SUBJECT: Developing and managing water resources

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Counts, King, Cook, Hilderbran, Hope, R. Lewis, Puente, Walker

0 nays

1 absent — Corte

SENATE VOTE: On final passage, April 19 — voice vote (Barrientos recorded nay)

WITNESSES: For — Jim Adams, San Jacinto River Authority and Region H Planning Group; Ed Archuleta, El Paso Water Utilities Public Service Board; Thomas Boehme, Texas Farm Bureau; Richard Bowers, North Plains Groundwater Conservation District; Bill Clayton, William's Farms; Wayne Halbert, Texas Irrigation Council; Milton Holloway, Texas Economists; Mike Mahony, Texas Alliance of Groundwater Conservation Districts; James P. Mitchell, High Plains Underground Water Conservation District No. 1; Ken Petersen, Texas Rural Water Association; C.E. Williams, Panhandle Groundwater District

Against — John C. Williams, Canadian River Municipal Water Authority

On — Matt Brockman, Independent Cattlemen's Association of Texas; Greg Ellis, Edwards Aquifer Authority; John Grant, Colorado River Municipal Water District and Region F Planning Group; Myron J. Hess, National Wildlife Federation; Margaret Hoffman, Texas Natural Resource Conservation Commission; Jace Houston, Harris-Galveston Coastal Subsidence District; Tommy Knowles, Texas Water Development Board; Ken Kramer, Sierra Club, Lone Star Chapter; Larry McKinney, Texas Parks and Wildlife Department; C.E. Williams, Panhandle Groundwater Conservation District

BACKGROUND: The 75th Legislature in 1997 enacted SB 1 Brown, a sweeping overhaul of water planning and development in Texas. SB 1 required the Texas Water Development Board (TWDB) to adopt a comprehensive state water plan

every five years, incorporating local and regional plans. Regional water planning groups developed plans with technical and financial assistance from TWDB. SB 1 also made groundwater districts the preferred governmental entity for managing groundwater resources and established new procedures for creating priority groundwater management areas.

Other provisions in the omnibus legislation included:

- consolidating TWDB bond authorizations into a single financial assistance fund, the Texas Water Development Fund II;
- granting sales-tax exemptions for the purchase of water conservation and reuse equipment;
- authorizing TWDB to use the Agricultural Trust Fund to provide financial incentives or loans for the installation of water-conserving devices; and
- establishing procedures and notice and hearing requirements for interbasin transfers, providing criteria for determining whether to grant an application for an interbasin transfer, and making an interbasin transfer junior in priority to water rights granted before the transfer.

By January 2002, TWDB will issue a state water plan based on the regional plans. The regional plans are based on a projection that Texas' population will nearly double to about 40 million people by 2050. Population growth will outweigh reductions in per-capita water consumption, which is projected to decline by 22 gallons per capita per day by 2050, largely because of conservation efforts. Total projected water demand is projected to increase from 17 million acre-feet in 2000 to 20 million acre-feet in 2050, an increase of 18 percent.

The regional planning groups identified $17 billion in capital costs needed to implement strategies to meet Texas' additional water needs for next 50 years. The most commonly recommended water management strategies were connection to existing surface water supplies, conservation, and expanding use of groundwater supplies. The groups also recommended building seven major and 10 minor reservoirs to meet additional water needs. Six legislative recommendations were common among all the regional groups:

- provide funding for administrative activities of the regional planning groups, such as travel expenses and public notice requirements;
- allow the regional groups to develop alternative water management strategies not specified in SB 1;
- continue the planning process;
- provide funding for regional water planning;
- provide funding to implement recommended water supply strategies; and
- clarify the SB 1 provisions on unique stream segments.

The 76th Legislature enacted SB 1911 by Brown, creating 13 temporary groundwater conservation districts. The districts are limited in their powers and must be ratified by the 77th Legislature to become permanent.

Government Code, sec. 403.095 governs the use of dedicated revenue. After certification of the general appropriations act, sec. 403.095 authorizes the comptroller to reduce the balance of a dedicated account in the amount by which estimated revenues and unobligated balances exceed appropriations. Sec. 404.071 governs the monthly disposition of interest on investments for special funds and accounts.

