

# Texas Commission on Environmental Quality

## Interoffice Memorandum

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

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

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

**Docket No.:** 2022-0719-RUL

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

### **Background and reason(s) for the rulemaking:**

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

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

This rulemaking would also amend 30 TAC Chapter 292 to remove an outdated reference to Industrial Development Bonds and Pollution Control Bonds from the minimum requirements for administrative policies adopted by the boards of the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

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking would do:**

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

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

Re: Docket No. 2022-0719-RUL

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

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

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

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

There are no additional staff recommendations.

**Statutory authority:**

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

**Effect on the:**

**A.) Regulated community:**

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

**B.) Public:**

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

**C.) Agency programs:**

There are no anticipated effects on agency programs.

**Stakeholder meetings:**

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

**Potential controversial concerns and legislative interest:**

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

Re: Docket No. 2022-0719-RUL

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

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

None.

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

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

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** October 19, 2022

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

**Anticipated public hearing date:** December 7, 2022

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

**Anticipated adoption date:** March 2023

**Agency contacts:**

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

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

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

**Attachments:**

None.

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