

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATION DEPARTMENT

SUBCHAPTER A. ADMINISTRATION

13 TAC §11.15

The Texas Historical Commission (hereinafter referred to as the "commission") proposes to amend §11.15, relating to Advisory Committees and Boards. This amendment is proposed to reauthorize and set new expiration dates for the commission's advisory committees and boards.

FISCAL NOTE. Joseph Bell, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFIT. Mr. Bell has determined that for the first five-year period the amended rule is in effect, the public benefit will be the increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas, the Texas Preservation Trust Fund, and the National Register of Historic Places through the State Board of Review.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Bell has determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rules. Accordingly, no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed section is in effect; therefore, no local employment impact statement is required under Texas Government Code §§ 2001.022 and 2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During

the first five years that the amendments would be in effect, the proposed rules will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code § 2007.043.

PUBLIC COMMENT. Comments on the proposal may be submitted to Bradford Patterson, Deputy Executive Director for Preservation Programs, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendment is proposed under Texas Government Code § 442.005, which gives the commission authority to promulgate rules and appoint advisory committees; and § 2110.008, which allows a state agency to provide by rule for the expiration date of an advisory committee.

CROSS REFERENCE TO OTHER LAW. No other statutes, articles or codes are affected by these amendments.

This agency hereby certifies that the proposed amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

§11.15. Advisory Committees and Boards.

(a) As provided by Texas Government Code, § 442.005(r) the commission may establish advisory committees or boards to advise the commission on archeological and historical matters.

(b) Section 26.5 of this title (relating to Antiquities Advisory Board) provides for the creation of an Antiquities Advisory Board whose purpose, tasks and manner for reporting to the agency are defined therein. Said Board shall be abolished or reauthorized by rule on or before December 31, 2031 [~~February 1, 2025~~].

(c) Section 15.3 of this title (relating to State Board of Review/National Register) provides for the creation of a State Board of Review whose purpose, tasks and manner for reporting to the agency are defined therein. Said Board shall be abolished or reauthorized by rule on or before December 31, 2031 [~~February 1, 2025~~].

(d) Section 17.1 of this title (relating to Texas Preservation Trust Fund) provides for the creation of a Texas Preservation Trust Fund Advisory Board whose purpose, tasks and manner for reporting to the agency are defined therein. Said Board shall be abolished or reauthorized by rule on or before December 31, 2031 [~~February 1, 2025~~].

(e) Pursuant to Chapter 2110 of the Texas Government Code the commission shall annually evaluate the work, usefulness, and cost effectiveness of these advisory committees or boards, and report the

same to the Legislative Budget Board biennially with the agency's request for appropriations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2024.

TRD-202406168

Joseph Bell

Executive Director

Texas Historical Commission

Earliest possible date of adoption: February 2, 2025

For further information, please call: (512) 463-6100



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.251

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct. The amended rule will modify the appeal process at the commission for ERCOT decisions on exemptions and make other minor and conforming changes. In the same project, the commission proposes new 16 TAC §25.517, relating to Exemption Process for ERCOT Reliability Requirements. The proposed rule will allow ERCOT to promulgate reliability-related technical standards and list general criteria by which ERCOT must decide whether to grant an exemption from those standards.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will create a new regulation;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Rachel Seshan, Attorney, Division of Compliance and Enforcement, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering this section.

Public Benefits

Ms. Seshan has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be improved grid reliability in the ERCOT power region. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by February 3, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by February 3, 2025. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 57374.

In addition to this proposed rule, the commission is simultaneously proposing new 16 TAC §25.517. Interested persons may provide comments to both proposals in a single filing, and the commission will consider the two proposals together.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendments are proposed under PURA §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Public Utility Regulatory Act §14.001 and §14.002.

§22.251. *Review of Electric Reliability Council of Texas (ERCOT) Conduct.*

(a) Purpose. This section establishes [~~prescribes~~] the procedure by which an entity, including [~~the~~] commission staff and the Office of Public Utility Counsel (OPUC), may appeal a decision made by ERCOT as the independent organization certified under PURA §39.151 or any successor in interest to ERCOT.

(b) Definitions. The following terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) Conduct--a decision, act, or omission.

(2) Applicable ERCOT Procedures--the applicable sections of the ERCOT protocols that are available to challenge or modify ERCOT conduct, including Section 20 (Alternative Dispute Resolution Procedures, or ADR) and Section 21 (Process for Protocol Revision), and other participation in the protocol revision process.

(c) [~~(b)~~] Scope of complaints.

(1) The scope of permitted complaints includes ERCOT's performance as the independent organization certified under PURA §39.151, including ERCOT's promulgation and enforcement of standards and procedures relating to reliability, transmission access, customer registration, and the accounting of electricity production and delivery among generators and other market participants.

(2) An [~~Any~~] affected entity may file a complaint with the commission [~~complain to the commission in writing~~], setting forth any conduct that is alleged to be in violation [~~or claimed violation~~] of any law that the commission has jurisdiction to administer, [~~of~~] any order or rule of the commission, or [~~of~~] any protocol, [~~of~~] procedure, or binding document adopted by ERCOT in accordance with [~~pursuant to~~] any law that the commission has jurisdiction to administer. [~~For the purpose of this section, the term "conduct" includes a decision or an act done or omitted to be done. The scope of permitted complaints includes ERCOT's performance as an independent organization under the PURA including, but not limited to, ERCOT's promulgation and enforcement of procedures relating to reliability, transmission access, customer registration, and accounting for the production and delivery of electricity among generators and other market participants.~~]

(3) An affected entity may file a complaint with the commission appealing a decision by ERCOT on an exemption request under §25.517 of this title (relating to Exemption Process for ERCOT Reliability Requirements) in accordance with subsection (r) of this section.