DIGEST:

CSSB 2 would create the Texas Water Advisory Council, revise the authority of groundwater conservation districts, create water infrastructure and rural water assistance funds, and impose a liability cap for aquatic herbicide application.

This bill would take effect September 1, 2001.

Texas Water Advisory Council. The council would include 13 members, including representatives of the TWDB, the Texas Natural Resource Conservation Commission (TNRCC), and Texas Parks and Wildlife Department (TPWD), the agriculture commissioner, the land commissioner, three House members appointed by the speaker, two senators appointed by the lieutenant governor, and three public members.

The governor would have to appoint a council member as chair. The council could request staff from TWDB, TNRCC, TPWD, and the Texas Department of Agriculture (TDA) to assist it in its duties. The council would have to meet once each quarter. Members would serve without compensation

but could be reimbursed for expenses. The council would be subject to open meetings requirements and the Administrative Procedure Act.

The council would act in an advisory role to recommend state water policy initiatives, coordinate intergovernmental efforts along the Texas-Mexico border, coordinate a unified state position on federal and international water issues, and advise TWDB on funding prioritization for the state water plan.

The council could not adopt rules, regulate water use or any aspect of water management, plan or construct water projects, grant or lend money for water projects, establish water resource management standards, or consider a specific permit or project until the permit had been issued and was not subject for rehearing.

By December 1 of each even-numbered year, the council would have to report the findings of its periodic reviews of river authorities. The report would have to include any other findings and recommendations by the council. River authorities would be divided into these regional groups:

- Group 1, Northeast Texas Municipal Water District;
- Group 2, Angelina and Neches River Authority, Lower Neches Valley Authority, Sabine River Authority, and Upper Neches River Municipal Water Authority;
- Group 3, Red River Authority of Texas, Sulphur River Municipal Water District, and Sulphur River Basin Authority;
- Group 4, San Jacinto River Authority, Gulf Coast Water Authority, and North Harris County Regional Water Authority;
- Group 5, North Texas Municipal Water District, Tarrant Regional Water District, Trinity River Authority of Texas, and Dallas County Utility and Reclamation District;
- Group 6, Brazos River Authority, West Central Texas Municipal Water District, and North Central Texas Municipal Water Authority;
- Group 7, Guadalupe-Blanco River Authority, Lavaca-Navidad River Authority, Lower Colorado River Authority, and Upper Guadalupe River Authority;
- Group 8, Nueces River Authority, San Antonio River Authority, and Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1;

- Group 9, Colorado River Municipal Water District, Central Colorado River Authority, and Upper Colorado River Authority; and
- Group 10, Canadian River Municipal Water Authority, and Mackenzie Municipal Water Authority.

Each river authority would have to provide the council with information for the report every five years. Submission of the information would occur on a rotating basis according to a river authority's regional group. The council could ask an authority to provide follow-up information and could modify the submission schedule if necessary.

Information provided to the council would have to include each authority's self-assessment of progress in achieving stated mission and goals, providing service to customers, addressing issues raised in the most recent management audit, and the authority's role in the regional water planning process. Each authority's report also would have to include recommendations on problematic interregional issues and solutions for barriers to implementing the regional or state water plan. TNRCC would have to provide to the council any information received from the authorities in complying with its administrative policies for river authorities.

The bill would create an interagency water advisory account as a special account in general revenue consisting of legislative appropriations, gifts and grants, and other money required to be deposited in the account.

Unless extended by the 78th Legislature, the council and the interagency water account would expire September 1, 2003.

Surface water permits. For purposes of water rights, the bill would define agriculture to include:

- cultivating the soil to produce crops;
- the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in a nursery;
- raising animals for breeding or production;
- planting cover crops or leaving land idle for crop rotation; and
- raising or keeping equine animals.

