

BILL ANALYSIS

C.S.H.B. 3043
By: Workman
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that there is a need to increase involvement from the general public and stakeholders in the local water planning process. C.S.H.B. 3043 seeks to address this need by providing for management area planning groups with respect to the joint planning process for groundwater management.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3043 amends the Water Code to change the desired future conditions with which a regional water planning group's regional water plan must be consistent, other than desired future conditions established after the adoption of the most recent state water plan at the option of the regional water planning group, from desired future conditions adopted as of the date the Texas Water Development Board (TWDB) most recently adopted a state water plan to desired future conditions adopted as of the most recent deadline for the TWDB to adopt the state water plan. The bill changes the entities required to meet to conduct joint planning in a management area from groundwater conservation district representatives to a management area planning group, specifies that a such group consists of the district representatives as voting members and members added to the group, and makes related changes. The bill authorizes the district representatives to add a voting or nonvoting member to the management area planning group by a written resolution adopted by a two-thirds vote of the district representatives and requires the resolution to describe the scope of voting authority for each member added to the management area planning group. The bill sets the initial deadline of the recurring five-year deadline for a management area planning group's proposal of desired future conditions at not later than May 1, 2021. The bill changes from after the public hearing on proposed desired future conditions to after the close of the public comment period for such conditions the time at which a district is required to compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions. The bill changes the time at which a management area planning group is required to reconvene to review the reports, consider revisions, and finally adopt the desired future conditions from after the earlier of the date on which all districts have submitted their district summaries or the expiration of the public comment period to after all the districts have submitted their summaries. The bill sets the deadline by which desired future conditions must be approved by a resolution adopted by a two-thirds vote of the voting members of the management

area planning group at not later than January 5, 2022, and requires subsequent desired future conditions to be proposed and finally adopted by the management area planning group before the end of each successive five-year period after that date. The bill changes the time at which a district is required to adopt applicable desired future conditions from as soon as possible after the district receives the desired future conditions resolution and explanatory report to after the district receives notification from the TWDB that the resolution and report are administratively complete. The bill requires a management area planning group to hold a public meeting for the purpose of receiving recommendations for desired future conditions from a joint planning advisory committee at least once during every five-year period for the development and adoption of desired future conditions and not less than three years or more than four years before the deadline for adoption of the desired future conditions. The bill requires the group to coordinate with the committee to schedule the meeting.

C.S.H.B. 3043 removes the authorization for district representatives, during the joint planning process, to appoint and convene nonvoting advisory subcommittees who represent certain interests to assist in the development of desired future conditions and instead requires the management area planning group and the presiding officer of each regional water planning group located wholly or partly in the management area, during that process, to appoint a joint planning advisory committee of persons to represent specified interests. The bill requires the presiding officer of each regional water planning group located wholly or partly in the management area to provide written notification to the management area planning group of whether the officer or the officer's designee will serve on the joint planning advisory committee and which interest the officer or the officer's designee represents. The bill requires the management area planning group, after receiving the notification from each applicable regional water planning group, to appoint additional members of the joint planning advisory committee in a manner that ensures the greatest representation of the specified interests and to the extent that the management area planning group is able to identify qualified people willing to serve on the committee. The bill requires the management area planning group to provide certain notice that describes the purpose of the joint planning advisory committee and the process by which a person may submit nominations to the committee. The bill requires the TWDB to provide assistance in soliciting additional members of the joint planning advisory committee on request by the management area planning group.

C.S.H.B. 3043 establishes that members of the joint planning advisory committee are not required to reside in the management area or a regional water planning area that is located wholly or partly in the management area. The bill authorizes the joint planning advisory committee to adopt written bylaws to govern the committee's performance of its duties and requires a vacancy on the committee to be filled by the regional water planning group presiding officer or designee of the management area planning group that appointed the person whose position is vacant. The bill exempts the joint planning advisory committee from state open meetings law and state public information law.

C.S.H.B. 3043 includes temporary provisions set to expire December 31, 2019, relating to the appointment and recommendations of the initial joint planning advisory committees.

C.S.H.B. 3043 repeals Section 36.108(d-5), Water Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3043 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 16.053(e), Water Code, as amended by Chapters 756 (H.B. 2031), 990 (H.B. 30), and 1180 (S.B. 1101), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended.

SECTION 2. Section 36.108(a), Water Code, is amended.

SECTION 3. Section 36.108, Water Code, is amended by adding Subsections (b-1), (b-2), and (f) and amending Subsections (c), (d), (d-1), (d-2), (d-3), and (d-4) to read as follows:

(b-1) The management area planning group consists of:

(1) the district representatives as voting members; and

(2) the members added to the group under Subsection (b-2).

(b-2) The district representatives may add a voting or nonvoting member to the management area planning group by a written resolution adopted by a two-thirds vote of the district representatives. The resolution must describe the scope of voting authority for each member added to the management area planning group.

