

US EPA ARCHIVE DOCUMENT

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§ 5.103

Statutes

WATER COMMISSION
Ch. 5

§ 5.102. General Powers

(a) The commission has the powers to perform any acts whether specifically authorized by this code or other law or implied by this code or other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws.

(b) The commission may call and hold hearings, receive evidence at hearings, administer oaths, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to its jurisdiction under this code and other laws and rules, orders, permits, licenses, certificates, and other actions adopted, issued, or taken by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985.

Historical Note

Section 10.004(d) to (f) of the 1985 Act provides:

"(d) The Texas Water Development Board and the Texas Water Commission shall enter into any contracts or other agreements that are necessary to make transfers between the Texas Water Development Board and the Texas Water Commission and to carry out an orderly transition. This section is subject to the limitations established in the General Appropriations Act.

"(e) The Texas Water Commission, the Texas Water Development Board, the executive director, and the executive administrator shall cooperate in an orderly transition to the new agency organization provided by this Act. The Texas Water Commission shall continue to process, analyze, investigate, provide evidence and information, and carry out other duties for the

Texas Water Development Board until this transition is completed.

"(f) The reorganization of the Texas Department of Water Resources into the Texas Water Commission and Texas Water Development Board does not affect or impair any act done, bonds authorized or issued, or obligation, right, permit, license, standard, rule, criterion, order, resolution, or penalty that has accrued or that exists under the authority of the Texas Department of Water Resources, Texas Water Commission, or Texas Water Development Board as they existed before the effective date of this Act, and those bonds, obligations, rights, permits, licenses, standards, rules, and criteria remain in effect until such time as they are paid, recalled, changed, altered, renewed, amended, canceled, revoked, repealed, or abolished under the Water Code, other laws of this state, and outstanding contracts, agreements, and resolutions."

Library References

States $\S$ 66.
C.J.S. States $\S$ 120 et seq.

§ 5.103. Rules

(a) The commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state.

(b) The commission shall adopt reasonable procedural rules to be followed in a commission hearing. The executive director may recommend to the commission for its consideration any rules that he considers necessary.

(c) Rules shall be adopted in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985.

Historical Note

The 1985 amendment renumbered and in subsec. (a) substituted "commission" for "board", "adopt" for "make", "its" for "the" and deleted "the provisions of" after "and duties under"; in subsec. (b) inserted the first sentence, in the resulting second sentence deleted "and the commission" after "The executive director", and substituted "commission" for "board" and "he considers" for "they consider"; and in subsec. (c) substituted "by" for "in".

Section 10.002 of the 1985 Act provides:

"The rules required to be adopted by Sections 5.103 and 6.101, Water Code, must be adopted and in force not later than January 1, 1986. All rules of the Texas Department of Water Resources that are in effect on September 1, 1985 shall remain in effect until the Texas Water Commission and the Texas Water

Development Board adopt new rules for their areas of responsibility."

Derivation:

Acts 1957, 55th Leg., p. 1268, ch. 425, §§ 19, 21-a(13), added by Acts 1963, 58th Leg., p. 73, ch. 49, § 2.
Acts 1965, 59th Leg., p. 587, ch. 297, § 9.
Acts 1967, 60th Leg., p. 745, ch. 313.
Acts 1969, 61st Leg., p. 2229, ch. 760, § 1.
Acts 1969, 61st Leg., p. 2267, ch. 764, §§ 1, 2.
Vernon's Ann.Civ.St. art. 7621d-1, § 3.09; art. 8280-9, §§ 12(q), 19.
Acts 1971, 62nd Leg., ch. 58, § 1, enacted as V.T.C.A. Water Code, §§ 11.025 and 21.069.
Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.
V.T.C.A. Water Code, former § 5.131.

Administrative Code References

Water Commission, see 31 TAC § 261.1 et seq.

Law Review Commentaries

Effective participation in adjudicatory and legislative functions of Texas environmental agencies. W. Thomas Buckle, 9 St. Mary's L.J. 789 (1978).

Library References

States ⇐66.
C.J.S. States § 120 et seq.

Notes of Decisions

Certificates of obligation 2
Discretion 1

1. Discretion

The Texas Water Quality Board is given broad discretion to issue rules and regulations governing proceedings before it for permits and orders and may require, as a condition to the issuance of a permit, that a feedlot owner submit evidence to establish that his operation will not cause wastes to pollute ground or surface waters. Op.Atty.Gen.1973, No. H-64.

2. Certificates of obligation

The Texas Water Development Board and the Texas Water Quality Board could not amend their joint rules and regulations to authorize the purchase of certificates of obligation except in those instances where the proceeds were to be used for the purpose enumerated in Vernon's Ann.Civ.St. art. 2368a.1, § 7 (repealed; see, now, V.T.C.A. Local Government Code, §§ 271.051, 271.056). Op.Atty.Gen. 1972, No. M-1157.