Surface water could be diverted for agricultural uses, which would be considered an equivalent priority to industrial purposes for appropriation of state water in times of shortage. A holder of a permit, certified filing, or certificate of adjudication that included industrial or irrigation use before September 1, 2001, could use or supply water for agricultural purposes without amending the permit or certificate. However, CSSB 2 would not change the existing priority of any industrial water right holder along the Rio Grande below the Amistad Reservoir supplying a nursery.

In considering an application for appropriation of unappropriated surface water, TNRCC would have to consider assessments of in-stream uses, fish and wildlife habitat, water quality, and effects on groundwater.

A person would not require a permit to build on his or her own property a dam or reservoir with less than 100 acre-feet storage capacity for commercial and noncommercial fish and wildlife purposes, other than aquaculture, if the land was designated for wildlife management for tax purposes. Forfeiture and cancellation of permit requirements would not apply to construction of a reservoir designed to store more than 50,000 acre-feet of water.

TWDB duties. The TWDB executive administrator would have to work with groundwater conservation districts and regional water planning groups to develop groundwater availability models for major and minor aquifers by October 1, 2004. The executive administrator could conduct periodic surveys of entities using groundwater and surface water. A person who failed to return the survey would not be eligible for funding from TWDB and could not obtain permits, permit amendments, or renewals from TNRCC. Failure to return the survey would be a Class C misdemeanor, punishable by a maximum fine of $500.

In adopting guidance principles for the state water plan, TWDB, TNRCC, TDA, and TPWD would have to consider the protection of agricultural and natural resources.

TWDB would have to require any person or entity transporting groundwater or surface water at least 20 miles to report to the board on pipelines and other facilities that could be used for conveyance.

Water assistance programs. Money from the water loan assistance fund could be used for brush control, weather modification, consolidation of multiple water and wastewater systems into an area-wide system, desalination, or regional water-quality enhancement projects. TWDB could provide financial assistance from the fund through grants requiring receipt of funds and performance of obligations by the applicant.

Money in the agricultural soil and water conservation fund could be used to consolidate multiple water and wastewater systems into an area-wide system designed to promote agricultural water conservation. Money from the fund also could be used to buy measurement and data-collection equipment related to groundwater conservation.

The state water pollution control revolving fund could be used for nonpoint-source pollution control or estuary management projects.

TWDB could make conservation loans from the agricultural water conservation fund for capital equipment, labor or preparation costs for preparing land for brush-control activities, or implementing weather modification activities.

Regional water plans. Regional water planning groups would have to add to their regional water plans information on using water pipelines or other facilities, such as oil or gas pipelines, for water conveyance; river and stream segments with unique ecological value; and the impact of proposed projects on water quality. Designation by the Legislature of a river or stream segment of unique ecological value would mean that a state agency or political subdivision could not finance construction of a reservoir in that segment. TWDB only could approve a regional water plan that included water conservation and drought management measures and was consistent with the long-term protection of the state's resources.

Conflict resolution. TWDB would have to facilitate resolution of any conflict that arose between a groundwater conservation district management plan and a regional plan. If resolution required revision of either a regional water plan or groundwater district management plan, TWDB would have to suspend approval of the plan and provide information to the group or district. The group or district would have to implement any revisions specified by

TWDB and would have to hold at least one public hearing on the matter before resubmitting the plan.

A political subdivision could ask a regional water planning group to change the regional plan to reflect changed conditions or new information. If the political subdivision was dissatisfied with the regional group's response, it could ask TWDB to review the plan and the proposed changes.

Financing. Each regional planning group would have to report to TWDB by June 1, 2002, on how political subdivisions in the region plan to pay for water projects identified in the plan and what role the state should play in financing projects identified in the plan. TWDB would have to consider the reports and to consult with affected groups and other interested parties. By October 1, 2002, TWDB would have to submit a report to the Legislature including the regional group's reports and TWDB's recommendations.

Groundwater management areas. TWDB and TNRCC would have to designate groundwater management areas covering all major and minor aquifers in the state. The initial designation would have to be completed by September 1, 2003. TWDB would assume the other responsibilities of TNRCC in regard to designating groundwater management areas, except that TNRCC could designate a groundwater management area on or after September 1, 2001, in response to a valid petition. TWDB and TNRCC would have to prioritize the designated groundwater management areas by September 1, 2005.

