

The Texas Commission on Environmental Quality (TCEQ, or commission) proposes new 30 Texas Administrative Code (TAC) §§353.1-353.8.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 4256, 88th Texas Legislature, Regular Session, 2023, amended the Texas Water Code (TWC), Chapter 28, Subchapter E to require TCEQ to establish and administer a Leaking Water Wells Grant Program (Program). This proposed rulemaking establishes the Program and its associated requirements and criteria by creating new 30 TAC Chapter 353. The proposed rules implement requirements in HB 4256 (88R) which includes the establishment of criteria for prioritizing projects and criteria for ensuring that wells are permanently plugged. After rule adoption, the Program will provide an opportunity for input on the terms and conditions of the grant, including a project prioritization plan.

TWC, §28.106(c) requires that TCEQ establish, by rule, criteria for prioritizing projects eligible to receive grant funding. The criteria proposed include: well characteristics, including completion and wellbore conditions; well location relative to sensitive areas; environmental considerations; wellsite safety and access considerations; economic considerations; and other priorities determined by the commission.

TWC, §28.107(b) requires TCEQ to establish criteria for ensuring a well is permanently plugged. The commission proposes that the grant recipient use Railroad Commission of Texas (RRC) information, data, and regulations to plan, plug, and document that a well has been permanently plugged.

The Leaking Water Wells Fund created by HB 4256 is a separate fund within the state treasury outside of the general revenue fund and may only be used to implement the Program, including the costs of TCEQ program administration and operation. The fund can be financed by various

sources, including money appropriated, credited, or transferred by the legislature, gifts or grants contributed to the fund, and interest earned from deposits and investments of the fund. To date, \$10,000,000 has been deposited to the Leaking Water Wells Fund. None of these funds have been appropriated by the legislature for grant awards. Any grant awarded under this Program will be subject to availability of funds.

Section by Section Discussion

§353.1 Purpose

TWC, Chapter 28, Subchapter E, charges the commission to establish a grant program to offset the cost of plugging leaking water wells for eligible Districts for eligible projects. The commission proposes new 30 TAC §353.1 to describe the purpose of the rules and specify that these grants will be administered by the commission staff in accordance with the most recent Uniform Grant and Contract Management Act (Texas Government Code, Chapter 783) and any specific requirements of the applicable State General Appropriations Act.

§353.2 Definitions

The commission proposes new 30 TAC §353.2 to include definitions for “District,” “Leaking Water Wells Fund,” and “Leaking Water Wells Grant Program.” The three terms are defined in TWC, §28.101 as “District,” “Fund” and “Program.” The variation in the terms defined and slight variations in the language defining these three terms is for clarity. For the purposes of this chapter, “District” means a groundwater conservation district or authority established under Section 52, Article III, or Section 59, Article XVI of the Texas Constitution and endowed with the power to regulate the spacing and production of water wells. The “Leaking Water Wells Fund” and “Leaking Water Wells Grant Program” refer to the fund created and the program established under TWC, §§28.103 and 28.104.

The commission also proposes to define "approved well plugger" by referencing RRC rules, 16 TAC §3.14. The definition establishes that the term "approved well plugger" in the statute is equivalent to the RRC's term "approved cementer."

§353.3 Grant Eligibility

The commission proposes new 30 TAC §353.3 which incorporates requirements from TWC, §28.102 and specifies that this chapter only applies to groundwater conservation districts within counties that have a population of 16,000 or less and that are adjacent to at least seven counties with populations less than 15,000.

§353.4 Application for Grant

The commission proposes new 30 TAC §353.4 to incorporate requirements from TWC, §28.105(b), which specifies that Districts seeking grants for eligible projects under the program must apply using a specific form provided by the commission and include the information requested on that form by the commission.

§353.5 Restriction on Use of the Grant

The commission proposes new 30 TAC §353.5 to identify restrictions on the use of the grant funds. In accordance with TWC, §28.107, the commission proposes that Districts may only use the funds for the cost of the project, excluding administrative expenses. The grant terms and conditions will specify what constitutes an administrative expense.

Per TWC, §28.106(b)(1-2), the proposed rules would require that a District select a contractor from a list of RRC approved well pluggers after a bid process, and that the District may select a

contractor based on whose bid the District determines provides the best value.

Lastly, per TWC, §28.107(c), unspent grant money must be returned to the commission to be re-allocated to the fund.

§353.6 Project Eligibility

The commission proposes new 30 TAC §353.6 to identify projects eligible for the grant funds, consistent with TWC, §28.106. A District must demonstrate that the project includes a leaking water well, and then must demonstrate either: that the leaking water well is located within 2,000 feet of a drinking water well, a water well for livestock or irrigation, or a sensitive wildlife area; or that the leaking water well has seasonal or annual flow to the surface, or a hydrological connection to surface water, including a waterway, intermittent stream, or springs system. In addition, a District must demonstrate either: that the leaking water well is known by a District to have a deficiency in the plug, casing, completion interval, or general integrity; or that the leaking water well's completion interval is sufficiently proximate to other known intervals or pressurized zones with high concentrations of salinity, chlorides, sulfides, or other hazardous or toxic components.