(d) [~~(e)~~] [~~Requirement of compliance with~~] ERCOT Protocols compliance prerequisite. An affected entity must use the [~~Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures, or ADR), or Section 21 of the Protocols (Process for Protocol Revision), or other~~] Applicable ERCOT Procedures[~~before filing~~] [~~presenting~~] a complaint with [~~to~~] the commission under this section. [~~For the purpose of this section, the term "Applicable ERCOT Procedures" refers to Sections 20 and 21 of the ERCOT Protocols and other applicable sections of the ERCOT protocols that are available to challenge or modify ERCOT conduct, including participation in the protocol revision process.~~] If a complainant fails to use the Applicable ERCOT Procedures, the presiding officer [~~official~~] may dismiss [~~the complaint~~] or abate the complaint [~~it~~] to afford [~~give~~] the complainant an opportunity to use the Applicable ERCOT Procedures.

(1) A complainant may file a complaint with the commission directly [~~present a formal complaint to the commission~~], without first using the Applicable ERCOT Procedures, if:

(A) the complainant is [~~the~~] commission staff or OPUC [~~the Office of Public Utility Counsel~~];

(B) the complainant is not required to comply with the Applicable ERCOT Procedures; [~~or~~]

(C) the complainant seeks emergency relief necessary to resolve health or safety issues; [~~or~~]

(D) [~~where~~] compliance with the Applicable ERCOT Procedures would inhibit the ability of the affected entity to provide continuous and adequate service; [~~or~~]

(E) the commission has granted a waiver of the requirement to use the Applicable ERCOT procedures in accordance with paragraph (2) of this subsection.

(2) An affected entity may file with the commission a request for waiver of the Applicable ERCOT Procedures. The waiver request must be in writing and clearly state the reasons why the Applicable ERCOT Procedures are not appropriate. The commission may grant the waiver for good cause shown. [For any complaint that is not addressed by paragraph (1) of this subsection, the complainant may submit to the commission a written request for waiver of the requirement for using the Applicable ERCOT Procedures. The complainant shall clearly state the reasons why the Applicable ERCOT Procedures are not appropriate. The commission may grant the request for good cause.]

(3) For complaints for which ADR proceedings have not been conducted at ERCOT, the presiding officer may require informal dispute resolution.

(c) [~~(d)~~] Formal complaint.

(1) A formal complaint must [~~shall~~] be filed within 35 days of the ERCOT conduct that is the subject of the complaint [~~complained of~~], except as otherwise provided in this subsection. When an ERCOT ADR procedure has been timely commenced, a complaint concerning the conduct or decision that is the subject of the ADR procedure must [~~shall~~] be filed no later than 35 days after the completion of the ERCOT ADR procedure. The presiding officer may extend the deadline, upon a showing of good cause, including the parties' agreement to extend the deadline to accommodate ongoing efforts to resolve the mat-

ter informally, and the complainant's failure to timely discover through reasonable efforts the injury giving rise to the complaint.

(2) [(4)] A formal [The] complaint must [shall] include the following information:

(A) a complete list of all complainants and the entities against whom the complainant seeks relief and the addresses, e-mail addresses, and, if available, the facsimile transmission numbers [and e-mail addresses, if available,] of the parties' counsel or other representatives;

(B) a procedural and historical statement of the case that does [ordinarily should] not exceed two pages and does [should] not discuss the facts. The statement must contain the following:

(i) a concise description of any underlying proceeding or any prior or pending related proceedings;

(ii) the identity of all entities or classes of entities that [who] would be directly affected by the commission's decision, to the extent such entities or classes of entities can reasonably be identified;

(iii) a concise description of the conduct, alleged conduct, or ERCOT decision from which the complainant seeks relief;

(iv) a statement of the ERCOT procedures, protocols, binding documents, by-laws, articles of incorporation, or law applicable to resolution of the dispute; [and]

(v) whether the complainant has used the Applicable ERCOT Procedures for challenging or modifying the complained of ERCOT conduct or decision [(as described in subsection (d) [(e)] of this section)] and, if not, the provision of subsection (d) [(e)] of this section upon which the complainant relies to excuse its failure to use the Applicable ERCOT Procedures;

(vi) [(v)] a statement of whether the complainant seeks a suspension of the conduct or implementation of the decision complained of; and

(vii) [(vi)] a statement [without argument] of the basis of the commission's jurisdiction, presented without argument.

(C) a detailed and specific statement of all issues or points presented for commission review;

(D) a concise statement of the relevant facts, [without argument of the pertinent] relevant facts, presented without argument. Each fact must [shall] be supported by references to the record, if any;

(E) - (G) (No change.)

(H) a record consisting of a certified or sworn copy of any document constituting or evidencing the matter complained of. The record may also contain any other item relevant [pertinent] to the issues or points presented for review, including affidavits or other evidence on which the complainant relies.

(3) [(2)] If the complainant seeks to suspend the conduct or the implementation of the decision complained of while the complaint is pending, and all entities against whom the complainant seeks relief do not agree to the suspension, the complaint must [shall] include a statement of the harm that is likely to result to the complainant if the conduct or implementation of the decision [enforcement] is not suspended.

(A) Harm may include deprivation of an entity's ability to obtain meaningful or timely relief if a suspension is not entered.

(B) A request for suspension of the conduct or implementation [enforcement] of a decision must [shall] be reviewed in accordance with subsection (i) of this section.

(4) [(3)] All factual statements in the complaint must [shall] be verified by affidavit made on personal knowledge by an affiant who is competent to testify to the matters stated.

[(4) A complainant shall file the required number of copies of the formal complaint, pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). A complainant shall serve copies of the complaint and other documents, in accordance with §22.74 of this title (relating to Service of Pleadings and Documents), and in particular shall serve a copy of the complaint on ERCOT's General Counsel, every other entity from whom relief is sought, the Office of Public Utility Counsel, and any other party.]

(f) [(e)] Notice. Within 14 days of receipt of the complaint, ERCOT must [shall] provide notice of the complaint by email to all qualified scheduling entities and, at ERCOT's discretion, all relevant ERCOT committees and subcommittees. Notice must [shall] consist of an attached electronic copy of the complaint, including the docket number, but may exclude the record required by subsection (e)(2)(H) [(d)(4)(H)] of this section.

