

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** January 19, 2023

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel  
As to certain fiscal elements: Rebecca Trevino, Chief Financial Officer

**FROM:** Kendal Kowal, Assistant General Counsel

**SUBJECT:** Consider authorizing publication of notice of intent to review rules in 31 Texas Administrative Code Chapter 353, Subchapters B, D, E, F, and I and notice of intent to review rules in 31 Texas Administrative Code Chapter 353, Subchapters A, C, G, H, and J, including proposed amendments.

### ACTION REQUESTED

Consider authorizing the publication of a (1) notice of intent to review rules in 31 Texas Administrative Code (TAC) Chapter 353, Subchapters B, D, E, F, and I and (2) notice of intent to review rules in 31 TAC Chapter 353, Subchapters A, C, G, H, and J, including proposed amendments to 31 TAC §§ 353.4, 353.12, 353.41, 353.103, 353.122, and 353.140.

### BACKGROUND

On December 15, 2022, the TWDB adopted a schedule of review related to the Agency's rules in 31 TAC Part 10. This action proposes to publish notice of the Agency's review of certain rules in 31 TAC Chapter 353 and amendments to others within the same chapter of the TWDB rules. Chapter 353 ("Introductory Provisions") contains TWDB rules related to general agency procedures and practices, including Board Meetings, employee leave pools, Historically Underutilized Businesses Program, rulemaking hearings, the agency's vehicle fleet, ethics issues related to donors and conflicts of interest, TNRIS programs, collecting delinquent obligations, and enhanced contract monitoring. Many of these rules are required by general statutes applicable to all state agencies.

### KEY ISSUES

The TWDB is required pursuant to Texas Government Code (Tex. Gov't Code) § 2001.039 to review all existing rules every four years. Pursuant to that review, it must either re-adopt, re-adopt with amendments, or repeal existing rules.

#### Our Mission

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

#### Board Members

Brooke T. Paup, Chairwoman | George B. Peyton V, Board Member | L'Oreal Stepney, P.E., Board Member  
Jeff Walker, Executive Administrator

The Office of General Counsel proposes the following actions to 31 TAC Chapter 353:

- Publication of notice of the TWDB's intent to review rules in 31 TAC Chapter 353, Subchapters B, D, E, F, and I. This notice and the TWDB's subsequent review will be conducted in accordance with Tex. Gov't Code § 2001.039; and
- Publication of proposed amendments to 31 TAC §§ 353.4, 353.12, 353.41, 353.103, 353.122, and 353.140 in order to make necessary updates due to updated statutory language or agency practice. This proposed rulemaking document will also include the notice of intent to review the remaining rules in the applicable subchapters.

The proposed amendments include the following key changes:

- § 353.4 (Public Participation) – Update references to visitor registration for Board Meetings to align with current agency practice, especially due to updated technologies
- § 353.12 (Applications Filing and Notice) – Move posting of all administratively complete applications from the *Texas Register* to the agency website to increase transparency
- §§ 353.41 (Adoption of Comptroller Rules), 353.103 (State Agency Geographic Information Standards), and 353.122 (Procedures for Collecting A Delinquent Obligation) – Update outdated citations, cross references, and terminology
- § 353.140 (Enhanced Contract Monitoring Procedure) – Simplify factors and procedure for reviewing risk factors of agency contracts.

### **RECOMMENDATION**

The Executive Administrator recommends the publication of a (1) notice to review certain rules in 31 TAC Chapter 353 and (2) notice to review certain rules in 31 TAC Chapter 353, including proposed amendments to 31 TAC §§ 353.4, 353.12, 353.41, 353.103, 353.122, and 353.140 in order to comply with Tex. Gov't Code § 2001.039 and to conform TWDB rules with current statutory language and agency practice.

Attachments:

- (1) Proposed notice of review of rules to be filed with *Texas Register*.
- (2) Proposed rulemaking to be filed with the *Texas Register*.

Texas Water Development Board

Title 31, Part 10, Chapter 353

The Texas Water Development Board (TWDB) files this notice of intent to review the rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 353, Subchapters B, D, E, F, and I.

This review is being conducted in accordance with the requirements of the Texas Government Code, §2001.039, which requires state agencies to review and consider for re adoption each of their rules every four years.

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments on this notice may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the Texas Register. Include “Chapter 533, Subchapters B, D, E, F, and I” in the subject line of any comments submitted.

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §§353.4, 353.12, 353.41, 353.103, 353.122, and 353.140.

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

These amendments are being made pursuant to the TWDB's periodic rule review of Chapter 353. In assessing the reasons for initially adopting the rules and assessing any necessary updates, the TWDB identified some necessary changes.

## SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

### SUBCHAPTER A. GENERAL PROVISIONS.

#### *§353.4. Public Participation.*

Section 353.4 is proposed to be amended in order to conform with current agency practice. While the rule states that members of the public must sign a registration form at the Board Meeting, the agency currently allows members of the public to submit a form via email in anticipation of Board Meetings.

#### *§353.12. Applications Filing and Notice.*

Section 353.12 is proposed to be amended to provide transparency to the public on applications received by the TWDB. While current rule requires publishing a list of certain applications received in the *Texas Register* each month, the TWDB proposes to post the list on the agency's website instead. The statute requiring reporting of certain applications received does not require publication in the *Texas Register* and those individuals interested in TWDB applications are more likely to check the agency website than the *Texas Register*.

### SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM.

#### *§353.41. Adoption of Comptroller Rules.*

Section 353.41 is proposed to be amended to update citations and cross references. The former General Services Commission duties and rules were transferred to the Comptroller of Public Accounts.

### SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS).

#### *§353.103. State Agency Geographic Information Standards.*

Section 353.103 is proposed to be amended to update an outdated statutory reference and correct grammar.

### SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS.

#### *§353.122. Procedures For Collecting A Delinquent Obligation.*

Section 353.122 is proposed to be amended to change an updated United States Postal Service term from “address service requested” to “address correction requested.”

#### SUBCHAPTER J. ENHANCED CONTRACT MONITORING.

##### *§353.140. Enhanced Contract Monitoring Procedure.*

Section 353.140 is proposed to be amended in order to simplify the enhanced contract monitoring procedures that the TWDB uses for analyzing contracts. The simplified language will align more closely with statutory requirements for applicable types of contracts. The simplified list of attributes and risk factors to be considered by staff will aid staff in tailoring risk reviews to specific types of contracts. The key risk factors that apply to typical TWDB contracts will remain in the procedures.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because the rules update non-substantive references and terminology or only impact internal agency procedures. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments’ costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it simplifies and clarifies TWDB processes and updates outdated terminology and references. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as it generally only impacts internal TWDB procedures.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

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

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, 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 clarify and simplify internal TWDB procedures.

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 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 proposed solely under the general powers of the agency, but rather Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this 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 Submission of Comments section of this preamble.

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

The TWDB evaluated this proposed 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 and simplify TWDB procedures. The proposed rule would substantially advance this stated purpose by updating outdated terminology and references and by clarifying agency practice and procedure related to general administrative functions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill obligations mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is a state agency in the executive branch that is required to adopt certain general state agency requirements in rule.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed 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, 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. In other words, this rule establishes internal agency practices without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

## GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed 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 proposed rule would be in effect, the proposed 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.

## AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

The TWDB reviewed Chapter 353 and the proposed rulemaking in light of the statutory requirement for the TWDB to review existing rules in Texas Government Code §2001.039. It has determined that the proposed rulemaking to Chapter 353 (specifically §§353.4, 353.12, 353.41, 353.103, 353.122, and 353.140) is necessary to comply with §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002,

2161.003, and 2261.253, which establish either general state agency requirements or specific TWDB requirements for rules.

The TWDB concurrently intends to review the rules in 31 TAC Chapter 353 in accordance with Texas Government Code §2001.039. The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include “Chapter 353” in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed 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 Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

<rule>

### TITLE 31. NATURAL RESOURCES AND CONSERVATION.

#### PART 10. TEXAS WATER DEVELOPMENT BOARD.

#### CHAPTER 353. INTRODUCTORY PROVISIONS.

##### SUBCHAPTER A. GENERAL PROVISIONS.

##### §353.4. Public Participation.

(a) Board meetings, unless recessed into executive session pursuant to the Texas Open Meetings Act, shall be open to the public.

(b) Any person seeking to address the board concerning an item on the board's agenda posted with the secretary of state shall complete [~~sign~~] a registration form at or before the meeting. The board may administer oaths to those persons testifying before the board. When the board is required to accept or invites public comments at its meetings, the board will establish the order for presentation of argument or comments concerning items about which the public seeks to



address the board. When necessary in order to prevent undue meeting length, the board may limit the number of times a person may testify, the time period for oral presentations, and the time period for raising questions. The board may limit or exclude cumulative or unduly repetitious presentations, and may require that one representative present the information and position of an entity or persons and entities that are closely aligned.

(c) A person desiring to file briefs, affidavits, information, or any written statements or documents relating to an agenda item shall submit the document no later than the date of the meeting, provided the board may grant additional time for submission. Since the board will take action on most agenda items at the scheduled meeting, persons seeking to file written information with the board should attempt to provide the information to the executive administrator as early as possible before the board meeting.

#### §353.12. Applications Filing and Notice.

At the time an application requiring action of the board is filed with the board and is administratively complete, the board shall give notice as follows.

