

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 5, 2024

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

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

**Docket No.:** 2023-1521-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 230, Groundwater Availability Certifications for Platting  
Rule Project No. 2024-006-230-OW

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

The purpose of this rule proposal is to implement the provisions of Senate Bill (SB) 2440, passed during the 88th Texas Legislature's Regular Session in 2023. Local Government Code (LGC) §212.0101 and §232.0032 establish requirements for groundwater availability certification in the municipal and county plat application and approval process for proposed subdivisions when the groundwater beneath the land serves as the primary source of water supply. SB 2440 amended §212.0101(a) and §232.0032(a) to make groundwater availability certification a mandatory component of the plat application and approval process. SB 2440 also established specific circumstances under which a municipal or county authority may waive the certification requirement by adding §212.0101(a)(1) and (a)(2) and §232.0032(a)(1) and (a)(2). SB 2440 became effective on January 1, 2024, and requires that existing commission rules are continued in effect for plat applications filed before January 1, 2024.

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

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

The Texas Commission on Environmental Quality (TCEQ) has adopted rules at 30 Texas Administrative Code (TAC), Chapter 230 that prescribe requirements for groundwater availability certification. This rulemaking will implement SB 2440 by amending the applicability provisions at 30 TAC §230.1 and referenced at 30 TAC §230.3 - 230.11. Additional amendments are proposed as discussed under Item C, below.

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

Scope of this rulemaking is defined by state statute at LGC, §212.0101 and §232.0032.

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

The charge to the commission under LGC, §212.0101(b) and (c) and §232.0032(b) and (c) is limited to adopting rules that establish the form and content of a groundwater availability certification and require transmittal of specific information to the Texas Water Development Board and the applicable groundwater conservation district. Currently, 30 TAC §230.1 and §230.3 - 230.11 include references to applicability and have embedded forms. Since applicability is addressed by LGC §212.0101(a), (a)(1) and (a)(2) and §232.0032(a), (a)(1) and (a)(2) and does not require further definition, the commission proposes to replace applicability provisions with general provisions that identify the purpose of the rule. And since the current rules specify transmittal requirements and groundwater availability certification contents, the commission also proposes to remove the

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embedded forms and replace those with references to TCEQ forms so that the format of the forms can be updated as technology changes.

**Statutory authority:**

LGC, Title 7, Subtitle A, Chapter 212, Subchapter A, §§212.0101

LGC, Title 7, Subtitle B, Chapter 232, Subchapter A, §§232.0032

**Effect on the:**

**A.) Regulated community:**

None beyond the effect of the statute. Municipal and county authorities will need to incorporate these requirements into the subdivision platting process. Some municipalities and counties will be able to absorb the increased work associated with the review of the groundwater availability certification while others will need to hire engineers or professional geoscientists to review the groundwater certification. Subdivision developers will incur increased costs associated with groundwater certification. The new platting approval processes could increase fees from municipal or county platting authorities.

**B.) Public:**

None beyond the effect of the statute. The public that purchases homes in an area platted after January 1, 2024, that rely solely on groundwater will benefit from groundwater availability certifications that confirm groundwater supplies will be available to the home buyer now and in the future.

**C.) Agency programs:**

None.

**Stakeholder meetings:**

No stakeholder meetings have been held or are planned. A public hearing will be held as part of the rulemaking process.

**Public Involvement Plan**

Is a Public Involvement Plan Required? Yes

**Alternative Language Requirements**

Yes, Spanish.

**Potential controversial concerns and legislative interest:**

The author of SB 2440, Chairman Perry, is likely to have interest in the rulemaking effort.

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

No.

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

If this rulemaking does not go forward, TCEQ rules at 30 TAC 230 would be inconsistent with LGC, §§212.0101(a), 212.0101(a)(1) and (a)(2), 232.0032(a), 232.0032(a)(1) and (a)(2).

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

**Anticipated proposal date:** May 8, 2024

**Anticipated *Texas Register* publication date:** May 13, 2024

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**Anticipated public hearing date:** June 24, 2024  
**Anticipated public comment period:** May 24, 2024 to June 25, 2024  
**Anticipated adoption date:** November 2024

**Agency contacts:**

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**Attachments:**

cc: Chief Clerk, 2 copies  
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