A District is required to obtain any necessary property access from the surface owner where the leaking water well is located.

§353.7 Prioritization Criteria

The commission proposes new 30 TAC §353.7 to provide the criteria that will be used to prioritize projects, consistent with TWC, §28.106(c). In addition to the requirements proposed in the "Project Eligibility" section, the commission proposes additional criteria for the purpose

of prioritizing projects. These criteria include the following: well characteristics, such as completion information and wellbore conditions; well location relative to sensitive areas; environmental considerations; wellsite safety and access considerations; economic considerations, and other priorities determined by the commission. Additional details about prioritization considerations and weighting will be included in the grant agreement.

After rule adoption, the Program will provide an opportunity for input on the terms and conditions of the grant, including a project prioritization plan.

§353.8 Plugging Criteria

The commission proposes new 30 TAC §353.8 to direct a District to utilize appropriate information, data, and regulations available from the RRC and to adhere to certain RRC rules as applicable to ensure wells are properly and permanently plugged. Per TWC, §28.106(b)(1), the contract to permanently plug a leaking water well must be awarded to a contractor selected from a list of RRC-approved well pluggers. The approved well plugger must adhere to applicable RRC rules for plugging wells (16 TAC §3.14). A District must ensure a leaking water well is permanently plugged. The grant will set forth the criteria for ensuring that a well is permanently plugged and documentation will be required.

Fiscal Note: Costs to State and Local Government

Kyle Girtten, 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 government as a result of administration or enforcement of the proposed rule.

This rulemaking may result in fiscal implications for a local governmental entity or entities. The rulemaking implements HB 4256 from the 88th Regular Legislative Session (2023), which limits the applicability of the Program to groundwater conservation districts or authorities in counties with populations of 16,000 or less that are adjacent to at least seven counties with populations of less than 15,000. Any such entities would be eligible to apply for grant funding from the Leaking Water Wells Fund (General Revenue Dedicated Account No. 0308). To date, \$10,000,000 has been deposited to this fund. None of these funds have been appropriated by the legislature for grant awards. Aside from the approximately \$200,000-\$250,000 needed annually by TCEQ to administer the program, the remainder of these funds, interest earned, and any future deposits or investments in the fund are anticipated to be eligible for grant awards. As required by HB 4256, funds awarded to an eligible district may only be used to pay for the cost of a project for which the grant is provided, and recipients may not use the funds for administrative costs. Therefore, districts receiving these funds would incur any such costs.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency with state law, specifically HB 4256 from the 88th Regular Legislative Session (2023). Should grants be made available and be awarded, there could also be environmental benefits resulting from leaking water wells being plugged. Plugging leaking water wells can prevent pollutants from contaminating the land, surface waters, and hydrologically connected freshwater aquifers.

Should grant funds be made available and be awarded, the proposed rulemaking is anticipated to result in fiscal benefits for contractors or subcontractors that are hired to plug leaking water wells. HB 4256 requires that such entities must be selected from a list of approved well

pluggers maintained by the Railroad Commission of Texas. These businesses would be paid with grant funds awarded to a district or districts for the completion of the work to permanently plug wells.

Should grant funds be made available and be awarded, the rulemaking would also benefit landowners in cases where the landowner would otherwise be financially responsible for plugging a well. In addition to cost savings from well plugging activities, there may also be financial benefits in terms of the value of the property.

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. This rulemaking would apply in counties with a population of 16,000 or less with at least seven neighboring counties with populations of less than 15,000, so the rulemaking applies to rural areas. These counties would benefit from this rulemaking.

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 creates a new government program as required by HB 4256 from the 88th Regular Legislative Session (2023). The rulemaking 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 would create a new rule, 30 TAC Chapter 353. 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 specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 4256, which establishes and funds a grant program to plug leaking water wells in certain Texas counties.

In addition, the rulemaking does not meet the statutory definition of a “Major environmental rule” because the proposed rule 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 rule 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). There are no federal standards governing grant programs for plugging leaking water wells. 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 is not an adoption of a rule solely under the general powers of the commission as the proposed rules are required by HB 4256.

The commission invites public comment of 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 the proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 4256, which establishes and funds a grant program to plug leaking water wells in certain Texas counties. The proposed rules would substantially advance this purpose by incorporating the new statutory requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed 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. The proposed rules would primarily affect Districts planning to utilize the grant program to plug leaking water wells; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are 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 January 29, 2025, at 10:00 a.m. in building A, room 173 at the commission's central office located at 12100 Park 35 Circle in Austin, Texas. 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 at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by January 27, 2025. 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 January 28, 2025, to those who register for the hearing.

Any members of 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://events.teams.microsoft.com/event/f1d357e0-a45e-4e8e-9d10->

6fd55ec46a98@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

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://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2025-008-353-OW. The comment period closes on February 4, 2025. 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 Cindy Hooper, P.G., Groundwater Planning and Assessment Team, at (512) 239-4271.