(c) The management area planning group [~~district representatives~~] shall meet at least annually to conduct joint planning [~~with the other districts in the management area~~] and to review the management plans, the accomplishments of the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the management area planning group [~~districts~~] shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each district's management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Section 36.108, Water Code, is amended by adding Subsections (b-1), (b-2), and (f) and amending Subsections (c), (d), (d-1), (d-2), (d-3), and (d-4) to read as follows:

(b-1) The management area planning group consists of:

(1) the district representatives as voting members; and

(2) the members added to the group under Subsection (b-2).

(b-2) The district representatives may add a voting or nonvoting member to the management area planning group by a written resolution adopted by a two-thirds vote of the district representatives. The resolution must describe the scope of voting authority for each member added to the management area planning group.

(c) The management area planning group [~~district representatives~~] shall meet at least annually to conduct joint planning [~~with the other districts in the management area~~] and to review the management plans, the accomplishments of the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the management area planning group [~~districts~~] shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each district's management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management

area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than May 1, 2021 [~~September 1, 2010~~], and every five years thereafter, the management area planning group [~~districts~~] shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the management area planning group [~~districts~~] shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the feasibility of achieving the desired future condition; and

(9) any other information relevant to the specific desired future conditions.

(d-1) After considering and documenting the factors described by Subsection (d) and other relevant scientific and hydrogeological data, the management area planning group [~~districts~~] may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management

area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than May 1, 2021 [~~September 1, 2010~~], and every five years thereafter, the management area planning group [~~districts~~] shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the management area planning group [~~districts~~] shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the feasibility of achieving the desired future condition; and

(9) any other information relevant to the specific desired future conditions.

(d-1) After considering and documenting the factors described by Subsection (d) and other relevant scientific and hydrogeological data, the management area planning group [~~districts~~] may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management

area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of ~~all~~ the voting members of the management area planning group ~~[district representatives]~~ for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the close of the public comment period ~~[hearing]~~, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

(d-3) After ~~[the earlier of the date on which]~~ all the districts have submitted their district summaries ~~[or the expiration of the public comment period under Subsection (d-2)]~~, the management area planning group ~~[district representatives]~~ shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the

area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of ~~all~~ the voting members of the management area planning group ~~[district representatives]~~ for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the close of the public comment period ~~[hearing]~~, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

(d-3) After ~~[the earlier of the date on which]~~ all the districts have submitted their district summaries ~~[or the expiration of the public comment period under Subsection (d-2)]~~, the management area planning group ~~[district representatives]~~ shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the

desired future conditions for the management area. The desired future conditions must be approved by [adopted as] a resolution adopted by a two-thirds vote of [all] the voting members of the management area planning group [district representatives].

The management area planning group [district representatives] shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

- (1) identify each desired future condition;
- (2) provide the policy and technical justifications for each desired future condition;
- (3) include documentation that the factors under Subsection (d) were considered by the management area planning group [districts] and a discussion of how the adopted desired future conditions impact each factor;
- (4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
- (5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) After [As soon as possible after] a district receives notification from the Texas Water Development Board that the desired future conditions resolution and explanatory report under Subsection (d-3) is administratively complete, the district shall adopt the applicable desired future conditions in the resolution and report not later than January 5, 2022, and every five years thereafter [that apply to the district].

(f) At least once during every five-year period for the development and adoption of desired future conditions and not less than three years or more than four years before the deadline for adoption of the desired future conditions, the management area planning group shall hold a public meeting

desired future conditions for the management area. The desired future conditions must be approved by [adopted as] a resolution adopted by a two-thirds vote of [all] the voting members of the management area planning group not later than January 5, 2022. Subsequent desired future conditions must be proposed and finally adopted by the management area planning group before the end of each successive five-year period after that date [district representatives].

The management area planning group [district representatives] shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

- (1) identify each desired future condition;
- (2) provide the policy and technical justifications for each desired future condition;
- (3) include documentation that the factors under Subsection (d) were considered by the management area planning group [districts] and a discussion of how the adopted desired future conditions impact each factor;
- (4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
- (5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) After [As soon as possible after] a district receives notification from the Texas Water Development Board that the desired future conditions resolution and explanatory report under Subsection (d-3) are administratively complete, the district shall adopt the applicable desired future conditions in the resolution and report [that apply to the district].

(f) At least once during every five-year period for the development and adoption of desired future conditions and not less than three years or more than four years before the deadline for adoption of the desired future conditions, the management area planning group shall hold a public meeting

for the purpose of receiving recommendations for desired future conditions from the joint planning advisory committee created under Section 36.1081. The management area planning group shall coordinate with the joint planning advisory committee to schedule the meeting.

SECTION 4. Section 36.1081, Water Code, is amended to read as follows:

Sec. 36.1081. TECHNICAL STAFF AND [SUBCOMMITTEES—FOR] JOINT PLANNING ADVISORY COMMITTEE.

(a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist the management area planning group and the joint planning advisory committee with the development of desired future conditions during the joint planning process under Section 36.108.

(b) In this section:

(1) "Management area planning group" has the meaning assigned by Section 36.108.

(2) "Regional water planning group" means a group created under Section 16.053.

