

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 21, 2022

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

**From:** Erin E. Chancellor, Director  
Office of Legal Services

**Docket No.:** 2022-1527-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 5, Advisory Committee and Groups  
Establishing dates of abolishment in rule for advisory committees  
Rule Project No. 2023-006-005-LS

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

This proposed rulemaking would add and amend rules in 30 Texas Administrative Code (TAC) Chapter 5 to specify the dates on which various advisory committees are abolished to conform with Texas Government Code (TGC), Chapter 2110. During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees through a rulemaking process. TGC, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished.

This rulemaking proposes to continue the existence of seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. These advisory committees should continue to exist because they continue to serve the purpose of providing advice to the agencies. The proposed rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of TGC, Chapter 2110 are not included in this proposed rule.

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

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

The proposal would amend 30 TAC §5.3, Creation and Duration of Advisory Committees Created by the Commission, to provide that advisory committees created by the commission are to be abolished according to the requirements of TGC, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law or a different date for abolishment is established under new §5.15. The proposal would create new §5.15, Duration of Advisory Committees, to establish the duration of advisory committees. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee.

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

The proposed rulemaking is not required by federal regulations. Texas Water Code (TWC), §5.107 authorizes the commission to create advisory committees. The proposed rules implement TGC, §2110.008, which allows an agency to designate the date of an advisory committee's abolishment

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by rule if the committee's duration is not already determined by another statute. The advisory committee may continue in existence if the rule providing its abolishment date is amended. If an agency does not designate a date by rule, the committee is automatically abolished by statute four years after its creation.

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

The proposed rule implements state statutes and Sunset Recommendation 1.6 to continue the existence of advisory committees by rule to conform to the requirements of TGC, §2110.008.

**Statutory authority:**

TWC, §5.013, General Jurisdiction of Commission; TWC, §5.102, General Powers; and TWC, §5.103, Rules; Texas Health and Safety Code (THSC), §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; and THSC, §361.024, Rules and Standards.

**Effect on the:**

**A.) Regulated community:**

The proposed rules are administrative and do not establish any new requirements for the regulated community. The proposed rule would renew and continue the existence through December 31, 2032, for: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. These advisory committees would continue to provide advice to the agency.

**B.) Public:**

The public would benefit from the commission's continued receipt of advice from the advisory committees' business, environmental and technical expertise and experience with respect to matters in the commission's jurisdiction.

**C.) Agency programs:**

Agency programs will continue to work with the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. No changes in duties or workload are expected to agency programs as a result of the proposed rule changes.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

**Public Involvement Plan**

Significant public interest in this proposed rulemaking is not expected. A specific public involvement plan has not been developed. The public will have the opportunity to submit comments and attend the public hearing.

**Alternative Language Requirements**

The agenda item announcement for proposal and adoption at the Commissioners' Agenda Meeting and the agency webpage requesting comments on the proposed rules will be provided in English

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and Spanish. The public will have an opportunity to request additional communication accommodations, including live translation services, for the public hearing.

**Potential controversial concerns and legislative interest:**

The proposed rulemaking is not expected to be controversial.

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

No changes to current policies or development of new policies or workload are required. Agency programs that work with advisory committees would need to track the abolition date for the advisory committee and prepare for future rulemaking, if necessary, to extend the abolition date.

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

If the proposed rulemaking does not go forward, agency advisory committees that do not have an established date of abolishment could be abolished by operation of TGC, §2110.008. This could affect: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee.

If this rulemaking does not go forward as scheduled and the four watermaster advisory committees are abolished by operation of TGC, §2110.008, the commission would be out of compliance with TWC, §§11.3261, 11.4531, and 11.557 which require the watermaster programs to establish the watermaster advisory committees. In addition, if the rule schedule is not met it may inhibit the watermaster programs from spending the watermaster fund beginning in Fiscal Year 2024 pursuant to TWC, §11.3291. TWC, §11.3291 states the watermaster fund shall be used to pay expenditures when recommended by the watermaster advisory committee, and water right holders would not be able to petition an advisory committee to conduct a referendum on the continuation of a program pursuant to TWC, §11.559.

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

**Anticipated proposal date:** January 11, 2023

**Anticipated *Texas Register* publication date:** January 27, 2023

**Anticipated public hearing date:** February 27, 2023

**Anticipated public comment period:** January 27, 2023 to February 28, 2023

**Anticipated adoption date:** June 14, 2023

**Agency contacts:**

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**Attachments:**

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