(g) [(f)] Response to complaint. A response to a complaint is [shall be] due within 28 days after receipt of the complaint by the commission.

(1) The response must be confined to the issues or points raised in the complaint and must otherwise [and shall] conform to the requirements for the complaint established under [set forth] in subsection (e) [(d)] of this section except for the following items [that]:

(A) [(4)] the list of parties and counsel [is not required] unless necessary to supplement or correct the list contained in the complaint;

(B) [(2)] a procedural and historical [the response need not include a] statement of the case, a statement of the issues or points presented for commission review, or a statement of the facts, unless the respondent contests that portion of the complaint;

(C) [(3)] a statement of jurisdiction, [should be omitted] unless the complaint fails to assert valid grounds for jurisdiction, in which case the reasons why the commission lacks jurisdiction must [shall] be concisely stated; and

(D) any item already contained in a record filed by another party.

[(4) the argument shall be confined to the issues or points raised in the complaint;]

[(5) the record need not include any item already contained in a record filed by another party; and]

(2) [(6)] If [if] the complainant seeks a suspension of the conduct or implementation of the decision that is the subject of the complaint, the response must [complained of the response shall] state whether the respondent opposes the suspension and, if so, the basis for the opposition, specifically stating the harm likely to result if a suspension is ordered.

(h) [(g)] Comments by commission staff and motions to intervene.

(1) Commission staff representing the public interest must [shall] file comments within 45 days after the date on which the complaint was filed.

(2) Any ~~[In addition, any]~~ party desiring to intervene in accordance with ~~[pursuant to]~~ §22.103 of this title (relating to Standing to Intervene) must ~~[shall]~~ file a motion to intervene within 45 days after the date on which the complaint was filed. A motion to intervene must ~~[shall]~~ be filed with ~~[accompanied by]~~ a response to the complaint.

(i) ~~[(h)]~~ Reply. The complainant may file a reply addressing any matter in a party's response or commission staff's comments. A reply, if any, must be filed within 55 days after the date on which the complaint was filed. ~~The~~ ~~[However, the]~~ commission may consider and decide the complaint ~~[matter]~~ before a reply is filed.

(j) ~~[(h)]~~ Suspension of conduct ~~[enforcement]~~. The ERCOT conduct that is the subject of the complaint remains ~~[complainted of]~~ shall remain in effect until ~~[and unless]~~ the presiding officer ~~[or the commission]~~ issues an order suspending the conduct or decision.

(1) If the complainant seeks to suspend the conduct or implementation of the decision that is the subject of the complaint ~~[complainted of]~~ while the complaint is pending and all entities against whom the complainant seeks relief do not agree to the suspension, the complainant must demonstrate that there is good cause for suspension. A ~~[The]~~ good cause determination under ~~[required by]~~ this subsection will ~~[shall]~~ be based on the presiding officer's ~~[an]~~ assessment of:

(A) the harm that is likely to result to the complainant if a suspension is not ordered;²

(B) the harm that is likely to result to others if a suspension is ordered;²

(C) the likelihood of the complainant's success on the merits of the complaint;² and

(D) any other relevant factors as determined by the commission or the presiding officer.

(2) ~~[(4)]~~ The presiding officer may issue an order, for good cause, on such terms as may be reasonable to preserve the rights and protect the interests of the parties during the processing of the complaint, including requiring the complainant to provide reasonable security, assurances, or to take certain actions, as a condition for granting the requested suspension.

(3) ~~[(2)]~~ A party may appeal a decision of a presiding officer granting or denying a request for a suspension, in accordance with ~~[pursuant to]~~ §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Orders Issued by the Commission).

(k) ~~[(j)]~~ Oral argument. If the facts are such that the commission may decide the matter without an evidentiary hearing on the merits, a party desiring oral argument must ~~[shall]~~ comply with the procedures set forth in §22.262(d) of this title (relating to Commission Action After a Proposal for Decision). In its discretion, the commission may decide a case without oral argument if the argument would not significantly aid the commission in determining the legal and factual issues presented in the complaint.

(l) ~~[(k)]~~ Extension or shortening of time limits. ~~[The time limits established by this section are intended to facilitate the expeditious resolution of complaints brought pursuant to this section.]~~

(1) The presiding officer may grant a request to extend or shorten the time periods established by this rule for good cause shown.

(A) Any request or motion to extend or shorten the schedule must be filed prior to the date on which any affected filing would otherwise be due.

(B) A request to modify the schedule must ~~[shall]~~ include a representation of whether all other parties agree with the request² and a proposed schedule.

(2) For cases to be determined after the making of factual determinations or through commission ADR as provided for in subsection (o) ~~[(n)]~~ of this section, the presiding officer will ~~[shall]~~ issue a procedural schedule.

(m) ~~[(h)]~~ Standard for review.

(1) If the factual determinations supporting the conduct complained of have not been provided or established ~~[made]~~ in a manner that meets the procedural standards under paragraph (3) of ~~[specified in]~~ this subsection, or if factual determinations necessary to the resolution of the matter have not been provided or established ~~[made]~~, the commission will resolve any factual issues on a *de novo* basis.

(2) If the factual determinations supporting the conduct complained have been made in a manner that meets the procedural standards specified under paragraph (3) of ~~[in]~~ this subsection, the commission will reverse a factual finding only if it is not supported by substantial evidence or is arbitrary and capricious. ~~[The procedural standards in this subsection require that facts be determined:]~~

(3) Facts must be determined:

(A) ~~[(4)]~~ in ~~[In]~~ a proceeding to which the parties have voluntarily agreed to participate; and

(B) ~~[(2)]~~ by ~~[By]~~ an impartial third party under circumstances that are consistent with the guarantees of due process inherent in the procedures established by ~~[described in]~~ the Texas Government Code Chapter 2001 (Administrative Procedure Act).