At the conclusion of an evidentiary hearing on designation of a priority groundwater management area (PGMA), TNRCC would have to issue an order stating its findings and conclusions. An order to designate a PGMA would have to recommend that the area be covered by creating one or more new water districts, adding the area to an existing district, or combining the two options. A PGMA would have to comply within two years of — but no earlier than 120 days after — the designation.

If voters in an existing water district did not approve the addition of a PGMA, TNRCC would have to create one or more districts to cover the area within one year of defeat by the voters. If district creation was not feasible, TNRCC would have to include in its biennial report recommendations for

future management of the area. The bill would eliminate current statutory provisions for designating of a groundwater management area and providing notice of the designation.

Groundwater conservation districts. A petition to create a groundwater conservation district would have to include the names of at least five people to serve as temporary directors and financial information about the district.

TNRCC would have to hold a public meeting in the area petitioning to become a groundwater district within 60 days of posting notice of the meeting. Within 90 days of holding the meeting, TNRCC would have to approve creation of the district if the petition was administratively complete. It could not approve the district if it found that the proposed boundaries would prevent effective management of groundwater resources.

If the petition proposed creating a groundwater district partly but not entirely in a PGMA, TNRCC would have to notify TWDB. TWDB would have to declare the remainder of the district's area a PGMA.

If TNRCC did not approve a petition to create a groundwater district, it would have to notify the petitioners of its reason for withholding approval. The petition could be resubmitted within 90 days without paying the fee.

TNRCC would have to appoint temporary directors upon approving a petition. Within 120 days of appointment, the temporary directors would have to order an election to approve creation of the district and elect permanent directors. If voters did not approve the levy of a maintenance tax, the district would have to set production fees to pay for regulation of groundwater, including fees on withdrawing water from a well. The bill would set forth operational procedures for calling the election, publishing notice, printing the ballots, canvassing the returns, and declaring the results.

A director of a groundwater district could be compensated up to $150 per day of service but not more than $9,000 annually. The district board could set penalties for violating district rules of up to $5,000 per day for each day a violation continued. In addition to the penalty, a district could seek a penalty up to 115 percent of the economic benefit gained from the violation.

After January 5, 2002, a groundwater district would have to develop a water management plan and submit the plan to the appropriate regional planning group. The district would have to use groundwater availability modeling information from TWDB and any site-specific information acceptable to TWDB.

Joint planning. Groundwater districts located within the same management area would have to consider their management plans individually and compare them to other management plans in the area. Districts in the same management area could undertake joint studies, research, or projects.

If a groundwater district failed to forward a copy of its management plan to another district within the area, TNRCC could order the district to take certain actions, dissolve the board and call for election of a new one, ask the attorney general to bring suit to appoint a receiver to collect the assets and carry on the business of the district, or dissolve the district. An appointed receiver would have to be bonded and would perform the duties directed by the court to preserve the assets and carry on the business of the district. If the district showed good cause, the court could terminate the receivership and return assets and control to the district.

If a groundwater district refused to participate in the joint planning process and, after a petition process, a review panel had considered the matter and made recommendations to TNRCC, TNRCC could take action to implement the panel's recommendations.

Well permits. Groundwater districts could impose more restrictive conditions on new permit applications and increased use by existing users if the limits applied to all new permit and increased-use applications, bore a relationship to the management plan, and were necessary to protect existing use.

A groundwater district could regulate well-spacing requirements and water production, provided that agriculture, municipal, and natural resources were protected. In determining spacing requirements for wells, a district could require all wells or wells with certain characteristics to be spaced a certain distance from property lines or from adjoining wells and could impose spacing requirements adopted by the district board. The district could

regulate production of groundwater by setting limits on wells or by limiting the amount of water produced based on area, volume, or rate.

CSSB 2 would exempt from permit requirements a well that produced 25,000 gallons per day or less if the well was on a tract of land larger than 10 acres and if the water was to be used for domestic purposes, livestock, poultry. A groundwater district could not restrict production from the well.

