

AGENDA ITEM MEMO

BOARD MEETING DATE: July 22, 2021

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Rebecca Trevino, Chief Financial Officer

FROM: Glenna Bowman, Deputy Chief Financial Officer

SUBJECT: Repeal of Rules for Colonia Plumbing Loan Program, 31 TAC Chapter 370

ACTION REQUESTED

Consider authorizing the publication of the proposed repeal of current 31 Texas Administrative Code (TAC) Chapter 370, relating to the Colonia Plumbing Loan Program (CPLP).

BACKGROUND

The CPLP was a low-interest loan program created by the Legislature in 1991 to administer a federal appropriation for border counties. The program was designed to assist low-to-moderate income colonia residents by providing the financing needed to install plumbing improvements or connections to water and wastewater collection systems. Funding for the CPLP was appropriated by Congress to the U.S. Environmental Protection Agency (EPA) through the former Construction Grants program to establish a special revolving fund to provide loans to residents in Cameron, Hidalgo, Zapata, Starr, Webb, Maverick, Val Verde, Terrell, Brewster, Presidio, Hudspeth and El Paso Counties. The CPLP was to be administered by the State. The Texas Legislature amended Texas Water Code Chapter 15 to add a new Subchapter L that provided for the Texas Water Development Board (TWDB) to administer the federal program.

Funds were held separately from other funds outside the state treasury to be loaned to eligible political subdivisions that in turn lent the money to residents in need of plumbing improvements or connections. The political subdivision was required to repay the TWDB loan with money received as repayments from the colonia residents.

The TWDB published proposed rules in the *Texas Register* on July 12, 1991. These rules were adopted and became effective on October 11, 1991. The EPA notified the TWDB on October 4, 1991 that its application for the federal grant in an amount of \$15,000,000 had been approved, subject to specified terms and conditions.

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Board Members

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

Jeff Walker, Executive Administrator

Political subdivisions demonstrated little, if any, demand for the CPLP. From its inception, the TWDB approved CPLP commitments of \$6,114,372; however, due to the availability of grant funding through other programs, only \$2,354,171 was actually disbursed. The TWDB therefore requested, and the EPA approved, the transfer of \$12,645,829 in CPLP funds into the Clean Water State Revolving Fund. The TWDB executed Grant Agreement CS-48000208-3 with the EPA to effect this transfer of funds on or around September 29, 2008. On November 10, 2009, the Office of the Governor granted permission for the transfer of CPLP funds into the Clean Water State Revolving Fund in accordance with Tex. Water Code § 15.733(e) and the EPA transferred the funds. The CPLP was closed in November 2009. The program is still in the statutes but there are no funds and no intent to revive the program. Therefore, the rules are not needed.

KEY ISSUES

The Chapter 370 rules relating to the CPLP are no longer needed because the EPA Grant expired in 2005 and all remaining funds were transferred to the Clean Water State Revolving Fund in 2009 with explicit approval from the EPA and Governor's Office. Chapter 370 should be repealed.

RECOMMENDATION

Staff recommends authorizing the publication of the proposed repeal of 31 TAC Chapter 370 (concerning the Colonia Plumbing Loan Program) and the publication of a notice of adoption of the repeal if the Executive Administrator receives no substantive public comments or changes from the proposed repeal that would warrant Board consideration.

Attachment(s): Preamble for Repeal, 31 TAC Chapter 370

TEXAS ADMINISTRATIVE CODE
TITLE 31. NATURAL RESOURCES
PART 10. TEXAS WATER DEVELOPMENT BOARD
Chapter 370. Colonia Plumbing Loan Program

The Texas Water Development Board (TWDB) proposes to repeal Chapter 370, Subchapter A, §370.1 and §370.2, Subchapter B, §§370.21 - 370.35, Subchapter C, §370.41 - §370.42, and Subchapter D, §§370.51 - 370.53, relating to the Colonia Plumbing Loan Program (CPLP).

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

This chapter is proposed for repeal because the agreement between the TWDB and the U.S. Environmental Protection Agency (EPA) expired and the funds in the CPLP account were formally transferred to the Clean Water State Revolving Fund program with the permission of the EPA and the Office of the Governor. The TWDB has determined that, while the CPLP is still in the statutes (Tex. Water Code §§ 15.731-.737), with no federal funding for the CPLP, there is no need for rules.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal impact to state or local governments as a result of this proposed repeal because other programs are available that provide similar funding.

This repeal is not expected to result in reductions in costs to either state or local governments, nor is this repeal expected to have any impact on state or local revenues. Repealing the rules will not cause any increase in expenditures for state or local governments as those entities are not required to provide the funding referenced under the rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the repeal.

PUBLIC BENEFITS AND COSTS

Ms. Trevino has determined that the public will benefit from the repeal as it will eliminate the costs of maintaining unnecessary rules, and other funding sources are available to meet the public need for such funds.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Board has determined that a local employment impact statement is not required because the proposed rule repeal does not adversely affect a local economy in a material way as it will impose no new requirements on local economies.

The Board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of repealing these rules. The Board also has

determined that there is no anticipated economic cost to persons who were required to comply with the rules. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS

The Board has determined that the proposed rule repeal is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT

The Board has determined that the promulgation and enforcement of this proposed rule repeal will constitute neither a statutory nor a constitutional taking of private real property. The proposed repeal does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule repeal does not burden or restrict or limit the owner's right to use of property. Therefore, the proposed rule repeal does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

SUBMISSION OF COMMENTS

Comments on the proposed rule repeal will be accepted for 30 days following publication in the Texas Register and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.texas.gov, or by fax at (512) 475-2053.

STATUTORY AUTHORITY

This rule repeal is proposed under the authority of Tex. Water Code§ 6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.
Cross reference to statute: Tex. Water Code Chapter 15, Subchapter L.

§370.1. Scope of Rules.

§370.2. Definition of Terms

§370.21 General Policies

§370.22 Additional Policies

§370.23 Amount of Funding

§370.24 Eligible Plumbing Improvements

§370.25 On-site Waste Disposal Permit

§370.26 Eligible Political Subdivisions

§370.27 Loans

§370.28 Collection and Repayment

§370.29 Eligible Households

§370.30 Water Conservation Plan

§370.31 Local Program Operating Procedures

§370.32 Accounts

§370.33 Disbursement of Program Funds

§370.34 Labor Standards

§370.35 Program Inspection and Audit

§370.41 Required Information

§370.42 Return of Insufficient Application

§370.51 Board Consideration of Application

§370.52 Action of the Board on Application

§370.53 Return of Funds to Water Pollution Control Revolving Fund