(n) ~~[(m)]~~ Referral to the State Office of Administrative Hearings (SOAH).

(1) If resolution of a complaint does not require determination of any factual issues, the commission may decide the issues raised by the complaint on the basis of the complaint, including any ~~[and the]~~ comments, ~~[and]~~ responses, and replies.

(2) If factual determinations must be made to resolve a complaint brought under this section, and the parties do not agree to the making of all such determinations in accordance with ~~[pursuant to]~~ a procedure described in subsection (o) ~~[(n)]~~ of this section, the matter may be referred to SOAH for ~~[the State Office of Administrative Hearings for the making of]~~ all necessary factual determinations and the preparation of a proposal for decision, including findings of fact and conclusions of law, unless the commission or a commissioner serves as the finder of facts.

(o) ~~[(n)]~~ Availability of alternative dispute resolution. In accordance with ~~[Pursuant to]~~ Texas Government Code Chapter 2009 (Governmental Dispute Resolution Act), the commission will ~~[shall]~~ make available to the parties alternative dispute resolution procedures described by Civil Practices and Remedies Code Chapter 154, as well as combinations of those procedures. The use of these procedures before the commission for complaints brought under this section must ~~[shall]~~ be by agreement of the parties only.

(p) ~~[(o)]~~ Granting of relief. Where the commission finds merit in a complaint and that corrective action is required by ERCOT, the commission will ~~[shall]~~ issue an order granting the relief the commission deems appropriate. The commission order granting relief may include ~~[, including, but not limited to]:~~

(1) entering ~~[Entering]~~ an order suspending the conduct or implementation of the decision complained of;

(2) ordering [Ordering] that appropriate protocol revisions be developed;

(3) providing [Providing] guidance to ERCOT for further action, including guidance on the development and implementation of protocol revisions; or [and]

(4) ordering [Ordering] ERCOT to promptly develop protocols revisions for commission approval.

(q) [(p)] Notice of proceedings affecting ERCOT.

(1) Within seven days of ERCOT receiving a pleading instituting a lawsuit against it concerning ERCOT's conduct as described in subsection (c) [(b)] of this section, ERCOT must [shall] notify the commission of the lawsuit by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the pleading instituting the lawsuit.

(2) Within [In addition, within] seven days of receiving notice of a proceeding at the Federal Energy Regulatory Commission in which relief is sought against ERCOT, ERCOT must [shall] notify the commission by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the notice received by ERCOT.

(r) Complaint regarding exemptions to ERCOT reliability requirements. In a complaint involving the outcome of an exemption decision by ERCOT under §25.517 of this title, the following provisions apply:

(1) the complainant is not required to comply with the Applicable ERCOT Procedures prior to submitting a complaint to the commission;

(2) the parties to a proceeding under this subsection are the complainant, the complainant's transmission service provider, ERCOT, OPUC, and commission staff;

(3) ERCOT is exempt from the notice requirements of subsection (f) of this section;

(4) a proceeding under this subsection is exempt from ADR or other informal dispute resolution procedures otherwise available in this section;

(5) the complaint must include the resource's history of violations of ERCOT protocols, operating guides, or other binding documents related to the reliability requirement that is the subject of the complaint;

(6) commission staff's comments under subsection (h) of this section may include consideration of the following, in addition to the specific claims by the complainant:

(A) ERCOT's most recent outlook for resource adequacy;

(B) date of interconnection of the resource in question;

(C) the potential impact of new resources in the interconnection queue on system reliability;

(D) the resource's history of violations described in paragraph (4) of this subsection;

(E) the complainant's cost to comply with the reliability requirement; and

(F) a modification or condition to the exemption.

(7) In addition to any other relief the commission may grant under subsection (p) of this section, the commission may grant an ex-

emption to a complainant with modifications as the commission deems appropriate.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2024.

TRD-202406144

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: February 2, 2025

For further information, please call: (512) 936-7322



CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.517

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.517, relating to Exemption Process for ERCOT Reliability Requirements. The proposed rule will allow ERCOT to promulgate reliability-related technical standards and list general criteria by which ERCOT must decide whether to grant an exemption from those standards. In the same project, the commission also proposes amendments to 16 TAC §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct. The amended rule will modify the appeal process at the commission for ERCOT decisions on exemptions and make other minor and conforming changes.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will create a new regulation;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Rachel Seshan, Attorney, Division of Compliance and Enforcement, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering this section.

Public Benefits

Ms. Seshan has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be improved grid reliability in the ERCOT power region. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by February 3, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by February 3, 2025. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 57374. In addition to this proposed rule, the commission is simultaneously proposing amendments to 16 TAC §22.251. Interested persons may provide comments to both proposals in a single filing, and the commission will consider the two proposals together.

In addition to general comments on the text of the proposed rule, the commission invites interested persons to address the following specific questions:

1. Should the concept of feasibility include a cost component?
2. How should the rule distinguish between ERCOT reliability requirements that should and should not allow for an exemption?
3. How should ERCOT evaluate cost in comparison to the reliability risk that an unmodified resource may pose to the grid?
4. Under subsection (g)(1), an exemption is no longer valid if the market participant makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations. Is this a reasonable threshold for considering a resource modified to the extent that it is no longer the same resource that was granted an exemption? If not, what is a reasonable threshold?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The new section is proposed under PURA §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; and 14.002.

§25.517. Exemption Process for ERCOT Reliability Requirements.

(a) Application. This section applies to the Electric Reliability Council of Texas (ERCOT) and market participants in the ERCOT region that are required to comply with reliability requirements. Any exemption granted under this section applies only to a resource that existed before the date a reliability requirement takes effect and that satisfies the criteria for an exemption. An unacceptable reliability risk described in subsection (b)(5) of this section applies only to the assessment of exemption requests and does not affect reliability criteria in the ERCOT protocols, operating guides, or other binding documents.

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:

(1) Resource--includes a generation resource, load resource, and an energy storage resource, as defined in the ERCOT protocols.

