

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 252. ADMINISTRATION

##### 1 TAC §252.8

The Commission on State Emergency Communications (CSEC) adopts amendments to §252.8, concerning the agency's Emergency Communications Advisory Committee (ECAC), without changes to the proposed text as published for comment in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3013). The adopted rule will not be republished.

##### REASONED JUSTIFICATION

CSEC adopts amendments to §252.8 (Title 1, Part 12, Chapter 252 of the Texas Administrative Code) to extend the date on which ECAC is abolished from September 1, 2023, to September 1, 2029 - date corresponds to CSEC's sunset date. ECAC continues to serve a vital advisory role for CSEC regarding the development, implementation, and transition of Texas to providing Next Generation 9-1-1 (NG9-1-1) service, including fostering Texas 9-1-1 Entity collaboration, collective decision-making, and assurances that the requirements of the entities are met.

##### PUBLIC COMMENT AND AGENCY RESPONSE

To date no comments were received regarding the proposed amendment.

##### STATEMENT OF AUTHORITY

The adopted amendment affects Texas Health and Safety Code §771.051(a)(1), (2), (4), (7), (8), (9), (10), §771.0511, and §771.052; and Texas Government Code Chapter 2110.

No other statutes, articles, or codes are affected by the adopted amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2023.

TRD-202302673

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: August 16, 2023

Proposal publication date: June 16, 2023

For further information, please call: (512) 305-6915



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §1.10, Public Comment Procedures, without changes to the proposed text as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2801). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

##### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the security of personal information.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively affect this state's economy.

##### b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REG-

ULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT. The public comment period was open from June 2, 2023, to July 3, 2023, and no comment was received. The repeal is being adopted with no changes.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2023.

TRD-202302689

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: August 17, 2023

Proposal publication date: June 2, 2023

For further information, please call: (512) 475-3959



**10 TAC §1.10**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §1.10, Public Comment Procedures with changes to the proposed text as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2802). The rule

will be republished. The purpose of the rule is to govern how public comment can be made at Governing Board meetings.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule governing the security of personal information.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand, or repeal an existing regulation, but merely revises a rule.

7. The new rule does increase or decrease the number of individuals to whom this rule applies.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule provides specific detail on how public comment can be provided at meetings of the Department's governing board. Other than in the case of a small or micro-business that participates at a board meeting, no small or micro-businesses are subject to the rule. If a small or micro-business does participate at a board meeting, merely direct how their comment can be made.

3. The Department has determined that because this rule relates only to a revision to a rule, and the rule changes do not specifically relate to geographic location or business size, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first

five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to requirements of existing and future Department Contractors and echoes state and federal regulations already in effect.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by the rule..." Considering that the rule is applicable to all commenters at a meeting, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule will be improved clarity on the process for making comment at a board meeting. There is no economic cost to any individuals required to comply with the new rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

PUBLIC COMMENT. The public comment period was open from June 2, 2023 to July 3, 2023 and no comment was received.

STATUTORY AUTHORITY. The adoption is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

#### §1.10. Public Comment Procedures.

(a) Purpose. The purpose of this section is to establish procedures for hearing public comment at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov't Code.

(b) Procedures for taking public comment.

(1) At each meeting open to the public the Governing Board (Board) shall provide opportunity for members of the public to make:

(A) General public comment after the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business, or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection; and

(B) Specific public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff's presentation to be staff's written presentation in the Board's meeting book posted on the Department's website, or additional printed materials only as provided for in paragraph (6) of this subsection.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application. The opportunity for any such testimony is to be limited to the appointed time when action on such matter

is requested to be formally considered as a posted agenda item as described in paragraph (1)(B) of this subsection.

(3) At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak, or this may be directed by the Board Chair. If a large number of speakers wish to testify, the Chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.

(4) Individuals present at the meeting, who wish to register their position for or against a posted agenda item, but do not wish to speak, may do so by submitting a comment registration form with the secretary of the meeting, or another person designated by the Board Chair. The comment registration form must state the commenter's name, whom they represent, the action item to which their comment relates, their position, and must be signed by the commenter. At the end of the public comment on the item the Board Chair will have registered positions for and against read into the record. It is the Board Chair's discretion to determine if similar comments submitted are aggregated and reported as a total number providing their position, as opposed to reading all names into the record.

(5) Additional limits on public comment.

(A) The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

- (i) the number of persons wishing to give public comment;
- (ii) the number of agenda items to be heard;
- (iii) the time available for the meeting; and
- (iv) the risk of losing a quorum of Board members.

(B) If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances. Deference to elected officials may include, but is not limited to reading letters from elected officials to the Board into the record.

