

AGENDA ITEM MEMO

BOARD MEETING DATE: May 6, 2021

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica N. Peña, Deputy Executive Administrator, Water Supply & Infrastructure

FROM: Sarah Backhouse, Manager, Regional Water Planning

SUBJECT: Adoption of rule amendments related to regional water planning.

ACTION REQUESTED

Consider adopting amendments to 31 Texas Administrative Code (TAC) Chapter 355 relating to Regional Water Planning Grants and 31 TAC Chapter 357.21 relating to Regional Water Planning Notice and Public Participation.

BACKGROUND

The Texas Water Development Board (TWDB) authorized publication of proposed amendments to 31 TAC Chapter 355 and 357.21 on February 10, 2021. The proposed amendments were published in the *Texas Register* on February 26, 2021, with a deadline to receive public comments by March 29, 2021.

The TWDB received a comment from the Texas Press Association on the proposed amendments to Chapter 357.21. By statute, the Board is required to respond to timely submitted comments and, if warranted, modify the proposed rules. The Executive Administrator has determined that no changes were warranted to Chapter 357 as a result of the public comment. No public comments were received on the proposed amendments to Chapter 355.

Staff identified a clarification necessary for inclusion in the final rules regarding the minimum timeframe for posting meeting materials for subsection §357.21(h). The adoption preamble includes the Board's response to the comment and changes in the final language considered for adoption are outlined below as key issues.

Our Mission

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

Board Members

Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

KEY ISSUES

The proposed amendments will address concerns raised by regional water planning groups, clarify language, and simplify and streamline regional water planning notice requirements.

Revisions made to the final rules include:

- 31 TAC §357.21(e): correction of a typographical error.
- 31 TAC §357.21(g)(1-3): clarification that materials must be posted on the website of the RWPG.
- 31 TAC §357.21(h)(8): clarification that meeting materials associated with this subsection are subject to a minimum posting requirement.

The comment received, and the response, is summarized in Attachment 2 to this memo as part of the rule adoption package.

RECOMMENDATION

The Executive Administrator recommends approval of this item in order to clarify existing regional water planning rules.

- Attachments:
1. Adoption of rule amendments for publication in the Texas Register - Chapter 355.
 2. Adoption of rule amendments for publication in the Texas Register - Chapter 357.21

Attachment 1
Chapter 355 amendments

The Texas Water Development Board (“TWDB” or “board”) adopts amendments to 31 TAC §355. The proposal is adopted without changes as published in the February 26, 2021 issue of the Texas Register (46 Tex.Reg. 1305).

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

The purpose of the amendments to 31 TAC §355 are to address concerns raised by the regional water planning groups, which was also identified as a recommendation from the Interregional Planning Council, established by House Bill 807 of the 86th Legislature, to allow for the limited reimbursement of certain labor costs for regional water planning administrative agents. The revisions also clarify language throughout the section.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter C. Regional Water Planning Grants.

Section §355.91. Notice of Funds and Submission and Review of Applications.

Section §355.91(a) is revised to remove the requirement that the request for funding applications be published in the Texas Register. Eligible applicants are limited to the Political Subdivision designated by each regional water planning group. These entities will be notified directly by the Executive Administrator (EA) that funding is available.

Section §355.91(b) is revised to add clarity to the rule.

Section §355.91(c) is revised to comply with §357.21 as modified by the current rulemaking project.

New section §355.91(d) is added clarify the statutory requirements to be included in a funding application.

Renumbered section §355.91(e) is revised to remove the requirement for multiple applications during the five-year planning cycle. The Board has discretion to amend the regional water planning grant contracts to add additional funds and scope of work tasks without a new application for funding during the same planning cycle.

Renumbered section §355.91(f) is revised to closely adhere to the statutory requirements.

Section §355.92. Use of Funds.

Section §355.92(a)(5) is renumbered as §355.92(a)(4) and is revised to clarify that the EA may deem an analysis of benefits and costs of water management strategies eligible for funding at the EA’s discretion and specifies items the EA must consider. Section §355.92(d) is removed, as the EA consideration is now addressed in new §355.92(a)(4).

Section §355.92(a)(4) is renumbered as §355.92(b) and provides clarification on ineligible expenses for RWPG members and the RWPGs’ designated political subdivisions.

Section §355.92(b) is renumbered as §355.92(c) and clarifies certain eligible administrative costs that are specifically limited by the regional water planning grant contract. This includes a new eligible cost for limited reimbursement of the RWPG's political subdivision's personnel costs associated with RWPG meetings and hearings.

