.4645, 49.181, 49.273, 54.030, and 57.059.

The rulemaking adoption implements the following legislation: LGC, §375.022 in House Bill (HB) 2815; LGC, §375.0645(a) - (f) in HB 2815; LGC, §375.025(c) in HB 2815; TWC, §49.011(a) in HB 2815; TWC, §49.011(b) in SB 1397; TWC, §49.316(a) - (l) in HB 2815; TWC, §49.4645(a) in SB 938; TWC, §49.181(f-1)(1) and (2) in HB 2815; TWC, §49.273(d) and (e) in HB 3507; TWC, §49.273(i) in HB 3437; TWC, §54.030(b) in HB 2815; TWC, §57.059(a) in HB 2815; and TWC, §49.4645(a) and (a-1) in HB 1410 (87th Legislature).

**§293.63. Contract Documents for Water District Projects.**

Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). The following specific requirements must apply, unless otherwise provided by a district's special law.

(1) All contract documents shall be prepared in such a manner as to promote competitive bidding and to ensure that all bids are prepared on a common basis.

(2) The instruction to bidders section of the contract documents shall give special attention to the following items.

(A) The basis of award shall be clearly defined. If alternate proposals are to be considered, the instructions to bidders shall clearly state in which order the alternates will be considered in determining the most advantageous bid. If two or more contracts are to be awarded, the instructions to bidders shall clearly indicate if combined bids, or tied bids, will be allowed, or if each contract will be awarded separately.

(B) The contract should clearly provide that alternate bids will not be considered, unless specifically allowed by instructions to bidders and requested in the proposal form.

(C) Specific notice shall be given that qualifying statements or accompanying qualifying letters will be cause for rejection of the bid.

(D) Provision shall be made for prospective bidders to request additional information, explanations, or interpretations regarding contract documents prior to the bid opening. All requests and answers to all such requests shall be given in writing. Answers will be in addendum form to all prospective bidders.

(3) The district shall require the bidder to whom the district proposes to award the contract to submit a statement of qualifications. The statement shall include such data as the district may reasonably require to determine whether the contractor is responsible and capable of completing the proposed project.

(4) For contracts over \$50,000, the district shall require bidders to submit certified or cashier's checks or a bid bond issued by a surety legally authorized to do business in this state in an amount of at least 2.0% of the total amount of the bid. For a contract greater than \$250,000, the district must accept a bid bond if it meets all requirements. If cashier's checks are required, the checks for all bidders except the three most qualified bidders shall be returned within three days of the bid opening.

(5) The district shall require that bidders submit, along with the bid, the name of the person, firm, or corporation that will execute payment and performance bonds.

(6) The district may establish criteria for acceptability of the surety company issuing payment and performance bonds including, but not limited to:

(A) authorization to do business in Texas; and

(B) authorization to issue payment and performance bonds in the amount required for the contract and:

(i) a rating of at least B from Best's Key Rating Guide; or

(ii) if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the United States Small Business Administration and must be an approved surety company listed in the current United States

Department of Treasury Circular 570. Such performance and payment bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation. The district shall satisfy itself that such surety company and bonds meet such criteria.

(7) The district shall satisfy itself that all persons executing the bonds are duly authorized by the laws of the State of Texas and the surety company to do so.

(8) For contracts over \$150,000 [\$75,000], a district's board shall advertise the project once a week for two consecutive weeks. For contracts over \$25,000 but not more than \$150,000 [\$75,000], a district's board shall solicit written competitive bids on the project from at least three bidders. For contracts not more than \$25,000, a district's board is not required to advertise or seek competitive bids.

(9) A board of a special law district may elect to contract in accordance with the requirements in Texas Water Code, §49.273, even if those requirements conflict with provisions in the district's special law.

(10) A district with a population of more than 100,000 may utilize the design-build procedure for limited projects as provided in Local Government Code, Chapter 271, Subchapter J.

**SUBCHAPTER G: OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR  
APPROVAL  
§293.81**

**Statutory Authority**

The rulemaking is adopted under Local Government Code (LGC), §§375.022, 375.025, and 375.0645 and Texas Water Code (TWC), §§49.011, 49.316, 49.4645, 49.181, 49.273, 54.030, and 57.059.

The rulemaking adoption implements the following legislation: LGC, §375.022 in House Bill (HB) 2815; LGC, §375.0645(a) - (f) in HB 2815; LGC, §375.025(c) in HB 2815; TWC, §49.011(a) in HB 2815; TWC, §49.011(b) in SB 1397; TWC, §49.316(a) - (l) in HB 2815; TWC, §49.4645(a) in SB 938; TWC, §49.181(f-1)(1) and (2) in HB 2815; TWC, §49.273(d) and (e) in HB 3507; TWC, §49.273(i) in HB 3437; TWC, §54.030(b) in HB 2815; TWC, §57.059(a) in HB 2815; and TWC, §49.4645(a) and (a-1) in HB 1410 (87<sup>th</sup> Legislature).