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five business days prior to the meeting at which they are to be. This is to enable staff to post them on the Department's website not later than the third day before the date of the meeting, as provided for in Tex. Gov't Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department's website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

(i) they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;

(ii) they are not so voluminous as to cause inordinate delay while members of the Board and public review them;

(iii) they are provided in hard copy format to all members of the public in attendance;

(iv) they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department's website; and

(v) if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(D) Persons seeking allowance of written materials under paragraph (6)(C) of this subsection should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

(E) If materials submitted relate to a competitive Application under any Department program, including Chapters 11 and 13 of this title (relating to Qualified Allocation Plan (QAP) and Multifamily Direct Loan Rule, respectively), such materials provided under either subparagraphs (A) or (C) of this paragraph may be prohibited from presentation to the Board under applicable rules or statute.

(c) To the extent that subsection (b) of this section, or the Board Chair, place limitations on the amount of time that a member of the public may address the Board, a member of the public who addresses the Board through an interpreter will be given at least twice the amount of time as a member of the public who does not require the assistance of an interpreter in order to ensure that non-English speakers receive the same opportunity to address the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2023.

TRD-202302690

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: August 17, 2023

Proposal publication date: June 2, 2023

For further information, please call: (512) 475-3959



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §22.6

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter A, §22.6, General Provisions without changes to the proposed text as published in the April 28, 2023, issue of the *Texas Register* (48 TexReg 2175). The rules will not be republished.

This adopted amendment provides the Coordinating Board the flexibility to respond to unforeseen exigent circumstances that may otherwise significantly impact students' ability to meet the financial aid priority deadline. Texas Education Code, Section 56.008, requires the Coordinating Board to establish a rule outlining a uniform priority application deadline for applications for financial assistance for an academic year and to consult financial aid personnel at institutions in doing so. Texas Administrative Code, Section 22.6, fulfills this requirement, though it currently does not provide the flexibility for the Coordinating Board to respond to unforeseen exigent circumstances. The adopted amendment provides that flexibility in a manner that continues to require consultation with financial aid personnel.

The following comments were received regarding adoption of the amendments.

Comments: Two comments were received in support of the amendments from the Austin Chamber of Commerce and the Texas College Access Network. The comments did not propose any changes to the amendments.

Response: The Coordinating Board appreciates and agrees with the comments supporting adoption of the revisions.

The amendment is adopted under Texas Education Code, Section 56.008, which provides the Coordinating Board with the authority to establish a rule outlining a uniform priority application deadline for applications for financial assistance for an academic year.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2023.

TRD-202302692

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 17, 2023

Proposal publication date: April 28, 2023

For further information, please call: (512) 427-6365



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 100. CHARTERS

#### SUBCHAPTER AA. COMMISSIONER'S

#### RULES CONCERNING OPEN-ENROLLMENT

#### CHARTER SCHOOLS

#### DIVISION 1. GENERAL PROVISIONS

## 19 TAC §100.1019

The Texas Education Agency adopts new §100.1019, concerning application to adult high school charters. The amendment is adopted without changes to the proposed text as published in the May 19, 2023 issue of the *Texas Register* (48 TexReg 2556) and will not be republished. The adopted new rule implements Senate Bill (SB) 1615, 87th Texas Legislature, Regular Session, 2021, by providing requirements for the administration of the adult high school open-enrollment charter application process.

**REASONED JUSTIFICATION:** Adopted new §100.1019 implements SB 1615, 87th Texas Legislature, Regular Session, 2021, which added Texas Education Code (TEC), §12.265, regarding adult high school charters. The new rule specifies which portions of the open-enrollment charter application process codified in 19 TAC §100.1002, Application and Selection Procedures and Criteria, apply to adult high school charters.

The adopted new rule is constructed to mirror 19 TAC §100.1004 that provides application process requirements for public senior college or university charters and junior college charters. This construction is intended to provide consistency in rule among each program's authorization and administration.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began May 19, 2023, and ended June 20, 2023. Following is a summary of the public comment received and the agency response.

**Comment:** A superintendent of The Goodwill Excel Center for Adults requested the rule specify that the application includes a section describing how the applicant will provide for the adult education program described in TEC, §12.259.

**Response:** The agency agrees that it is beneficial for more specificity to be outlined in rule regarding adult education charter programs; however, no changes to new §100.1019 will be made at this time. The agency anticipates proposing an amendment to the rule to align with legislation passed by the 88th Texas Legislature, Regular Session, 2023.

**STATUTORY AUTHORITY.** The new rule is adopted under Texas Education Code, §12.265, as added by Senate Bill 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner of education to adopt rules to administer the adult high school charter school program.

**CROSS REFERENCE TO STATUTE.** The new rule implements Texas Education Code, §12.265, as added by SB 1615, 87th Texas Legislature, Regular Session, 2021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2023.