Section §355.92(c) is renumbered as §355.92(d) and is revised to clarify the subcontracting process is through the RWPG's political subdivision.

Section §355.93. Board Consideration of Applications; Applicant's Responsibilities; and Contract.

Sections §355.93(a), (b), and (c) are revised to clarify rule language.

Section §355.93(d) is revised to clarify that the contracts and subcontracts for regional water planning must, at the direction of the EA, include either a scope of work provided by the EA or a scope of work developed by the RWPG if requested by the EA and a budget subdivided into task budgets.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board 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 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 rulemaking is to define eligible expenses and clarify existing language.

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 the a standard set by federal law or any other 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 proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code § 16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board 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 clarify language and to provide for some reimbursement of labor costs for regional water planning administration.

The board'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 board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board 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 proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor 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 rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT:

No comments were received.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the 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.

The rulemaking is adopted under the additional authority of Texas Water Code § 15.403 which provides the TWDB with the authority to adopt rules necessary to carry out the purposes of the Research and Planning Program and Texas Water Code § 15.4061 which provides the TWDB with the authority to enter into contracts with political subdivisions and pay from the research and planning fund, all or part of the cost of developing or revising Regional Water Plans in accordance with the statute.

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CHAPTER 355 RESEARCH AND PLANNING FUND

SUBCHAPTER C REGIONAL WATER PLANNING GRANTS

§355.91 Notice of Funds and Submission and Review of Applications

(a) The EA will notify the RWPGs that funds are available and that applications will be accepted from eligible applicants for grants to develop a scope of work or to develop or revise regional water plans. The notice will describe the form and manner for applications. A RWPG may not receive grant funds unless the RWPG has provided the EA with a copy of the RWPG's adopted by-laws.

(b) The RWPG shall provide a written designation to the EA naming the political subdivision that is authorized to apply for grant funds on behalf of the RWPG. The RWPG shall ensure that the designated political subdivision has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional water planning.

(c) The political subdivision shall provide notice that an application for funding is being submitted in accordance with §357.21 of this title (relating to Notice and Public Participation).

(d) The application must include: the name of the political subdivision; citation to the laws under which the political subdivision was created and is operating, specific citation of all laws providing authority to develop and implement a regional water plan; the amount of funding requested; and any other relevant information requested by the EA.

(e) The EA may request clarification from the political subdivision if necessary to evaluate the application. Incomplete applications may be rejected and returned to the applicant.

(f) The applications shall be evaluated by the following criteria:

(1) degree to which proposed planning does not duplicate previous or ongoing water planning;

(2) project budget;

(3) scope of work;

(4) the relative need of the political subdivision for the money based on the scope of work and cost to develop the regional water plan;

(5) the legal authority of the political subdivision to participate in the development and implementation of a regional water plan; and

(6) the degree to which regional water planning by the RWPG will address the water supply needs in the regional water planning area.

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STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the 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 Texas Water Code § 15.403 and 15.4061.

Cross-reference to statute: Texas Water Code Chapters 15.

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§355.92 Use of Funds

(a) Limitations of Funding. The Board has sole discretion in determining which activities are necessary for the development or revision of regional water plans. However, no funds will be provided for the following:

(1) activities for which the Board determines existing information or data is sufficient for the planning effort including:

(A) detailed evaluations of cost of water management strategies where recent information for planning is available to evaluate the cost associated with the strategy;

(B) evaluations of groundwater resources for which a desired future condition has been submitted to the Board pursuant to Texas Water Code §36.108(d) (relating to Joint Planning in a Management Area);

(C) evaluations of groundwater resources for which current information is available from the Board or other entity sufficient for evaluation of the resource;

(D) determination of water savings resulting from standard conservation practices for which current information is available from the Board;

(E) revision of the adopted state population and demand projections;

(F) revision of state environmental planning criteria for new surface water supply projects; and

(G) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) activities related to planning for individual system facility needs other than identification of those facilities necessary to transport water from the source of supply to a regional water treatment plant or to a local distribution system;

(4) analyses of benefits and costs of water management strategies are not eligible for funding, unless the EA at his or her discretion, has deemed an analysis necessary and appropriate, or

specifically authorizes reimbursement. In determining whether to authorize reimbursement for a cost benefit analysis for a water management strategy, the EA will consider:

(A) whether the water management strategy requires a state or federal permit and the RWPG has completed the analysis required by §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies);

(B) whether these analyses are needed to determine the selection of the water management strategy;

(C) whether the analysis is for strategies that serve the same demand, but the costs and benefits differ significantly among the strategies; and

(D) the overarching benefits to the state when determining whether to provide such funding.