**§293.81. Change Orders.**

A change order is a change in plans, specifications, or scope of work for construction work that is under contract. For purposes of this section, a variation between estimated quantities and actual quantities or use of supplemental items included in the bid where no change in plans and specifications has occurred is not a change order.

(1) Districts are authorized to issue change orders that are necessary or beneficial to the district as determined by the district's board, which alter the plans, specifications, or scope of work in the contract, subject to the following conditions.

(A) The aggregate of change orders that increase the original contract price more than 25% may be issued only in response to:

(i) unanticipated conditions encountered during construction, repair, or renovation;

(ii) changes in regulatory criteria; or

(iii) coordination with construction of other political subdivisions or entities.

(B) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(C) The competitive bidding requirements of Texas Water Code, §49.273(d) and (e) shall not apply to change orders issued in accordance with this section.

(2) No commission approval is required if the change order is \$150,000 [\$50,000] or less. If the change order is more than \$150,000 [\$50,000], the executive director or his designated representative may approve the change order. For purposes of this section, if either the total additions or total deletions contained in the change order exceed \$150,000 [\$50,000], even though the net change in the contract price will be \$150,000 [\$50,000] or less, approval by the executive director is required.

(3) If the change order is \$150,000 [\$50,000] or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be submitted to the executive director within ten days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required.

(4) Applications for change orders requiring approval shall include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor, and a resolution or letter signed by the board president indicating concurrence with the proposed change;

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a detailed explanation for the change;

(D) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and new contract price or cost estimate;

(E) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) filing fee in the amount of \$100; and

(I) other information as the executive director or the commission may require.

(5) Copies of all changes in plans, specifications, and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Commission Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application review.

## SUBCHAPTER H: REPORTS

### §293.91

#### **Statutory Authority**

The rulemaking is adopted under Local Government Code (LGC), §§375.022, 375.025, and 375.0645 and Texas Water Code (TWC), §§49.011, 49.316, 49.4645, 49.181, 49.273, 54.030, and 57.059.

The rulemaking adoption implements the following legislation: LGC, §375.022 in House Bill (HB) 2815; LGC, §375.0645(a) - (f) in HB 2815; LGC, §375.025(c) in HB 2815; TWC, §49.011(a) in HB 2815; TWC, §49.011(b) in SB 1397; TWC, §49.316(a) - (l) in HB 2815; TWC, §49.4645(a) in SB 938; TWC, §49.181(f-1)(1) and (2) in HB 2815; TWC, §49.273(d) and (e) in HB 3507; TWC, §49.273(i) in HB 3437; TWC, §54.030(b) in HB 2815; TWC, §57.059(a) in HB 2815; and TWC, §49.4645(a) and (a-1) in HB 1410 (87th Legislature).

#### **§293.91. Reporting by Districts.**

(a) All districts are required to submit certain documents and reports to the executive director by the Texas Water Code, Chapter 49, as follows:

(1) a certified copy of the order or legislative act creating the district within 60 days after the date the district is created;

(2) certified copy of the order of the district's governing board changing the boundaries of the district within 60 days after the date of any boundary change together with a linen tracing or other map of equal quality showing the new boundaries;

(3) a written notification to the executive director of the name, mailing address and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment;

(4) a certified copy of the audit report within 15 days after the date of completion of any audit of the affairs of the district, other than the annual audit required by Water Code, §49.191;

(5) an annual audit report, financial report, or financial dormancy affidavit, as required by §293.94(c), (e), and (f) of this title (relating to Annual financial Reporting Requirements); [and]

(6) an annual filing affidavit, as required by subsection (g) of §293.94 of this title (relating to Annual financial Reporting Requirements), and Water Code, §49.194(d), certifying that all filings of copies of the annual audit report, an annual financial dormancy affidavit, or annual financial report, as applicable, have been completed; and [.]

(7) a copy of an order dividing a district within 30 days after the date of adoption of the order dividing the district according to TWC, §49.316.

(b) Districts created pursuant to general law under provisions of the Texas Water Code are subject to specific reporting requirements. Each district should comply carefully with the reporting requirements provided in the Texas Water Code chapter under which it was created. Districts created pursuant to special acts of the Texas Legislature may be subject to specific

reporting requirements. Each district so created should comply carefully with any reporting requirements contained in special act of the Texas Legislature under which it was created.