

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §293.23.

**Background and Summary of the Factual Basis for the Proposed Rules**

The purpose of this rule proposal is to implement the provisions of House Bill (HB) 2080, passed during the 89th Legislature's Regular Session in 2025. This bill provides additional information and requirements regarding TCEQ's process for reviewing a petition for inquiry filed by an affected person pertaining to the actions of a groundwater conservation district (GCD).

HB 2080 amended Texas Water Code (TWC) §36.3011(d) and added §36.3011 (d-1), (d-2), (d-3), (e-1), (e-2), (e-3), and (e-4). Specifically, HB 2080 amended TWC §36.3011(d) to require the recording secretary of a review panel to be an employee of the commission. HB 2080 also adds §36.3011(d-1) clarifying that the review panel is an advisory board and not a governmental body. TWC §36.3011(d-2) requires TCEQ to reimburse a member appointed to the review panel for actual expenses incurred. TWC §36.3011(d-3) requires the records and documents of the recording secretary to be provided to the executive director and specifies that these records are public information. TWC §36.3011(e-1) requires the executive director to provide notice of review panel public meetings and public hearings. TWC §36.3011(e-2) states that the review panel may request technical assistance related to the petition from the Texas Water Development Board (TWDB) and that if assistance is requested, the deadline for the review is extended. TWC §36.3011(e-3) states that a member of the review panel can request

legal advice and assistance on a matter pertaining to the petition from the TCEQ's Office of Public Interest Counsel (OPIC). Lastly, TWC §36.3011(e-4) states that subsections (e-2) and (e-3) do not prohibit members of the review panel from using their own technical consultants or legal counsel.

### **Section by Section Discussion**

The proposed amendment to §293.23, Petition Requesting Commission Inquiry, updates subsection (g) to implement HB 2080. Specifically, it amends paragraph §293.23(g) to clarify that the panel is an advisory board and not a governmental body. It also amends subsection §293.23(g)(2) to require that the recording secretary be a TCEQ employee and to specify that records maintained by the recording secretary must be provided to the executive director and are public documents. Section §293.23(g)(3) is amended to include notice requirements for meetings or hearings held by the review panel. The proposal also adds subsection §293.23(g)(5) to require the commission to reimburse review panel members for actual expenses incurred while engaging in activities on behalf of the panel. Reimbursable expenses will be limited to those associated with meals, travel, and lodging. Once the Commission appoints a panel, information about reimbursable expenses and the process for getting reimbursed will be provided and will generally follow agency procedures.

The proposed amendment also adds §293.23(g)(6) which extends the timeframe for the commission's review of the petition if the review panel seeks technical assistance from TWDB. The proposed amendment also adds §293.23(g)(7) to specify that the review

panel may request legal assistance from the commission's OPIC. Lastly, the proposed amendment adds §293.23(g)(8) which clarifies that the review panel is not prohibited from seeking technical assistance or legal advice from entities other than TWDB and OPIC.

#### **Fiscal Note: Costs to State and Local Government**

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is 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**

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, specifically HB 2080 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

#### **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 Communities Impact Assessment**

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 amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. 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.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble

### **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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a “Major environmental rule” which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent “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.”

First, the proposed rulemaking does not meet the statutory definition of a “Major

environmental rule” because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to amend existing rules to implement HB 2080, 89th Texas Legislature (2025), which provided revised requirements for TCEQ’s review of a petition filed by an affected person pertaining to the actions of a GCD.

Second, the proposed rulemaking does not meet the statutory definition of a “Major environmental rule” because the proposed rule would 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. It is not anticipated that the cost of complying with the proposed rule will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rule will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a “Major environmental rule” listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: “1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or

4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of groundwater conservation districts; 2) does not exceed any express requirements of state law related to the regulation of groundwater conservation districts; 3) 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; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a “Major environmental rule” nor does it meet any of the four applicability requirements for a “Major environmental rule,” this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 of this preamble.

### **Takings Impact Assessment**

The commission evaluated this rulemaking and performed an analysis of whether the

proposed rule would constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that the proposed rule would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rule would not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the proposed amendments to 30 TAC § 293.23. The proposed amendments solely address the review of the duties of a groundwater conservation district.

