

CITY OF BOERNE

MEMORANDUM

TO: Andrea Snouffer, Utilities Administrative Supervisor

FROM: Mick McKamie, City Attorney

RE: SB 14 – Conservation and Reuse Credits Against Water and Wastewater Impact Fees

DATE: October 31, 2025

You have requested guidance regarding the new requirement under Senate Bill 14 (89th Legislature, 2nd Called Session) to implement policies and procedures for providing credits against water and wastewater impact fees for conservation and reuse. This memorandum addresses the statutory requirements, implementation timeline, and the City's approach to structuring defensible credit policies.

1. STATUTORY BACKGROUND

Senate Bill 14, passed during the 2nd Called Session of the 89th Legislature, added new Section 395.0231 to the Texas Local Government Code, effective January 1, 2026. This provision was originally introduced as SB 1253 during the regular session but was vetoed by the Governor due to unrelated groundwater conservation district provisions. The legislature addressed the Governor's concerns and passed the water conservation impact fee credit provisions separately in the second called session.

2. STATUTORY REQUIREMENTS

Section 395.0231 imposes three primary requirements on political subdivisions that assess water and wastewater impact fees:

A. Mandatory Credit Requirement

The statute uses mandatory language: a political subdivision "shall provide a credit" against water and wastewater impact fees to a builder or developer for "the construction, contribution, or dedication of an eligible facility, system, or product that results in water reuse, conservation, or savings." Tex. Loc. Gov't Code § 395.0231(a). This is not discretionary.

B. Eligible Facilities, Systems, or Products

Section 395.0231(b) defines four categories of eligible facilities, systems, or products:

1. Those that "reduce per service unit water consumption, supply requirements, or necessary treatment and distribution infrastructure per service unit";
2. Those that "decrease the need of wastewater collection and treatment facilities per service unit";
3. Those that "diminish the demand for stormwater and drainage facilities per service unit"; or

4. Those that "integrate practices or technologies that achieve water efficiency, reuse, or conservation performance that exceed standard compliance requirements."

C. Procedural Requirements

The statute requires that political subdivisions "establish procedures for: (1) calculating and applying the credits in a fair and consistent manner; and (2) reviewing and approving credits under this section." Tex. Loc. Gov't Code § 395.0231(c).

3. ABSENCE OF STATE GUIDELINES

Notably, the statute provides no specific guidance on:

- The amount of credits to be provided;
- The methodology for calculating credits;
- What specifically qualifies for credits beyond the broad categories listed;
- How to measure the degree of conservation, reuse, or savings;
- Documentation requirements; or
- Appeal procedures.

This legislative silence gives municipalities significant discretion in crafting their credit policies, subject to the overarching requirement that procedures be "fair and consistent."

4. CITY OF BOERNE'S CURRENT SITUATION

As you noted, Boerne's current water impact fee of \$2,509 includes a reclaimed water component of \$1,102. The City incurs costs for treatment, storage, and pumping of this reclaimed water and provides it to customers who have reclaimed water meters. Your concern that crediting the full \$1,102 for customers who simply connect to the City's reclaimed water system would be inappropriate is well-founded.

5. ANALYSIS AND RECOMMENDATIONS

A. Distinguishing City-Provided Reclaimed Water from Developer Conservation Systems

The key distinction to draw is between:

1. City-provided reclaimed water services: Customers with reclaimed water meters are connecting to a City-owned and operated system. The City bears the capital and operating costs for treatment, storage, and distribution. While these customers use reclaimed water instead of potable water for irrigation and other non-potable purposes, they are not reducing the overall demand on the City's infrastructure—they are simply utilizing a different City service that the City has already built capacity to provide.

2. Developer-installed conservation systems: When a developer installs private conservation systems (such as rainwater harvesting, greywater reuse systems, low-flow fixtures exceeding code requirements, or private on-site wastewater treatment and reuse), these systems genuinely reduce the development's demand on City infrastructure. These systems result in fewer gallons needing to be supplied by the

City's water system and fewer gallons requiring collection and treatment by the City's wastewater system.

B. Defensible Interpretation Under Section 395.0231

Your proposed approach (limiting credits to conservation systems that genuinely reduce demand on City infrastructure rather than systems that simply utilize existing City services) is defensible for several reasons:

1. Statutory Purpose: The legislative purpose of SB 14 is to incentivize reduced demand on municipal infrastructure, not to provide credits for connecting to services that municipalities have already built and financed.

2. Impact Fee Legal Framework: Impact fees must be based on the capital improvements "necessitated by and attributable to the new development." Tex. Loc. Gov't Code § 395.001(4). If a development reduces its actual demand on City infrastructure, it reduces the improvements necessitated by that development. But if a development simply connects to an existing City service that was already sized and financed to serve that development, no reduction in necessitated improvements occurs.

3. "Fair and Consistent" Standard: The statute requires procedures to be "fair and consistent." It would be inconsistent—and arguably unfair to existing City utility customers—to grant impact fee credits for connecting to a City service that requires ongoing City investment and operational expense.

C. Recommended Policy Framework

The City should adopt policies that provide credits for conservation and reuse measures that demonstrably reduce demands on City water and wastewater infrastructure. Specifically:

1. No Credit for Connection to City Reclaimed Water System: Developments that connect to the City's reclaimed water system should not receive impact fee credits, as they are utilizing a City service that requires City capital investment and operations, not reducing demand on the City's systems.