CHAPTER 353: LEAKING WATER WELLS GRANT PROGRAM

RULE §§353.1 – 353.8:

Statutory Authority

These new rules are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §28.106 establishes the commission's authority to make rules for establishing criteria for prioritizing projects eligible to receive a grant under the Leaking Water Wells Program set out in this chapter; and TWC, §28.030 requires the commission to adopt rules reasonably required for the performance of the powers, duties, and functions of the commission under this chapter. Lastly, TWC, §5.124 establishes the executive director's authority to award grants for any purpose regarding resource conservation or environmental protection in accordance with this section, with the consent of the commission, and it establishes the commission's authority to adopt rules for establishing procedures for awarding a grant, for making any determination related to awarding a grant, and for making grant payments.

The proposed rules implement the language set forth in House Bill 4256 88th Texas Legislature, Regular Session, 2023.

§353.1. Purpose.

This chapter sets forth the requirements for administration of the Leaking Water Wells Grant Program (Program), established by Texas Water Code, Chapter 28, Subchapter E. Under the Program, the commission will provide grants to offset the cost of plugging leaking water wells to eligible groundwater conservation districts for eligible projects. Any grant issued under

this Program is subject to the availability of funds and the requirements in 30 Texas Administrative Code Chapter 14 and any guidance issued under the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783, as it may be from time to time revised.

§353.2 Definitions.

When used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(a) Approved well plugger - is a Railroad Commission of Texas approved cementer as defined in 16 TAC §3.14

(b) District - means a groundwater conservation district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, which has the authority to regulate the spacing of water wells, the production of water wells, or both.

(c) Leaking Water Wells Fund (Fund) - means the leaking water wells fund created under TWC, §28.103 that provides funds to certain Districts to plug leaking water wells.

(d) Leaking Water Wells Grant Program (Program) - means the Texas Commission on Environmental Quality (commission or TCEO) program established under TWC, §28.104 that provides funds to certain Districts to plug leaking water wells.

§353.3. Grant Eligibility.

A District in a county that has a population of 16,000 or less and is adjacent to at least

seven counties with populations of less than 15,000 is eligible to apply for and receive a grant under the Program.

§353.4. Application for Grant.

A District seeking a grant under the Program must submit an application on a form provided by the commission and the application must contain the information required by the commission.

§353.5. Restriction on Use of the Grant.

(a) A District receiving a grant provided under the Program may use the grant only to pay the cost of eligible projects. A District may not use the grant to pay administrative costs associated with a project.

(b) When contracting or subcontracting for work on a project for which a grant is provided under the Program, a District shall engage in a bid process to select and hire a contractor or subcontractor.

(c) A contract for work on a project for which a grant is provided under the Program:

(1) must be awarded to a contractor or subcontractor selected from a list of approved well pluggers maintained by the Railroad Commission of Texas; and

(2) may be awarded to the contractor or subcontractor whose bid or proposal provides the best value for a District, as determined by the District based on the selection criteria published by the District in the bid solicitation documents.

(d) The amount of a grant provided under the Program that is not spent for the completion of a project must be returned to the commission for deposit to the credit of the Fund. TCEQ may choose to credit the funding to other projects under the grant.

§353.6. Project Eligibility.

(a) For a project to be eligible for a grant, a District must demonstrate that the project includes a leaking water well:

(1) that:

(A) is located within 2,000 feet of a drinking water well, a water well for livestock or irrigation, or a sensitive wildlife area; or

(B) has seasonal or annual flow to the surface, or a hydrological connection to surface water, including a waterway, intermittent stream, or springs system; and

(2) of which:

(A) the plug, casing, completion interval, or general integrity is known by a District to be deficient; or

(B) the completion interval is sufficiently proximate to other known intervals or pressurized zones with high concentrations of salinity, chlorides, sulfides, or other hazardous or toxic components.

(b) A District shall obtain written approval from a surface property owner for access to the property where the leaking water well is located.

§353.7 Prioritization Criteria.

In addition to the eligibility criteria at §353.6, the executive director may establish additional criteria for purposes of prioritizing projects for selection. The following criteria will be used for the prioritization of projects:

(a) Well characteristics, including completion information and wellbore conditions;

(b) Well location relative to sensitive areas;

(c) Environmental considerations;

(d) Wellsite safety and access considerations;

(e) Economic considerations; and

(f) Other priorities determined by the commission.

§353.8. Plugging Criteria.

(a) A District must utilize available Railroad Commission of Texas (RRC) information, data, and regulations to plan, plug, and document that a well has been permanently plugged.

(b) A District must:

(1) Ensure that the leaking water well is permanently plugged. The criteria for ensuring that a well is permanently plugged will be set forth in the grant terms and conditions.

(2) Award the plugging contract to an RRC approved plugger, and

(3) Ensure that the approved well plugger adheres to the applicable RRC rules in 16 TAC §3.14 and RRC guidance.