(2) Reliability requirement--a technical standard adopted by ERCOT to support the reliability of electric service, with which market participants must comply, that is included in the ERCOT protocols, operating guides, or other binding documents to support the reliability of electric service.

(3) Technical limitation--a technical restriction preventing a resource from complying with a reliability requirement, based on the resource's documented technical infeasibility to comply with the reliability requirement.

(4) Technically feasible--describes a modification or upgrade that, based on physics and engineering, can be made to a resource.

(5) Unacceptable reliability risk--a risk posed to the ERCOT system, including:

(A) instability, cascading outages, or uncontrolled separation;

(B) loss of generation capacity equal to or greater than 500 megawatts in aggregate from one or more resources;

(C) loss of load equal to or greater than 300 megawatts;

(D) equipment damage; or

(E) an unknown or unverified limitation.

(c) Exemption Request. If a technical limitation prevents a resource from complying with a requirement that ERCOT has determined is critical for reliability, a market participant may submit to ERCOT an exemption request in accordance with this section. The exemption request must be submitted in a form prescribed by ERCOT that, at a minimum, requires the following:

(1) a description of the applicable reliability requirement that the market participant's resource cannot meet, including cross-references to ERCOT protocols, operating guides, or other binding documents where the applicable reliability requirement is codified;

(2) a succinct description, with supporting technical documentation, of the market participant's efforts to comply with the applicable reliability requirement, and an explanation of the market participant's inability to comply;

(3) documentation describing all technically feasible modifications, replacements, or upgrades the market participant could implement, but has not yet implemented, to improve the performance of the resource toward meeting the applicable reliability requirement;

(4) the estimated total cost of implementing each modification, replacement, or upgrade identified in paragraph (3) of this subsection, including line-item descriptions and costs for procurement; installation, replacement, or modification; and operations and maintenance;

(5) models that accurately represent expected resource performance and reflect actual as-built resource equipment and settings, with all technical limitations, before and after maximizing the resource's operational capability. Each model must include a description of any technical limitation the market participant cannot accurately represent in that model;

(6) a plan to comply with each specific element of the applicable reliability requirement to the maximum extent possible. A plan under this paragraph must include:

(A) a proposed completion deadline for each proposed modification, replacement, or upgrade;

(B) proposed dates for the market participant to provide updates to ERCOT on its progress;

(C) any supporting documentation relevant to plan implementation;

(7) whether any other exemption request has been submitted for the resource, in accordance with this section or otherwise, including the outcome of each request;

(8) a list detailing the resource's history of violations of ERCOT protocols, operating guides, or other binding documents related to

the reliability requirement for which an exemption is being requested; and

(9) the resource's interconnection date, including a copy of the resource's interconnection agreement and any amendments.

(d) ERCOT assessment of exemption requests.

(1) Assessment process. ERCOT must assess the ERCOT system to determine whether an exemption granted to one resource or several resources would adversely affect ERCOT system reliability, including whether an unacceptable reliability risk is present in ERCOT's assessment. The assessment may consider the estimated total cost of each modification, replacement, or upgrade included in an exemption request under subsection (c)(3) of this section and must consider the following:

(A) steady state and dynamic stability of the ERCOT system;

(B) resource and system performance under a reasonable set of operating conditions (e.g., peak summer, peak winter, high wind low load, and nighttime conditions);

(C) reasonable and expected topology, equipment status, and dispatch used in the assessment;

(D) any contingencies ERCOT deems critical based on engineering judgment, including contingencies from any applicable North American Electric Reliability Corporation reliability standard, including any allowed steady state system adjustments for contingencies, or from the ERCOT planning guide;

(E) any technical limitations described in the request that are not included in the models provided by the applicant under subsection (c)(5) of this section, the effect of which will be assessed by analyzing the expected impact based on ERCOT's engineering judgment;

(F) ERCOT's most recent outlook for resource adequacy;

(G) the potential impact of new resources in the interconnection queue on system reliability; and

(H) any other information ERCOT deems necessary to assess the reliability impact of an exemption based on ERCOT's engineering judgment.

(2) Assessment outcomes. ERCOT may grant an exemption, grant an exemption with conditions, or deny an exemption.

(A) ERCOT may grant an exemption if its assessment identifies no unacceptable reliability risks.

(B) ERCOT may grant an exemption with conditions (e.g., curtailment of the resource's output under certain circumstances, a congestion management plan, or other remedial action) if implementation of those conditions would eliminate all unacceptable reliability risks.

(C) ERCOT must deny the exemption request if its assessment identifies an unacceptable reliability risk that cannot be eliminated by imposing conditions, such as those listed in subparagraph (B) of this paragraph.

(e) ERCOT inspections. ERCOT may inspect resources to verify the need for an exemption or perform field verification of modeling parameters, using employees or ERCOT-designated contractors. ERCOT must provide the market participant at least 48 hours' prior notice of a field visit unless otherwise agreed by the market participant and ERCOT. A market participant must grant ERCOT employees or ER-

COT-designated contractors access to its facility to conduct, oversee, or observe the inspection. ERCOT may require additional documentation from the resource or conduct its own verifications, as ERCOT deems necessary.

(f) Appeal to commission. If a market participant is not satisfied with ERCOT's determination of that market participant's request under subsection (d) of this section, the market participant may file a complaint under §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).

(g) Revocation.

(1) Any exemption is limited to the period identified by ERCOT in granting the exemption under subsection (d)(2) of this section or the period in the commission's order ruling on an exemption under §22.251 of this title. An exemption is no longer valid if the resource owner or operator makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations. After such a modification, the resource must meet the latest reliability requirements in the ERCOT protocols, operating guides, and other binding documents.

(2) ERCOT may revoke an exemption it granted, or suspend an exemption granted by the commission, if a reliability study by ERCOT demonstrates that system conditions have materially changed since the exemption was granted. If ERCOT suspends an exemption granted by the commission, the commission will either ratify or set aside ERCOT's action as soon as practicable.