### **Consistency with the Coastal Management Program**

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or

(4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

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 February 24, 2026 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 at 1:30 p.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 Friday, February 20, 2026. To register for the hearing, please email [Rules@tceq.texas.gov](mailto: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 Monday, February 23, 2026,

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://events.teams.microsoft.com/event/9ca36b32-14f2-4295-b5f6-94987017d629@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 Vanessa Onyskow-Lang, 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 2026-001-293-OW. The comment period closes on March 3, 2026. 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](https://www.tceq.texas.gov/rules/propose_adopt.html)*. For further information, please contact Cindy Hooper, Rule Project Manager, Water Availability Division, (512) 239-4271.

**SUBCHAPTER C: SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS**

**§293.23**

**Statutory Authority**

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over groundwater; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §36.3011, which establishes the commission's authority to, upon petition by an affected person, select a review panel to review activities regarding the management planning or rules of a groundwater conservation district.

These proposed amendments implement House Bill 2080, 89th Texas Legislature (2025).

**§293.23. Petition Requesting Commission Inquiry.**

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules; commission appointment of the review panel; review panel actions; and

executive director actions under Texas Water Code (TWC), §36.3011. An affected person means, with respect to a management area:

- (1) an owner of land in the management area;
- (2) a GCD or subsidence district in or adjacent to the management area;
- (3) a regional water planning group with a water management strategy in the management area;
- (4) a person who holds or is applying for a permit from a district in the management area; or
- (5) a person with a legally defined interest in groundwater in the management area.

(b) Petition requesting commission inquiry. An affected person may file a petition with the commission to request an inquiry for any of the reasons in paragraphs (1) - (9) of this subsection:

- (1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

- (2) a district fails to participate in the joint planning process under TWC, §36.108;
- (3) a district fails to adopt rules;
- (4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
- (5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
- (6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date the district updated its management plan with the adopted desired future conditions;
- (7) the rules adopted by a district are not designed to achieve the adopted desired future conditions;
- (8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or
- (9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

- (c) The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.
- (d) The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.
- (e) The petitioner shall provide a copy of the filed petition to all GCDs within and adjacent to the GMA within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.
- (f) Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report. A review panel established under this section is an advisory body to the commission and not a governmental body under Chapter 551 or 552, Government Code.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section and is not the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary mustmay be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel. The records and documents of the recording secretary of the proceedings of the review panel must be provided to the executive director and are public information under Chapter 552, Texas Government Code.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition. The executive director shall provide notice of any public meeting or public hearing the review panel is directed to conduct not later than the seventh day before the date of a public meeting or public hearing. The executive director shall provide notice by:

(A) Posting notice on the commission's Internet website; and

(B) Delivering notice by regular mail to:

(i) the district that is the subject of the petition;

(ii) the petitioner; and

(iii) the county clerk of each county in the district that is the subject of the petition.

(4) In accordance with TWC, §36.3011, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(5) The commission shall reimburse a member appointed to the review panel for actual expenses incurred while engaging in activities on behalf of the review panel.

(A) To be eligible for reimbursement, a review panel member must file with the executive director a signed verified statement which shall include any relevant receipts describing the expenses incurred.

(B) A member appointed to the review panel is not entitled to a fee of office or other compensation for serving on the review panel.

(6) The commission or the review panel may submit a written request to the executive administrator of the Texas Water Development Board for assistance on a technical issue related to the petition. A deadline under subsections (g), (h), and (i) of this section is extended by 120 days if a request for technical assistance is submitted to the executive administrator during the review phase under that subsection.

(7) On request from a member of the review panel, the office of public interest counsel of the commission shall provide legal advice and assistance to the review panel. The office of public interest counsel:

(A) may not participate as a party in an inquiry under this section; and

(B) has no duty or responsibility to represent the public interest or otherwise in an inquiry except as provided by this subsection.

(8) Paragraphs (6) and (7) of this subsection do not prohibit a member of the review panel from using the member's own technical consultant or legal counsel.

(h) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to

Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause contained in subsection (b)(1) - (9) of this section applies. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) of this title.