2. Credits for Private Conservation Systems: Developments should be eligible for credits when they install private systems that reduce potable water consumption or wastewater generation beyond what is required by code, such as:

- a. Rainwater harvesting systems that supply irrigation, toilet flushing, or other non-potable uses and reduce demand on the City's potable water system;
- b. Greywater reuse systems that capture and reuse water on-site, reducing both potable water consumption and wastewater generation;
- c. High-efficiency fixtures and appliances that exceed code requirements and demonstrably reduce per-unit consumption;
- d. Private wastewater treatment and on-site reuse systems (where legally permissible) that eliminate wastewater flows to the City's collection and treatment system;

- e. Condensate recovery systems, cooling tower water reuse, or other commercial/industrial systems that reduce water consumption and wastewater generation;
- f. Xeriscaping, soil moisture sensors, weather-based irrigation controllers, and other landscape water conservation measures that reduce irrigation demand beyond code requirements; and
- g. Other water efficiency, reuse, or conservation technologies that demonstrably reduce per-service-unit demands on City infrastructure.

3. Credit Calculation Methodology: Credits should be calculated based on the projected reduction in demand on City infrastructure attributable to the conservation system. This can be done by:

- a. Engineering Analysis:** Requiring the developer to submit engineering calculations (prepared and sealed by a licensed professional engineer) documenting the projected reduction in water consumption and/or wastewater generation attributable to the conservation system;
- b. Impact Fee Study Methodology:** Using the same methodology employed in the City's impact fee study to translate reduced consumption into reduced infrastructure demands. For example, if the impact fee study calculates that each Equivalent Residential Connection (ERC) requires X dollars of infrastructure investment based on Y gallons per day of consumption, a conservation system that reduces consumption by Z gallons per day would receive a credit of $(Z/Y) \times X$ dollars; or
- c. Percentage-Based Approach:** Establishing predetermined credit percentages for certain categories of conservation systems based on industry standards and engineering estimates of their typical water savings (e.g., a 15% credit for WaterSense-certified homes, a 25% credit for comprehensive greywater systems, etc.).

4. Documentation and Verification: Require developers seeking credits to submit:

- a. Detailed plans and specifications for the conservation system;
- b. Engineering calculations demonstrating projected water savings;
- c. Manufacturer specifications and performance data for equipment;
- d. Irrigation plans showing reduced water demands for landscape conservation measures;
- e. As-built documentation and commissioning reports verifying installation; and
- f. Long-term maintenance plans and commitments for systems requiring ongoing maintenance.

5. Review and Approval Process: Establish a clear process for:

- a. Submission of credit applications at the time of development plan review or building permit application;

- b. City staff review (potentially by the utility department, engineering department, and City Attorney's office);
- c. Timelines for review and determination;
- d. Appeal procedures for denied or reduced credits; and
- e. Conditions for credit approval (such as requiring ongoing maintenance agreements or reverting credits if conservation systems are not installed as approved).

D. Addressing Potential Challenges

1. Developer Objections: Developers may argue that using City reclaimed water should qualify for a credit because it conserves potable water resources. The City's response should emphasize that:

- a. The reclaimed water system is a City service that required City capital investment and continues to require City operations and maintenance;
- b. The water impact fee already accounts for the reclaimed water system through its inclusion in the fee structure;
- c. The statute requires credits for facilities/systems that result in water savings to the City's systems, not credits for connecting to City services; and
- d. Granting credits for connecting to existing City infrastructure would undermine impact fee revenue without reducing the City's actual infrastructure needs.

2. Calculations and Disputes: Given the lack of state guidelines, disputes over credit calculations are likely. The City should:

- a. Engage the services of the same engineer(s) who prepared the City's impact fee study to help develop the credit calculation methodology, ensuring consistency with the underlying impact fee calculations;
- b. Establish clear documentation requirements and objective standards to the extent possible;
- c. Retain discretion to require third-party peer review (at developer expense) of complex or novel conservation systems; and
- d. Build in an administrative appeal process before credits are finalized.

6. IMPLEMENTATION TIMELINE

The statute becomes effective January 1, 2026, meaning the City must have procedures in place by that date. I recommend the following timeline:

- November 2025: Engage with HDR Engineering (or other qualified professionals) to develop credit calculation methodologies consistent with the City's impact fee study;
- December 2025: Draft policies and procedures, including application forms and review processes;
- December 2025: Present draft policies to City Council for review and discussion;

- Late December 2025: Adopt ordinance or resolution establishing procedures pursuant to Section 395.0231; and
- January 1, 2026: Procedures effective and ready for implementation.

7. COORDINATION WITH OTHER AGENCIES

I recommend reaching out to the following for additional insights:

- Texas Municipal League: TML has published materials on this topic (including a "Post-Special Session: Impact Fee Credits for Water Conservation" article) and may have model policies or guidance;
- Other Texas municipalities: Particularly those with sophisticated impact fee programs and reclaimed water systems (such as Austin, San Antonio, or Plano) to learn how they are approaching implementation; and
- Alliance for Water Efficiency or similar organizations: These groups may have technical resources on quantifying water savings from various conservation measures.

8. CONCLUSION

Senate Bill 14 creates a new mandatory requirement for municipalities to provide impact fee credits for water conservation and reuse, effective January 1, 2026. The statute provides broad categories of eligible systems but leaves municipalities with discretion to establish "fair and consistent" procedures for calculating and applying credits.

Your instinct that connecting to the City's existing reclaimed water system should not receive the same credit as private conservation systems is sound. The City can and should distinguish between:

- City-provided services that the City has invested in and operates (such as the reclaimed water distribution system), where no reduction in City infrastructure demands occurs; and
- Private developer-installed conservation systems that genuinely reduce demands on City water and wastewater infrastructure.

I recommend working with HDR Engineering and other qualified professionals to develop detailed policies and procedures before the January 1, 2026, effective date. I am available to assist with drafting the necessary ordinances and procedures, reviewing developer credit applications, and addressing any legal challenges that may arise.

Please let me know if you need any additional information.

WMM/ddp