(3) Nothing in this section reduces or otherwise adversely affects ERCOT's authority to prudently operate the grid, regardless of whether a resource has been granted an exemption. The commission may initiate a review of an exemption on its own motion or in response to a filing by ERCOT.

(h) Limit on number of exemptions. A resource is limited to two exemptions from the same reliability requirement, regardless of whether the exemption is granted by ERCOT or the commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2024.

TRD-202406142
Adriana Gonzales
Rules Coordinator

Public Utility Commission of Texas
Earliest possible date of adoption: February 2, 2025
For further information, please call: (512) 936-7322



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1034

The Texas Education Agency (TEA) proposes an amendment to §61.1034, concerning the new instructional facility allotment

(NIFA). The proposed amendment would modify the rule to clarify existing statutory provisions and administrative procedures to calculate the allotment.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §42.158, enacted by Senate Bill 4, 76th Texas Legislature, 1999, created the NIFA for public school districts. The NIFA is provided for operational expenses associated with the opening of a new instructional facility and is available to all public school districts and open-enrollment charter schools that meet the requirements of the statute and rule. The proposed amendment to 19 TAC §61.1034 would clarify the criteria a school district or charter district must meet to be eligible for the NIFA.

New subsection (b)(2)(E) would be added to clarify the current TEA practice of requiring average daily attendance (ADA) for students attending career and technical education (CTE) campuses to be reported when the ADA for those students is reported at their respective home campuses for purposes of calculating the NIFA.

New subsection (b)(4) would clarify that retaining an existing gymnasium on an instructional campus does not affect the eligibility of a new instructional facility for the NIFA.

FISCAL IMPACT: Amy Copeland, chief school finance officer and associate commissioner of school finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by requiring ADA reporting at a certain time for students attending CTE campuses.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Copeland has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to clarify existing statutory provisions and administrative procedures. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 3, 2025, and ends February 3, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 27, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §48.004, which authorizes the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program; and TEC, §48.152, which entitles school districts to an allotment of \$1,000 for each student in average daily attendance in a manner prescribed by TEC, §48.152(d), for operational expenses associated with opening a new instructional facility as defined by TEC, §48.152(a), and requires the commissioner to reduce each district's allotment under this section in the manner provided by TEC, §48.266(f), if the total amount of allotments to which districts are entitled under this section for a school year exceeds the amount appropriated under §48.152(f).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.152.

§61.1034. New Instructional Facility Allotment.

(a) Definitions. The following definitions apply to the new instructional facility allotment (NIFA) in accordance with [the] Texas Education Code (TEC), §48.152.

(1) Instructional campus--A campus that:

(A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;

(B) receives federal and/or state and/or local funds as its primary support;

(C) provides instruction in the Texas Essential Knowledge and Skills (TEKS);

(D) has one or more grade groups in the range from early education through Grade 12; and

(E) is not a program for students enrolled in another public school.

(2) Instructional facility--A real property, an improvement to real property, or a necessary fixture of an improvement to real prop-

erty that is used predominantly for teaching the curriculum required by [the] TEC, §28.002.

(3) New instructional facility--A facility that includes:

(A) a newly constructed instructional facility, which is a new instructional campus built from the ground up;

(B) a repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time for the applying school district or charter school; or

(C) a leased facility operating for the first time as an instructional facility for the applying school district or charter school with a minimum lease term of not less than 10 years. The lease must not be a continuation of or renegotiation of an existing lease for an instructional facility.

(b) Eligibility. The following eligibility criteria apply to the NIFA in accordance with [the] TEC, §48.152.

(1) Both school districts and open-enrollment charter schools are eligible to apply for the NIFA for eligible facilities.

(2) The facility for which NIFA funds are requested must meet the following requirements.

(A) The facility must qualify as an instructional campus and a new instructional facility used for teaching the curriculum required by [the] TEC, Chapter 28.

(B) To qualify for first-year funding, a new facility must not have been occupied in the prior school year. To qualify for follow-up funding, the facility must have been occupied for the first time in the prior school year and funded for the NIFA for that first year. If an instructional facility qualifies as a new instructional facility but did not receive the allotment in the first year of eligibility due to a failure to apply, the school district or open-enrollment charter school may still apply for and receive funding for the average daily attendance (ADA) earned only during the second year of occupation in the new instructional facility.

(C) With the exception of a covered walkway connecting the new facility to another building, the new facility must be physically separate from other existing school structures.

(D) If the applicant is an open-enrollment charter school, the facility must be a charter school site approved for instructional use in the original open-enrollment charter as granted by either the State Board of Education or the commissioner of education or in an amendment granted under §100.1033(b)(9)-(11) of this title (relating to Charter Amendment), as described in §100.1001(3)(D) of this title (relating to Definitions).

(E) Career and technical education (CTE) campuses must report each CTE campus student's ADA when the ADA for that student is reported at the student's home campus.

(3) Expansion or renovation of existing instructional facilities, as well as portable and temporary structures, are not eligible for the NIFA.

(4) All instructional buildings on the campus must be newly constructed as new instructional facilities, except for an existing gymnasium that remains on the campus and will be utilized on the instructional campus.

(c) Application process. To apply for the NIFA, school districts and open-enrollment charter schools must complete [the] TEA's online application process requesting funding pursuant to the NIFA.

(1) The initial (first-year) application, or an application for one-year funding only, must be submitted electronically no later than July 15. The application must include the following:

(A) the electronic submission of [the] TEA's online application for initial funding; and

(B) the electronic submission of the following materials:

(i) a brief description and photograph of the newly constructed, repurposed, or leased instructional facility;

(ii) a copy of a legal document that clearly describes the nature and dates of the new or repurposed construction or a copy of the applicable lease;

(iii) a site plan;

(iv) a floor plan; and

(v) if applicable, a demolition plan.

(2) Second-year applications require only the electronic submission of [the] TEA's online application for follow-up funding no later than July 15 of the year preceding the applicable school year.