§ 5.104. Memoranda of Understanding

(a) The commission and board by rule shall develop memoranda of understanding as necessary to clarify and provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission or board that is not expressly assigned to either the commission or board.

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(b) The commission may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the commission and any other state agency.

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985.

§ 5.105. General Policy

Except as otherwise specifically provided by this code, the commission, by rule, shall establish and approve all general policy of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985.

Historical Note

The 1985 amendment renumbered and substituted "Except as otherwise specifically provided by this code, the " for "The", "commission" for "board" first time it appears and substituted "commission" for "department" second time it appears, and substituted "by rule" for "in the rules".

Derivation:

Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.
V.T.C.A. Water Code, former § 5.132.

Administrative Code References

Water Commission, see 31 TAC § 261.1 et seq.

§ 5.106. Budget Approval

The commission shall examine and approve all budget recommendations for the commission that are to be transmitted to the legislature.

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985.

Historical Note

The 1985 amendment renumbered and substituted "commission" for "board" first time it appears and "commission" for "department" second time it appears and deleted the last sentence which read "The commission may provide as a supplement to those recommenda-

tions statements of particular concern to the commission".

Derivation:

Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.
V.T.C.A. Water Code, former § 5.133.

§ 5.107. Advisory Councils

The commission may create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that the commission may consider appropriate.

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985.

Historical Note

The 1985 amendment renumbered and substituted "commission" for "board" twice and "that" for "which".

Derivation:

Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.
V.T.C.A. Water Code, former § 5.134.

§ 5.014

§ 5.014. Sunset Provision

The Texas Natural Resource Conservation Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2001.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.006, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 17, § 5.19(a), eff. Nov. 12, 1991.

Historical and Statutory Notes

1991 Legislation

Section 2.18 of Acts 1991, 72nd Leg., 1st C.S., ch. 17, amending this section, failed to take effect by its own provisions.

Section 8.03 of Acts 1991, 72nd Leg., 1st C.S., ch. 17 provides:

"(a) Except as provided by Subsection (b) of this section, if another law enacted by the 72nd Legislature, 1st Called Session, 1991, prescribes a sunset provision for a state agency, another governmental entity, or a statute that conflicts with this Act, this Act controls regardless of the

relative dates of legislative action on this Act and the other law.

"(b) A sunset provision prescribed by this Act for a state agency or another governmental entity has no effect if another law enacted by the 72nd Legislature, 1st Called Session, 1991:

"(1) abolishes the agency or entity;

"(2) repeals the sunset provision for the agency or entity; or

"(3) changes the agency or entity from an entity primarily responsible for administering a statute to an entity primarily advisory in nature."

SUBCHAPTER C. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Historical and Statutory Notes

1991 Legislation

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.007 amended the subchapter heading.

§ 5.051. Commission

The Texas Natural Resource Conservation Commission is created as an agency of the state.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.008, eff. Aug. 12, 1991.

§ 5.052. Members of the Commission; Appointment

Notes of Decisions

Residence 1

1. Residence

Subsection (b) of this section, which provides that the Governor shall appoint members of the

Water Commission so that "each member is from a different section of the state" does not establish an enforceable requirement and need not be followed. Op.Atty.Gen.1988, No. JM-877.

§ 5.058. Officers; Meetings

Administrative Code References

Texas Water Commission, introductory provisions, meetings, see 31 TAC § 261.4.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF THE COMMISSION

§ 5.104. Memoranda of Understanding

Administrative Code References

Texas Water Commission, industrial solid waste and municipal hazardous waste, adoption

of memoranda of understanding by reference, see 31 TAC § 335.28.

§ 5.109. Chief Clerk

[See main volume for text of (a)]

from 1991-1992 Pocket Part

STATE WATER ADMINISTRATION
Title 2

STATE WATER ADMINISTRATION
Title 2

(b) The chief clerk shall and other law.

Amended by Acts 1991, 72

§ 5.115. Notice of Appointment

(a) At the time an applicant for executive director and the application to any license.

Amended by Acts 1991, 72

§ 5.117. Mandatory Reporting

(a) The executive director by the commission and through this monitoring noncompliance with his period of time if the executive director shall report the noncompliance.

Amended by Acts 1991, 72

§ 5.119. Commission

The commission shall the state and of the water and the use and the quality of the environment.

Amended by Acts 1991, 72

§ 5.120. Conservation

The commission shall maximum conservation resources of the state.

Amended by Acts 1991, 72

Administrative Code References

Texas Water Commission activities by rule, commission operations, see 31 TAC

SUBCHAPTER E

§ 5.171. Audit

The financial transactions in accordance with Chapter 31, Government Code. Amended by Acts 1989

Historical and

1989 Legislation

The 1989 amendments conducted in accordance with Government Code.