

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** October 5, 2023

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel

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

**SUBJECT:** Rule Review for 31 TAC Chapters 357, 358, 359, 360, 363, 364, 367, 371, 375,  
and 377

### **ACTION REQUESTED**

Consider authorizing the publication of notices of intent to review rules in 31 Texas Administrative Code (TAC) Chapters 357, 358, 359, 360, 363, 364, 367, 371, 375, and 377.

### **BACKGROUND**

On December 15, 2022, the Texas Water Development Board (TWDB) adopted a schedule of review related to the TWDB's rules in 31 TAC Part 10. This action proposes to publish notice of the TWDB's review of rules in Chapters 357, 358, 359, 360, 363, 364, 367, 371, 375, and 377, pursuant to the rule review schedule.

#### *Chapter 357*

Chapter 357 includes the structure and requirements for the regional water planning groups (RWPGs) and regional water plans (RWPs). The composition of the RWPGs and the parameters for governance of the water planning groups are in Subchapters A and B. The technical requirements and sections of the RWPs are in Subchapters C and D. And the procedures for adopting the RWPs and submitting them to the TWDB are in Subchapter E. Subchapter F includes rules related to consistency and conflicts.

#### *Chapter 358*

Chapter 358, Subchapter A governs the TWDB's preparation, development, formulation, and adoption of the state water plan. This subchapter includes select principles that are to be used as guidance for the development of the state water plan. Subchapter B includes the

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regulations for conducting and collecting groundwater and surface water use surveys and water loss audits.

*Chapter 359 – Water Banking*

Chapter 359 contains the TWDB's rules related to the Texas Water Bank and the Texas Water Trust. The Texas Water Bank facilitates the transfer, sale, or lease of water and water rights. The Texas Water Trust is within the Water Bank to hold water rights dedicated to environmental needs, including instream flows, water quality, fish and wildlife habitat, or bay and estuary inflows. The chapter establishes procedures and requirements for depositing water rights into the Water Bank, listing water rights on the Registry of Buyers or Registry of Sellers, and depositing water rights into the Texas Water Trust.

*Chapter 360 – Designation of River and Coastal Basins*

Chapter 360 contains the TWDB's rules related to the designation of river and coastal basins in accordance with the requirement of Texas Water Code § 16.051(c), which directs the board to define and designate river basins and watersheds.

*Chapter 363 – Financial Assistance Programs*

Chapter 363 governs the TWDB's programs of financial assistance under certain programs in Texas Water Code, Chapter 15, Chapter 16, and Chapter 17. The general provisions, applicable to all state-funded programs, are in Subchapter A. Subchapter C pertains to applications for financing municipal solid waste facility projects. Subchapter D governs the TWDB's programs of flood financial assistance (Flood Infrastructure Fund). Subchapter E governs the TWDB's Economically Distressed Areas Program and colonia self-help program. Subchapter F pertains to the TWDB's Storage Acquisition Program. Subchapter G governs application for financial assistance for emergency situations to small communities under the Water Assistance Fund. Subchapter H governs applications for financial assistance to groundwater districts or authorities under the Water Assistance Fund (Groundwater District Loan Program). Subchapter I governs applications for loans of financial assistance to rural communities for the construction of water and wastewater facilities under the rural community water and wastewater loan fund. Subchapter J pertains to applications for financing State Participation projects. Subchapter K governs the use of funds deposited in the Water Loan Assistance Fund for certain programs. Subchapter L governs applications for financial assistance from the Water Infrastructure Fund. Subchapter M governs the TWDB's programs of financial assistance under the State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas.

*Chapter 364 – Model Subdivision Rules*

Chapter 364 contains the model rules that the TWDB was required to adopt in accordance with Texas Water Code § 16.343. The Model Subdivision Rules were initially adopted in early 2000, with specific sections amended once in 2004. An applicant for financial assistance from the Economically Distressed Areas Program must provide satisfactory documentation that the municipality, if applicable, and county in which the applicant is located has adopted the necessary orders, ordinances, or other rules that meet the requirements of the Model Subdivision Rules.

*Chapter 367 – Agricultural Water Conservation Program*

Chapter 367 describes TWDB's Agricultural Water Conservation Programs that offer grants and loans for eligible projects. Chapter 367 includes guidance on eligible projects, application requirements, grants for political subdivisions and state agencies, loans to political subdivisions and state agencies, reporting and auditing requirements, agreement requirements, and record requirements.

*Chapter 371 – Drinking Water State Revolving Fund*

Chapter 371 governs the TWDB's programs of financial assistance under the Drinking Water State Revolving Fund (DWSRF). Subchapter A provides the chapter's general program requirements. Subchapter B governs the financial assistance available under the chapter. Subchapter C governs the Intended Use Plan. Subchapter D governs the applications for assistance. Subchapter E governs the environmental reviews and determinations required. Subchapter F governs the engineering review and approval process. Subchapter G governs loan closings and availability of funds. Subchapter H governs construction and post-construction requirements.