TRD-202302658

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 15, 2023

Proposal publication date: May 19, 2023

For further information, please call: (512) 475-1497



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 354. MEMORANDA OF UNDERSTANDING

##### 31 TAC §§354.1, 354.2, 354.4, 354.6, 354.9, 354.15

The Texas Water Development Board (TWDB) adopts the repeal of 31 Texas Administrative Code §§354.1, 354.2, 354.4, 354.6, 354.9, and 354.15. The proposal is adopted without changes as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 470). The rules will not be republished.

##### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The TWDB determined through a review of its rules in Chapter 354 that the aforementioned rules for repeal are either expired, were adopted to facilitate the administration of Agency directives that are no longer necessary, or are instead interagency contracts effective pursuant to Chapter 771, Texas Government Code.

##### EFFECTIVE DATE.

These rules will become effective on September 1, 2023.

##### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 354.1 is repealed as the manner of compliance between the Texas Historical Commission and the TWDB has changed since the promulgation of the rule.

Section 354.2 is repealed because the term of the contract expired August 31, 2017.

Section 354.4 is repealed because the term of the contract expired August 31, 2017, and the General Appropriations Act rider relating to the contract has not been renewed.

Section 354.6 is repealed and the contract will not be readopted into rule as a memorandum of understanding because the contract is an interagency contract between the named agencies under Chapter 771, Texas Government Code.

Section 354.9 is repealed because the term of the contract expired August 31, 2017.

Section 354.15 is repealed because the initiative between the Comptroller of Public Accounts and the Agency is no longer necessary to facilitate TWDB directives.

##### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeal is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the repeal is to conduct a review and reorganization of the TWDB's rules as required by state law.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather under Texas Water Code §§5.104, 6.101, and 6.104. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is conducted pursuant to TWDB review and reorganization of its existing Memoranda of Understanding between it and various other state governmental agencies and in order to implement recent legislation. The repeal substantially advances this stated purpose.

The TWDB's analysis also indicates that Texas Government Code, Chapter 2007 does not apply to this repeal because this is an action that is reasonably taken to fulfill an obligation imposed by state statute which is exempt under Texas Government Code §2007.003(b)(4). The TWDB as an agency is required by law to promulgate into its rules all memoranda of understanding it enters into with the TCEQ.

The TWDB evaluated this repeal and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this repeal would be neither a statutory nor a constitutional taking of private real property because it neither relates to nor impacts private property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the repeal does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The comment period ended March 6, 2023. No comments were received.

#### STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§5.104 and 6.104, which require the TWDB to adopt by rule any MOU with the TCEQ.

This rulemaking affects Texas Water Code, Chapters 6, Subchapter D.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2023.

TRD-2023002677

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: September 1, 2023

Proposal publication date: February 3, 2023

For further information, please call: (512) 463-7686



### 31 TAC §354.6

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §354.6. The proposal is adopted without changes as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 472). The rule will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The TWDB adopts new §354.6 related to a new Memorandum of Understanding (MOU) between the Texas Water Development Board and the Texas Commission on Environmental Quality (TCEQ). The current §354.6 is repealed elsewhere in this same issue of the *Texas Register*.

#### EFFECTIVE DATE.

The rule will become effective on September 1, 2023.

#### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

§354.6. Memorandum of Understanding Between the Texas Water Development Board and the Texas Commission on Environmental Quality Related to Expedited Permit Review for Interregional Water Supply Projects.

This proposed rule would replace an outdated MOU, repealed elsewhere in this issue of the *Texas Register*, with a new MOU entered into between the TWDB and TCEQ. House Bill (HB) 1052, passed during the 86th Texas Legislative Session, required the TWDB and TCEQ to enter into an MOU related to the expedited permit review for interregional water supply projects funded by the TWDB's State Participation Program. This bill was codified as Texas Water Code §16.145. Texas Water Code §5.104 requires the TWDB to adopt by rule any MOU between the TWDB and TCEQ.

#### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Gov-

ernment Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to delineate the responsibilities of the TWDB and TCEQ related to expedited permit reviews for interregional water supply projects funded through the State Participation Program.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§ 5.104 and 6.104. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to comply with the statutory requirement to enter into this MOU outlined in Texas Water Code §16.145. The rule would substantially advance this stated purpose by delineating the responsibilities of the TWDB and TCEQ related to expedited permit reviews for interregional water supply projects funded through the State Participation Program.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code

§2007.003(b)(4). The TWDB is the agency that implements the State Participation Program.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. This rule simply delineates the TWDB's and TCEQ's responsibilities related to expedited permit reviews for interregional water supply projects funded through the State Participation Program and establishes compliance with the TWDB's requirement to publish all MOUs with TCEQ in rule. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The comment period ended March 6, 2023. No comments were received.

#### STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§ 5.104 and 6.104, which requires the TWDB to adopt by rule all MOUs with the TCEQ.

This rulemaking affects Texas Water Code, Chapters 6, 16, and 17.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2023.

TRD-202302656

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: September 1, 2023

Proposal publication date: February 3, 2023

For further information, please call: (512) 463-7686