(1) The executive administrator shall mail notice confirming the information in paragraph (3) of this section to any person who shall have previously informed the executive administrator in writing of an interest in said application.

(2) The executive administrator shall post the ~~[submit to the secretary of state]~~ information contained in paragraph (3) of this section on the agency website ~~[for publication in the Texas Register].~~

(3) Notices under this section shall state:

(A) the identifying number given the application by the board;

(B) the name and address of the applicant;

(C) the date on which the application was submitted; and

(D) a brief summary of the information included in the application.

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The amendment is proposed 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 Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

## SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES PROGRAM.

### §353.41. Adoption of Comptroller [~~General Services Commission's~~] Rules.

The board adopts the current administrative rules adopted by the Texas Comptroller of Public Accounts [~~General Services Commission~~] regarding the Historically Underutilized Business Program. The Comptroller's [~~General Service Commission's~~] rules can be found at Title 34 [~~4~~], Part 1 [~~5~~], Chapter 20 [~~444~~], Subchapter D [~~B~~], Division 1.

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The amendment is proposed 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 Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

## SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS).

### §353.103. State Agency Geographic Information Standards.

(a) **Applicability.** All users and developers of geographic datasets and geographic information systems in state agencies must comply with the technical standards specified in this section. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Texas Occupations Code, Chapter 1071[~~Art. 5282e, VTCS~~]) are exempt from these standards.

(b) **Implementation guidance.** Pursuant to Water Code §16.021(c), the GIO provides guidance to the Executive Administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the GIO to the department relates to technology standards developed by the department for geographic datasets pursuant to Water Code §16.021(e)(4).

(c) **Geographic Information Standards.**

(1) **Geographic dataset acquisition and development.**

(A) **Standard.** An agency planning to acquire, develop, or enhance a geographic dataset that may correspond to an HPIDS dataset shall coordinate such activity with the GIO to determine potential use of the HPIDS master contract.

(B) **Procurement of public domain geographic datasets.** An agency that procures a copy of a federal or other public domain geographic dataset shall make the dataset available to the Texas Natural Resources Information System (TNRIS). TNRIS will make these datasets available to

other agencies, institutions of higher education, and to the public.

(2) Geographic dataset exchange: Data format. An agency that originates or adds data content to a non-proprietary geographic dataset and distributes the dataset to another state agency, institution of higher education, or the public must make the dataset available in at least one digital format that is recognized by the most commonly used geographic information systems. This requirement does not preclude the agency from offering the dataset in other data formats. The GIO provides guidance on acceptable formats for data exchange.

(3) Geographic dataset documentation.

(A) Preparation. An agency shall prepare documentation for each geographic dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to another state agency, institution of higher education, or the public.

(B) Statement of Purpose. Documentation must include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset that [~~which~~] some users may be inclined to make, the dataset disclaimer must specifically warn against those uses.

(C) Format. This documentation must be in a geospatial metadata format specified by the GIO.

(D) Delivery. In responding to a request for a geographic dataset, an agency shall provide the requestor a copy of the documentation.

(4) GIS map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, must include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer must clearly state that the map is not a survey product.

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The amendment is proposed 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 Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS.

§353.122. Procedures For Collecting A Delinquent Obligation.

(a) When an obligation has been determined to be delinquent, pursuant to §353.121 of this title (relating to Procedures For Establishing A Delinquent Obligation), the board shall take the following steps.

(1) Verify the debtor's address and telephone number, to the extent possible.

(2) Use the comptroller of public account's "Warrant Hold" procedures to prevent payment to a delinquent debtor.

(3) Within 30 days of the obligation being determined to be delinquent, send the debtor a demand letter for the full amount of the obligation.

(4) If the debtor does not respond to the demand letter, send a second demand letter no sooner than 30 days but not more than 60 days after the first demand letter was mailed.

(5) Verify that the obligation is not legally uncollectible or uncollectible as a practical matter.

(A) In cases of bankruptcy, the board shall prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor. Copies of all such proofs of claims filed shall be sent to the attorney general. The board shall maintain records of notices of bankruptcy filings, dismissals, and discharge orders to enable it to ascertain whether the collection of the claim is subject to automatic stay provisions or whether the debt has been discharged.

(B) If the obligation is subject to an applicable limitation provision that would prevent suit as a matter of law, the obligation will not be referred to the attorney general unless circumstances indicate the limitations provision has been tolled or is otherwise inapplicable.

(C) If a corporation has been dissolved, has been liquidated under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked, the obligation shall be referred to the attorney general unless circumstances indicate the account is clearly uncollectible. These circumstances shall be documented in the appropriate account file.