(b) Costs associated with participation on a RWPG and certain administrative activities by the RWPG's Political Subdivision and RWPG members are not eligible for funding. Ineligible costs include but are not limited to:

(1) compensation for the time or expenses of RWPGs members' service on or for the RWPG, including attendance at RWPG meetings and hearings;

(2) costs for training;

(3) costs associated with the development of an application for a regional water planning grant;

(4) costs of reviewing products developed due to this grant; and

(5) costs of administering the regional water planning grant and associated contracts.

(c) Funding Administrative Costs. The following administrative costs are eligible for funding as specifically limited by the expense budget included in the regional water planning grant contract between the TWDB and the RWPG's political subdivision and if the RWPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act are available only for attendance at a posted meeting of the RWPG unless the travel is specifically authorized by the RWPG and EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RWPGs and certified by the chairperson;

(3) direct costs, not including personnel costs, for providing copies of information for the public and for members of the RWPGs as needed for the efficient performance of planning work;

(4) direct costs, not including personnel costs, of public notice postings including a maintaining a website and for postage for mailing notices of public meetings and hearings, including in newspapers pursuant to Chapter 357 of this title (relating to Regional Water Planning); and

(5) the RWPG's political subdivision's personnel costs, for the staff hours that are directly spent providing, preparing for, and posting public notice for RWPG meetings and hearings, including time and direct expenses for their support of and attendance at such RWPG meetings and hearings.

(d) Subcontracting. A RWPG through the political subdivision's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional water plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

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STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the 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 Texas Water Code § 15.403 and 15.4061.

Cross-reference to statute: Texas Water Code Chapters 15.

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§355.93 Board Consideration of Applications; Applicant's Responsibilities; and Contract

(a) The EA shall provide a summary of regional water planning funding applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicants of the time and place of such meeting.

(b) Board Review. The Board may approve, deny, amend, or continue consideration of an application. If the Board approves the application for funding, then the RWPG's political subdivision will be notified of the amount of funds available and the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The political subdivision may request an extension of time for good cause shown prior to the contract execution deadline.

(c) Eligible Applicant's Responsibility. The RWPG's political subdivision must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a regional water plan.

(d) The contracts and subcontracts for regional planning funds shall include:

- (1) a detailed statement of the purpose for which the money is to be used;
- (2) a scope of work provided by the EA or a scope of work developed by the RWPG if requested by the EA;
- (3) the total amount of money to be paid from the research and planning fund under the contract and, as determined by the EA, subdivided into task budgets;
- (4) the time for completion; and
- (5) any other terms and conditions required by the EA or agreed to by the contracting parties.

Attachment 2
Chapter 357.21 Amendments

The Texas Water Development Board (“TWDB” or “board”) adopts an amendment to 31 TAC §357.21. The proposal is adopted with changes as published in the February 26, 2021 issue of the Texas Register (46 Tex.Reg. 1305).

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

The purpose of this rule change is to simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements. The revisions closely align with the new flood planning public notice rules, where applicable, to reduce confusion among public notice requirements of the two regional planning processes administered by the agency.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Subchapter B. Guidance Principles and Notice Requirements.

§357.21. Notice and Public Participation.

Sections §357.21(b)-(e) are rescinded and the requirements within those subsections are rewritten as §357.21(g)(1-3)-(h). Section §357.21(e) is fully removed to no longer require a costly public notice for a non-competitive funding process.

New subsection §357.21(b) requires that each Regional Water Planning Group (RWPG) maintain a website where public notice and meeting materials are posted. This is currently already required by the regional water planning contract scopes of work.

New subsection §357.21(c) clarifies that oral public comment must be accepted at each public meeting or hearing and the RWPGs must specify when and how the public may submit written comment.

New subsection §357.21(d) requires the RWPGs to maintain a list of interested parties of who will receive electronic notice of public meetings and hearings.

New subsections §357.21(e-f) specify the minimum requirements for all meeting and hearing notices. RWPGs may add additional notice requirements above the requirements specified by rule to their bylaws. Subsection §357.21(e) is revised to correct a typographical error.