(c) During the joint planning process under Section 36.108, the management area planning group and the presiding officer of each regional water planning group located wholly or partly in the management area shall [district representatives may] appoint a joint planning [and convene nonvoting] advisory committee of persons to represent the interests described by Section 16.053(c) [subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions].

(d) The presiding officer of each regional water planning group located wholly or partly in the management area shall provide written notification to the management area planning group of:

(1) whether the officer or the officer's designee will serve on the joint planning advisory committee; and

(2) which interest described by Section 16.053(c) the officer or the officer's designee represents.

(e) After the management area planning group receives a notification under Subsection (d) from each regional water planning group that is located wholly or

for the purpose of receiving recommendations for desired future conditions from the joint planning advisory committee created under Section 36.1081. The management area planning group shall coordinate with the joint planning advisory committee to schedule the meeting.

SECTION 4. Section 36.1081, Water Code, is amended to read as follows:

Sec. 36.1081. TECHNICAL STAFF AND [SUBCOMMITTEES—FOR] JOINT PLANNING ADVISORY COMMITTEE.

(a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist the management area planning group and the joint planning advisory committee with the development of desired future conditions during the joint planning process under Section 36.108.

(b) In this section:

(1) "Management area planning group" has the meaning assigned by Section 36.108.

(2) "Regional water planning group" means a group created under Section 16.053.

(c) During the joint planning process under Section 36.108, the management area planning group and the presiding officer of each regional water planning group located wholly or partly in the management area shall [district representatives may] appoint a joint planning [and convene nonvoting] advisory committee of persons to represent the interests described by Section 16.053(c) [subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions].

(d) The presiding officer of each regional water planning group located wholly or partly in the management area shall provide written notification to the management area planning group of:

(1) whether the officer or the officer's designee will serve on the joint planning advisory committee; and

(2) which interest described by Section 16.053(c) the officer or the officer's designee represents.

(e) After the management area planning group receives a notification under Subsection (d) from each regional water planning group that is located wholly or

partly in the management area, the management area planning group shall appoint additional members of the joint planning advisory committee:

(1) in a manner that ensures the greatest representation of the interests described by Section 16.053(c); and

(2) to the extent that the management area planning group is able to identify qualified people willing to serve on the committee.

(f) The management area planning group shall provide notice in the manner described by Section 36.108(e) that describes:

(1) the purpose of the joint planning advisory committee; and

(2) the process by which a person may submit nominations to the committee.

(g) On request by the management area planning group, the Texas Water Development Board shall provide assistance in soliciting additional members of the joint planning advisory committee.

(h) Members of the joint planning advisory committee are not required to reside in the management area or a regional water planning area that is located wholly or partly in the management area.

(i) The joint planning advisory committee may adopt written bylaws to govern the committee's performance of its duties.

(j) A vacancy on the joint planning advisory committee shall be filled by the regional water planning group presiding officer or designee or the management area planning group that appointed the person whose position is vacant.

(k) The joint planning advisory committee is not subject to the provisions of Chapters 551 and 552, Government Code.

SECTION 5. Section 36.108(d-5), Water Code, is repealed.

SECTION 6. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 7. (a) Not later than the 120th day after the effective date of this Act, each regional water planning group described by Section 16.053, Water Code, as reenacted and amended by this Act, shall appoint a joint planning advisory committee as

partly in the management area, the management area planning group shall appoint additional members of the joint planning advisory committee:

(1) in a manner that ensures the greatest representation of the interests described by Section 16.053(c); and

(2) to the extent that the management area planning group is able to identify qualified people willing to serve on the committee.

(f) The management area planning group shall provide notice in the manner described by Section 36.108(e) that describes:

(1) the purpose of the joint planning advisory committee; and

(2) the process by which a person may submit nominations to the committee.

(g) On request by the management area planning group, the Texas Water Development Board shall provide assistance in soliciting additional members of the joint planning advisory committee.

(h) Members of the joint planning advisory committee are not required to reside in the management area or a regional water planning area that is located wholly or partly in the management area.

(i) The joint planning advisory committee may adopt written bylaws to govern the committee's performance of its duties.

(j) A vacancy on the joint planning advisory committee shall be filled by the regional water planning group presiding officer or designee of the management area planning group that appointed the person whose position is vacant.

(k) The joint planning advisory committee is not subject to the provisions of Chapters 551 and 552, Government Code.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

provided by Section 36.1081, Water Code, as amended by this Act.

(b) Not later than the 180th day after the date that the final appointment is made under Subsection (a) of this section for a joint planning advisory committee, the management area planning group described by Section 36.108, Water Code, as amended by this Act, for that joint planning advisory committee shall appoint additional members to the joint planning advisory committee as provided by Section 36.1081, Water Code, as amended by this Act.

(c) Not earlier than July 1, 2019, and not later than November 1, 2019, a joint planning advisory committee described by Section 36.1081, Water Code, as amended by this Act, shall make its recommendations to the management area planning group that appointed the members of that joint planning advisory committee.

(d) This section expires December 31, 2019.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 8. Same as introduced version.