*Chapter 375 – Clean Water State Revolving Fund*

Chapter 375 governs the TWDB's programs of financial assistance under the Clean Water State Revolving Fund (CWSRF). Subchapter A provides the chapter's general program requirements. Subchapter B governs the financial assistance available under the chapter. Subchapter C governs the Intended Use Plan. Subchapter D governs the applications for assistance. Subchapter E governs the environmental reviews and determinations required. Subchapter F governs the engineering review and approval process. Subchapter G governs loan closings and availability of funds. Subchapter H governs construction and post-construction requirements.

*Chapter 377 – Hydrographic Survey Program*

Chapter 377 contains the TWDB's rules related to the TWDB's Hydrographic Survey Program. Established by rule in 1992, the Hydrographic Survey Program allows eligible political subdivisions, state, and federal agencies to request a hydrographic survey of the state's water supply reservoirs. The TWDB may also survey the lakes of a neighboring state, upon request, if such request would benefit the state of Texas. Rules establishing the program have been amended at various times since promulgation with few statutory changes since enabling legislation was enacted in 1991.

**KEY ISSUES**

The TWDB is required, pursuant to Texas Government Code § 2001.039, to review existing rules every four years. As part of its review, the TWDB must determine whether the factual, legal, and policy reasons for adopting the rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments. Any suggested rule changes identified pursuant to this review will be brought to the Board in a separate Board Item for a formal rulemaking process.

The regional water planning cycle is a five-year cycle with new plans required every fifth year. As such, Chapter 357 and Chapter 358, Subchapter A are heavily reviewed and updated regularly to keep pace with the best available data. Chapter 357 was last updated through a rulemaking process in April 2022. Similarly, the data collection requirements related to water loss audits in 31 TAC § 358.6 were reviewed and updated through a rulemaking process in February 2023.

The other chapters subject to this review have not undergone recent updates as Chapters 357 and 358 have.

The reviews for Chapters 371 and 375 are being conducted earlier than originally scheduled on the rule review schedule adopted by the TWDB on December 15, 2022.

### **RECOMMENDATION**

The Executive Administrator recommends the publication of notice to review rules in Chapters 357, 358, 359, 360, 363, 364, 367, 371, 375, and 377 to comply with Texas Government Code § 2001.039 and the TWDB's rule review schedule.

#### Attachment(s):

1. Chapter 357 proposed notice of intent to review rules to be filed with the *Texas Register*.
2. Chapter 358 proposed notice of intent to review rules to be filed with the *Texas Register*.
3. Chapter 359 proposed notice of intent to review rules to be filed with the *Texas Register*.
4. Chapter 360 proposed notice of intent to review rules to be filed with the *Texas Register*.
5. Chapter 363 proposed notice of intent to review rules to be filed with the *Texas Register*.
6. Chapter 364 proposed notice of intent to review rules to be filed with the *Texas Register*.
7. Chapter 367 proposed notice of intent to review rules to be filed with the *Texas Register*.
8. Chapter 371 proposed notice of intent to review rules to be filed with the *Texas Register*.
9. Chapter 375 proposed notice of intent to review rules to be filed with the *Texas Register*.
10. Chapter 377 proposed notice of intent to review rules to be filed with the *Texas Register*.

Texas Water Development Board

Title 31, Part 10, Chapter 357

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 357.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in this chapter continues 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 357" in the subject line of any comments submitted.

Texas Water Development Board

Title 31, Part 10, Chapter 358

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 358.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in this chapter continues 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 358" in the subject line of any comments submitted.

Texas Water Development Board

Title 31, Part 10, Chapter 359.

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 359.

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

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

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Texas Water Development Board

Title 31, Part 10, Chapter 360

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 360.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting rules in this chapter 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 360" in the subject line of any comments submitted.



Texas Water Development Board

Title 31, Part 10, Chapter 363

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 363.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in this chapter continues 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 363" in the subject line of any comments submitted.

Texas Water Development Board

Title 31, Part 10, Chapter 364

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 364.

This review is being conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies to review and consider for readoption 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 chapter 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 364" in the subject line of any comments submitted.

Texas Water Development Board

Title 31, Part 10, Chapter 367

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 367.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting rules in this chapter 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 367" in the subject line of any comments submitted.

Texas Water Development Board

Title 31, Part 10, Chapter 371

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 371.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in this chapters 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 371” in the subject line of any comments submitted.

Texas Water Development Board

Title 31, Part 10, Chapter 375

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 375.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in this chapters 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 375” in the subject line of any comments submitted.

Texas Water Development Board

Title 31, Part 10, Chapter 377

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 377.

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

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting rules in this chapter 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 377" in the subject line of any comments submitted.