(D) If the debtor is an individual and is located out-of-state, or outside the United States, the matter shall not be referred to the attorney general unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of board funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified. The board shall consult with the attorney general in making such determinations.

(E) If the debtor is deceased, the board shall file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation shall be classified as uncollectible and not referred to the attorney general. If probate administration is

pending or if none has been opened, any referral to the attorney general shall include an explanation of any circumstances indicating that the decedent has assets available to apply towards satisfying the obligation.

(6) If the debtor does not respond to the second demand letter within 30 days of it being mailed, and if the debt is not determined to be legally uncollectible or uncollectible as a practical matter, the board shall report the uncollected and delinquent obligation to the attorney general for further collection efforts. However, delinquent obligations upon which a bond or other security is held shall be referred to the attorney general no later than 60 days after becoming delinquent. If the principal has filed for relief under federal bankruptcy laws, the account shall be referred to the attorney general immediately upon notice or as soon as the board knows of the filing.

(b) Demand letters sent by the board shall include a statement, where practical, that the debt, if not paid, will be referred to the Texas attorney general's office. The demand letters shall be mailed in envelopes bearing the notation "address correction [~~service~~] requested" in conformity with the current regulations and policies of the United States Postal Service. If an address correction is provided by the United States Postal Service, the affected demand letter shall be resent to the address provided.

(c) Where permitted by state law, the board shall file a lien securing an obligation in the appropriate records of the county where the debtor's principal place of business or, where appropriate, the debtor's residence is located or in such county as may be required by law. The lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. If the delinquent obligation is referred to the attorney general in accordance with this section, the lien may not be released unless the board receives written approval from the attorney general or if the delinquent obligation is paid in full.

(d) Where practicable, the board shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of the communications with the debtor, efforts to locate the debtor and assets, and other information pertinent to collection of the delinquent account.

(e) The procedures of this section do not apply to:

(1) bonds or other debt obligations held by the board as evidence of debt incurred through the board's financial assistance programs for which collection remedies are provided by the debt vehicle or by law; or

(2) any debt for which a collection process is already determined by law.

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The amendment is proposed 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 Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

#### SUBCHAPTER J. ENHANCED CONTRACT MONITORING.

##### §353.140. Enhanced Contract Monitoring Procedure.

(a) In accordance with Government Code §§2261.253(c) and 2261.256, [All] contract managers~~[, with the support of contract administration,]~~ will perform [a] risk analyses for goods and services contracts~~[analysis prior to the execution of a contract]~~ to determine whether enhanced contract and ~~[or]~~ performance monitoring is necessary. The ~~[impact and probability of the]~~ following attributes will be considered, as applicable:

- (1) risk of fraud, waste, or abuse ~~[contract cost revisions];~~
- (2) cost, duration, and scope of the contract ~~[contract duration limitations];~~
- (3) responsibilities and accountability of agency and vendor staff ~~[transaction and data volume];~~
- (4) vendor experience and past performance ~~[monitoring and quality assurance];~~
- (5) data security protocols ~~[vendor control activities and data quality]; and~~
- (6) legislative or statutory requirements, potential impact on agency operations or programs, and external stakeholder impacts.~~[communication and customer service;]~~
- ~~[(7) complexity of vendor operations and processes;]~~
- ~~[(8) complexity of contract scope or deliverables;]~~
- ~~[(9) close out, including untimely delivery, outstanding invoices or unresolved matters creating delays;]~~
- ~~[(10) extent of government regulations;]~~
- ~~[(11) vendor cooperation with audits;]~~
- ~~[(12) potential for public disclosure;]~~
- ~~[(13) vendor experience and past performance;]~~
- ~~[(14) physical and system security;]~~

~~[(15) data security;]~~

~~[(16) business continuity/disaster recovery;]~~

~~[(17) training;]~~

~~[(18) financial assurance and credit worthiness;]~~

~~[(19) fraud, waste and abuse; and/or]~~

~~[(20) any other factors that may impact the contract.]~~

(b) Any contract rated high risk will receive enhanced contract monitoring to be performed by the contract manager. Enhanced contract monitoring may include the following actions, as applicable:

- (1) weekly or monthly progress reports;
- (2) documented controlled correspondence;
- (3) regular site visits;
- (4) project team meetings; and/or
- (5) documentation of corrective actions.

(c) Contract and performance monitoring activities will be documented and reported to the board on a quarterly basis. The Procurement Director, in working with the contract manager, ~~[Contract administration]~~ will ~~[immediately]~~ notify the board of any serious issue or risk ~~[that is]~~ identified with respect to a contract subject to enhanced monitoring.

(d) This process does not apply to an interagency agreement or contract, interlocal agreement, memorandum of understanding, ~~[or]~~ a contract for which there is not a cost, or agency grant programs.