(d) Survey on days of instruction. In the fall of the school year after a school year for which an applicant received NIFA funds, the school district or open-enrollment charter school that received the funds must complete an online survey on the number of instructional days held in the new facility and submit the completed survey electronically. [The] TEA will use submitted survey information in determining the final (settle-up) amount earned by each eligible school district and open-enrollment charter school, as described in subsection (e)(6) of this section.

(e) Costs and payments. The costs and payments for the NIFA are determined by the commissioner.

(1) The allotment for the NIFA is a part of the cost of the first tier of the Foundation School Program (FSP). This allotment is not counted in the calculation of weighted average daily attendance for the second tier of the FSP.

(2) If, for all eligible applicants combined, the total cost of the NIFA exceeds the amount appropriated, each allotment is reduced so that the total amount to be distributed equals the amount appropriated. Reductions to allotments are made by applying the same percentage adjustment to each school district and charter school.

(3) Allocations will be made in conjunction with allotments for the FSP in accordance with the school district's or open-enrollment charter school's payment class. For school districts that are subject to the excess local revenue provisions under TEC, §48.257, and do not receive payments from the Foundation School Fund, NIFA distributions will be reflected as reduced recapture payments.

(4) For school districts that are subject to the excess local revenue provisions under TEC, §48.257, NIFA distributions increase the amount of the FSP entitlement and so will automatically reduce any excess local revenue and reduce the requirement to send recapture to the state in the amount of the NIFA allocation.

(5) For all school districts and open-enrollment charter schools receiving the NIFA, a final (settle-up) amount earned is determined by the commissioner when information reported through the survey described in subsection (d) of this section is available in the fall of the school year after the school year for which NIFA funds were received. The final amount earned is determined using the submitted

survey information and final counts of ADA for the school year for which NIFA funds were received, as reported through the Texas Student Data System Public Education Information Management System.

(6) The amount of funds to be distributed for the NIFA to a school district or open-enrollment charter school is in addition to any other state aid entitlements.

(f) Ownership of property purchased with NIFA funds. Property purchased with NIFA funds by an open-enrollment charter school is presumed to be public property under [the] TEC, §12.128, and remains public property in accordance with that section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2024.

TRD-202406164

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 2, 2025

For further information, please call: (512) 474-1497



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING FOR ENGINEERS

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes an amendment to 22 Texas Administrative Code, Chapter 133, regarding Licensing for Engineers. The proposed amendments are specifically to §§133.11, Types of Licenses; 133.26, Applications for Texas Licensure by License Holders in Another Jurisdiction; 133.27, Application for Temporary License for Engineers Currently Licensed Outside the United States; and 133.69, Waiver of Examinations.

BACKGROUND AND SUMMARY

Texas Occupations Code §1001.311 authorizes the Board to license an applicant that is not a resident of the State of Texas if the applicant holds a license issued by another jurisdiction and has met substantially equivalent licensure requirements to those in Texas. The Board is proposing rules to clearly set the procedure and requirements for licensure for applicants from other US states and territories, as well as international applicants licensed in a country that has a licensure agreement with Texas.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §133.11 by clarifying which rules relate to standard and temporary licenses.

The proposed rules amend §133.27 by relocating language from §133.11.

The proposed rules amend §133.69 by clarifying the duration of time for a reciprocal applicant must be licensed in the other jurisdiction prior to requesting a waiver of the PE examination.

The proposed rules create a new section §133.26 that sets out the streamlined requirements for applicants from international and US jurisdictions (states or territories) that are currently licensed in those jurisdictions.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Lance Kinney, Ph.D., P.E., Executive Director, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be allowing qualified applicants with licenses in another jurisdiction to have a streamlined reciprocal licensure process.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no addition requirements are part of the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not increase the number of individuals subject to the rule's applicability.

7. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, by email to rules@pels.texas.gov, sent by mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. In addition, §1001.311 allow for the licensure of nonresidents.

§133.11. *Types of Licenses.*

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any applicant found not to have met all requirements of the Act and board rules.

(1) Standard License. [Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses.] Standard licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal. An application received and processed under the following sections will be considered a standard license:

(A) §133.21 of this chapter (relating to Application for a Standard License)

(B) §133.23 of this chapter (relating to Applications from Former Standard License Holders)

(C) §133.25 of this chapter (relating to Applications from Engineering Educators)

(D) §133.26 of this chapter (relating to Applications for Texas Licensure by License Holders in Another Jurisdiction)

{(2) Reciprocal License. The board does not recognize any jurisdiction for reciprocity at this time.}

(2) [3] Temporary License.

(A) A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a standard license is subject. [A temporary license may only be renewed twice for a total maximum duration of three years.]

(B) After a temporary license has expired, a former temporary license holder may not apply for a subsequent temporary license.

(C) A current temporary license holder may initiate the standard licensure process.

(D) An application received and processed under the following sections will be considered a temporary license:

(i) §133.27 of this chapter (relating to Application for Temporary License for Engineers Currently Licensed Outside the United States)

(ii) §133.29 of this chapter (relating to Application for Temporary License for Military Spouses Who Are Licensed or Registered in Another State)

(3) [(4)] Provisional. The board does not issue provisional licenses at this time.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2024.

TRD-202406101

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: February 2, 2025

For further information, please call: (512) 440-3080



SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.26

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. In addition, §1001.311 allow for the licensure of nonresidents.

§133.26. Applications for Texas Licensure by License Holders in Another Jurisdiction.

(a) General Provisions

(1) An applicant who holds an engineering license from a qualifying US state, territory, or country may apply using the licensure process set forth in this section.

(2) Pursuant to §1001.311 of the Act, a standard license may be issued under this section for applicants who meet the requirements of the following subsections.

(3) In this section, the term "home jurisdiction" means the US state, US territory, or country in which an engineer making application holds a current professional registration or license to practice engineering.