New subsection §357.21(g)(1) specifies that regular RWPG meetings, and any committee or subcommittee meetings, are subject to a minimum seven-day public notice. Additional RWPG actions that would be subject to the seven-day notice are specified in this rule. This revises the previous requirement that regular RWPG meetings occur with a minimum three-day public notice. A seven-day public notice allows for increased public transparency of upcoming meetings. As referenced in the TWDB’s Best Practices Guide for RWPG Political Subdivisions, the TWDB’s Regional Water Planning Public Notice tool, developed in coordination with a RWPG political subdivision, recommends providing public notice at least seven days prior to a RWPG meeting. The rule also specifies the minimum time for posting

meeting materials as three days prior to and seven days following a public meeting. Subsection §357.21(g)(1) is revised to clarify that materials must be posted on the RWPG's website.

New subsection §357.21(g)(2) specifies certain actions that are subject to a minimum 14-day public notice and public comment period. The rule also specifies the minimum time for posting meeting materials as seven days prior to and 14 days following the public meeting. This subsection revises the previous 14-day public notice requirements by requiring adoption of the final regional water plan to be subject to a 14-day notice, removes the requirement for a 14-day follow up comment period after a RWPG takes action, and removes the requirement to submit public comments on minor amendments to the TWDB from the public notice section. The requirement to provide public comments on minor amendments to the TWDB will be moved to Section 357.50 during a subsequent rulemaking to occur in 2021. Subsection §357.21(g)(2) is revised to clarify that materials must be posted on the RWPG's website.

New subsection §357.21(g)(3) specifies public hearings requirements for declarations to pursue simplified planning and major amendments. These hearings are subject to a minimum 30-day public notice and public comment period prior to and after the hearings. This subsection revises the previous 30-day notice requirements for these hearings in that the notice requirements in Texas Water Code (TWC) 16.053(h) are no longer applied to these hearings to reduce the costly expense associated with a large mailout and posting notice in a newspaper. RWPGs may continue to provide newspaper notices and notify additional entities at their discretion and in accordance with their bylaws. Subsection §357.21(g)(3) is revised to clarify that materials must be posted on the RWPG's website.

New subsection §357.21(h) specifies public meeting and hearing requirements for pre-planning public meetings to obtain input on development of the next RWP and holding hearings on the Initially Prepared Plan (IPP) or making revisions to RWPs based on interregional conflict resolutions. These hearings are subject to public notice provision in TWC 16.053(h), including posting notice in a newspaper and providing a mailed notice to certain entities as specified in the rule. This subsection also requires notification of all adjacent RWPGs, which is an additional requirement not included in TWC 16.053(h). This subsection changes the 60 day "public comment" period on the IPP to a 60 day "written comment" period on the IPP. This will change the comment period of state and public agencies from 90 to 60 days in order to simplify the deadlines to submit written comment to the RWPGs. TWDB's 120-day comment period is not altered by this rule revision. The subsection also clarifies that if more than one hearing is held by a RWPG on the IPP, the notice and public comment periods apply to the date of the first hearing. The subsection adds in the requirements for RWPG hearings on making revisions to their RWPs based on interregional conflict resolutions. The requirements for this type of hearing are specified in TWC 16.053(h) but were not previously addressed in rule. The requirement to post notice for these meetings in the Texas Register is also removed. Subsection §357.21(h)(8) is added to clarify the minimum posting requirements for materials other than IPPs.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board 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

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 rulemaking is to simplify regional water planning public notice requirements and remove redundant references in the rule related to notice requirements.

Even if the proposed 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 the a standard set by federal law or any other 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 proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code § 16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board 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 simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements.

The board'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 board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board 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 proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor 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 rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the rule would be in effect, the rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

PUBLIC COMMENTS

The following written comment was received from the Texas Press Association.

Comment

The Texas Press Association asserted that the requirement to post notice in a newspaper for declarations of intent to pursue simplified planning and major amendments are set forth in statute and citizens would no longer be informed of these meetings if the requirement to post notice in newspapers are removed.

Response

The requirement to post notice in a newspaper set forth in statute (TWC §16.053(h)(8)) is not applicable for hearings regarding declarations of intent to pursue simplified planning and major amendments. At a minimum, notices for these types of hearings are still required to be posted on the website for the RWPG and the Secretary of State website. The proposed rules continue to require newspaper notices for such meetings specified in statute as requiring newspaper notices. No change has been made in response to this comment.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the 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. The rulemaking is adopted under the additional authority of Texas Water Code § 16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute.

