

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

Background and Summary of the Factual Basis for the Proposed Rules

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 Additionally, this rulemaking proposes to amend Chapter 292 to remove or revise outdated references to Industrial Development Bonds and Pollution Control Bonds and Historically Underutilized Businesses (HUB) requirements.

Section by Section Discussion

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

§292.1, Objective and Scope of Rules

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

§292.13, Minimum Provisions

The commission proposes to amend §292.13(5) to remove an outdated reference to Industrial

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

Fiscal Note: Costs to State and Local Government

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

Public Benefits and Costs

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

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

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

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rules is not expected to be significant with respect to the economy.

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

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

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

Takings Impact Assessment

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

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

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

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

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

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

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

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

Submittal of Comments

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

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

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

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

SUBCHAPTER A: GENERAL PROVISIONS

§292.1

Statutory Authority

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

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

§292.1. Objective and Scope of Rules.

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

- (1) Angelina and Neches River Authority;

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

(3) Brazos River Authority;

(4) Canadian River Municipal Water Authority;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER B: ADMINISTRATIVE POLICIES

§292.13

Statutory Authority

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

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

§292.13. Minimum Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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