(b) International Agreement Applications

(1) This section only applies to an applicant that:

(A) holds a current engineering licensure credential in a country that is a signatory to a mobility agreement with the Board, as follows: Chartered Engineer through the Engineering Council UK;

(B) Is on the international registry of their home jurisdiction; and

(C) Has a current International NCEES Record

(2) An applicant that meets the conditions of subparagraph (1) shall submit:

(A) An application in a format prescribed by the board;

(B) A current copy of the applicant's international NCEES Record. The International NCEES record shall be accepted as verification of documentation of education, licenses held, examinations or assessments taken, experience record, and reference documentation;

(C) A completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);

(D) A current application fee as established by the board;

(E) Proof of English language proficiency (per §133.21(c) of this chapter (relating to Application for Standard License)), if applicable;

(F) Information regarding any judgments of convictions, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(G) Documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act.

(c) NCEES Model Law Engineer (MLE) Applications

(1) This section only applies to an applicant that is:

(A) Currently licensed in another US jurisdiction;

(B) Has a current NCEES record; and

(C) Holds a current NCEES Model Law Engineer (MLE) designation.

(2) An applicant that meets the conditions of subparagraph (1) shall submit:

(A) An application in a format prescribed by the board;

(B) A current copy of the applicant's NCEES Record. The NCEES record shall be accepted as verification of an original transcript, licenses held, examinations taken, experience record, and reference documentation;

(C) A completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter;

(D) A current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(E) Proof of English language proficiency (per §133.21(c) of this chapter), if applicable;

(F) Information regarding any judgments of convictions, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(G) Documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act.

(d) NCEES Record Holders (Non-MLE) Applications

(1) This section only applies to an applicant that:

(A) Is currently licensed in another US jurisdiction;

(B) Has a current NCEES Record;

(C) Has a minimum of seven years of creditable engineering experience, three of which must be practicing as a registered or licensed engineer in a US jurisdiction; and

(D) Does not have an NCEES MLE designation.

(2) An applicant that meets the conditions of subparagraph (1) shall submit:

(A) An application in a format prescribed by the board;

(B) A current copy of the applicant's NCEES Record. The NCEES record shall be accepted as verification of an original transcript, licenses held, examinations taken, experience record, and reference documentation;

(C) A completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);

(D) A current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(E) Proof of English language proficiency (per §133.21(c) of this chapter), if applicable;

(F) Information regarding any judgments of convictions, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(G) Documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act.

(e) Applicants who have gained professional registration or licensure in the home jurisdiction through another mutual recognition pathway, containing exemptions from the usual assessment process, are not eligible for the pathways set out in this section.

(f) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-202406102

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. In addition, §1001.311 allow for the licensure of nonresidents.

§133.69. Waiver of Examinations.

(a) Examinations are considered an integral part of the licensing process; all applicants are expected to have passed the examinations or to offer sufficient evidence of their qualifications in the absence of passage of the examinations. The board may waive one or both of the examinations on the fundamentals of engineering or the principles and practice of engineering for applicants who:

(1) do not pose a threat to the public health, safety, or welfare;

(2) request a waiver in writing at the time the application is filed; and

(3) meet the requirements of subsections (b) or (c) of this section.

(b) Waiver of Fundamentals of Engineering Examination. Applications for a waiver of the fundamentals of engineering examination will only be accepted from persons who meet the requirements of paragraphs (1) or (2) of this subsection.

(1) Standard Application:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have eight or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation); or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have twelve or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(2) Engineering Educator: meet the requirements of §133.25(a) and (b) of this chapter (relating to Applications from Engineering Educators).

(c) Waiver of Principles and Practice of Engineering Examination. Applications for a waiver of the principles and practice of engineering examination will only be accepted from persons who meet the requirements of this subsection.

(1) Currently Licensed in U.S. State or Territory or Former Standard Texas License Holder: An applicant who is applying for a standard license and is currently licensed and in good standing in any U.S. state or territory, or a former Texas license holder applying under §133.23 of this chapter (relating to Applications from Former Texas License Holders), shall:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, three of which must be practicing as a registered or licensed engineer in that U.S. State or Territory, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation); or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, three of which must be practicing as a registered or licensed engineer in that U.S. State or Territory, as evaluated by the board under §133.43 of this chapter;

(2) Engineering Educator:

(A) meet the requirements of §133.25(a) and §133.25(b)(1) of this chapter (relating to Applications from Engineering Educators) and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least six years and began teaching engineering prior to September 1, 2001;

(ii) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the requirements of §133.25(a) and §133.25(b)(2) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least eight years and began teaching engineering prior to September 1, 2001;

(ii) at least eight years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least six years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(d) An applicant is not eligible to request a waiver of the examination on the fundamentals of engineering if the applicant has taken and failed any examination on the fundamentals of engineering in any jurisdiction within the previous two years. An applicant is not eligible to request a waiver of the examination on the fundamentals of engineering if the applicant has taken and failed any examination on the fundamentals of engineering in any jurisdiction three or more times.

(e) An applicant is not eligible to request a waiver of the examination on the principles and practice of engineering if the applicant has taken and failed any examination on the principles and practice of engineering in any jurisdiction within the previous four years.

(f) Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application, as provided in §133.51 of this chapter (relating to Reference Providers), and §133.53 of this chapter (relating to Reference Statements). The board shall review all elements of the application to evaluate waiver request(s) and may grant a waiver(s) to qualified applicants.

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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 353. LEAKING WATER WELLS

GRANT PROGRAM

30 TAC §§353.1 - 353.8

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 plugging 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 Girten, 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 ad-

versely 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 pro-

posed 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/proposal_adopt.html. For further information, please contact Cindy Hooper, P.G., Groundwater Planning and Assessment Team, at (512) 239-4271.

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:

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

(2) 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.

(3) 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.

(4) Leaking Water Wells Grant Program (Program)--means the Texas Commission on Environmental Quality (commission or TCEQ) 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:

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

(2) Well location relative to sensitive areas;

(3) Environmental considerations;

(4) Wellsite safety and access considerations;

(5) Economic considerations; and

(6) 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 plunger; and

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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