Texas Water Code § 16.053 is affected by this rulemaking.

<rule>

CHAPTER 357 REGIONAL WATER PLANNING

SUBCHAPTER B GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

§357.21 Notice and Public Participation

(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

(b) Each RWPG shall create and maintain a website that they will use to post public notices of all its full RWPG, committee, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with this section.

(c) Each RWPG shall provide a means by which it will accept written public comment prior to and after meetings. The RWPGs must also allow oral public comment during RWPG meetings and hearings.

(d) Each RWPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RWPG activities.

(e) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines and any additional notice requirements provided in subsection (g)(1) - (3) and (h) of this section or any additional notice requirements in the RWPG by-laws, to all voting and non-voting RWPG members and any person or entity who has requested notice of RWPG activities. Notice must also be provided to the following:

(1) if a recommended or Alternative WMS that is located outside of the RWPG is being considered, the RWPG where the recommended or Alternative WMS is located must also receive notice of any meeting or hearing where action or public input may be taken on the recommended or Alternative WMS.

(2) for hearings on declarations of intent to pursue simplified planning, if a RWPG shares a water supply source, WMS, or WMSP with another RWPG, the RWPG declaring intent to pursue simplified planning must notify the RWPG with shared source, WMS, or WMSP.

(3) each project sponsor of an infeasible WMS or WMSP must be provided notice of any meeting or hearing where action may be taken on the infeasible WMS or WMSP.

(f) At a minimum, all meeting and hearing notices must be posted to the RWPG website and on the secretary of state website and must include:

(1) the date, time, and location of the meeting;

(2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments will be received from the members and public.

(g) In addition to subsections (a) - (f) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available on the RWPG website at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RWPG meetings and any RWPG committee or subcommittee meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the scope of work or budget included in the regional water planning grant contract between the political subdivision and TWDB;

(D) approval of revision requests for draft population projections and Water Demand projections;

(E) adoption of the IPP;

(F) approval to submit a request to EA for approval of an Alternative WMS substitution or to request an EA determination of a minor amendment;

(G) declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning;

(H) initiation of major amendments to RWPs and adoption of major amendments following a public hearing on the amendment;

(I) approval of replacement RWPG members to fill voting and non-voting position vacancies; and

(J) any other RWPG approvals required by the regional water planning grant contract between TWDB and the political subdivision.

(2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comment must be accepted for 14 days prior to the meeting and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) approval to submit revision requests to officially adopted Board population and Water Demand projections;

(B) approval of process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs;

(C) approval to submit the Technical Memorandum;

(D) adoption of the final RWP;

(E) approval to substitute an Alternative WMSs; and

(F) adoption of minor amendments to RWPs.

(3) at a minimum, notice must be provided at least 30 days prior to the hearing, written comment must be accepted for 30 days prior to and following the date of the hearing and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the hearing, when the planning group will receive input from the public on the following items:

(A) declarations to pursue simplified planning; and

(B) major amendments to RWPs.

(h) when holding pre-planning public meetings to obtain public input on development of the next RWP, holding hearings on the IPP, or making revisions to RWPs based on interregional conflict resolutions, in addition to the requirements of subsection (e), the following additional public notice and document provisions must be met per TWC 16.053(h):

(1) notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

(2) at a minimum, notice must be provided at least 30 days prior to the meeting or hearing.

(3) written comments to be accepted as follows:

(A) written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(B) at least 60 days following the date of the public hearing on an IPP.

(4) if more than one hearing on the IPP is held, the notice and comment periods applies to the date of the first hearing.

(5) additional entities to be notified by mail under this subsection include:

(A) each adjacent RWPG;

(B) each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(C) each county judge of a county located in whole or in part in the RWPA;

(D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(E) each Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(F) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission.

(6) the public hearings shall be conducted at a central location readily accessible to the public within the regional water planning area.

(7) RWPGs shall make copies of the IPP available for public inspection at least 30 days before the required public hearing by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA. The locations of such copies shall be included in the public hearing notice. For distribution of the IPP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate public library and location in the county courthouse to ensure maximum accessibility to the public during business hours. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(8) Any additional meeting materials associated with meetings in this subsection must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the meeting or hearing.

(i) All notice periods given are based on calendar days.

(j) Each RWPG shall include a statement in their draft and final adopted RWPs regarding the RWPG's conformance with this section.