The bill also would exempt a well used solely to supply water for an active drilling rig permitted by the Railroad Commission if the permit holder was responsible for the well and the well was located near or on the same lease or field as the rig. A groundwater district could require a permit if the exempted well no longer was used to supply water to an active drilling rig.

A groundwater district could not require a permit for drilling of a well or restricting the production of a well that produced water for surface coal mining purposes, unless the water no longer was necessary for the operation or unless it exceeded the amount permitted by the Railroad Commission. If a permit was required, the permit holder would have to report monthly to the district the total amount of water withdrawn from the well, the quantity necessary for mining purposes, and the quantity withdrawn for other purposes. A district could not require the well to meet the district's spacing requirements.

A district could not deny a permit application to drill a well to supply water to a hydrocarbon production operation if the application complied with the district's spacing, density, and production rules. A driller of an exempted well would have to file the well's drilling log with the district.

Transfer of groundwater out of a district. If a permit application or amendment proposed transferring groundwater outside of a groundwater district's boundaries, the following considerations would apply in the district's determination of whether to approve the permit:

- a fee for application processing could not exceed fees imposed for any other applications, the application would have to be processed in the same manner as for other applicants, and the application would have to be combined with applications for in-district use by the same applicant;

- the district could approve a export fee by negotiating with the transporter, by setting the fee below the district's ad valorem water tax rate, or a fee that was a 50 percent export surcharge in a fee-based district;
- the district could not deny a permit on the grounds that an applicant sought to transfer water out of the district;
- the permit would have to be for at least 30 years if construction already had begun or began within five years;
- the district periodically could review and limit the amount of water transferred under the permit;
- the district could not use fees to prohibit the export of groundwater; and
- the district could not adopt rules expressly prohibiting the export of groundwater.

The groundwater district could consider the transfer of groundwater out of the district not to be an export of groundwater if the transfer was for nearby agricultural use, for a potable water supply, for an emergency potable water interconnection, or for use on an adjacent oil and gas field.

Provisions relating to transfer of groundwater out of a district would apply only to a transfer initiated after September 1, 1997.

By January 1, 2002, TWDB would have to adopt rules requiring a person holding a permit for the export of groundwater to report on water pipelines or other facilities that could be used for conveyance.

Authority to set fees. A groundwater district could charge fees for providing services outside the district only to cover the cost of the services.

A district could assess production fees in addition to any taxes levied by the district. Production fees could not exceed $1 per acre-foot annually for agricultural use or $10 per acre-foot annually for any other purpose. The $10 maximum rate would not apply to the Edwards Aquifer Authority. Any district created before September 1, 1999, that collected a property tax would be exempt from the maximum rates.

The Barton Springs-Edwards Aquifer Conservation District and the Guadalupe County Groundwater Conservation District could not charge

production fees of more than $1 per acre-foot annually or $0.17 per thousand gallons of water used for any other purpose.

A groundwater district could assess a production fee on an activity exempted from permitting requirements if the water was sold to a third party. District fees could be used to acquire groundwater rights for conservation purposes.

Water infrastructure fund. CSSB 2 would create the water infrastructure fund as a special account in general revenue. Money from the fund would have to be used to implement water projects recommended in the state and regional water plans. The fund would consist of legislative appropriations and other fees or revenue dedicated by the Legislature; loan repayments; accrued interest; gifts, grants, or donations; and bond proceeds. Specifically, the fund could be used to:

- make low-interest loans to political subdivisions;
- make grants, low-interest loans, or zero-interest loans to political subdivisions for projects outside of urban centers or for economically distressed areas, up to an amount equal to 10 percent of total annual financial assistance from the fund;
- make low-interest loans for costs associated with federal and state regulatory compliance, up to an amount equal to 10 percent of total annual financial assistance from the fund;
- repay bonds; and
- pay TWDB's expenses in administering the fund.

TWDB could approve an application for funding if the application met the appropriate rules and regulations, if the revenue pledged for repayment was sufficient to meet all obligations, and if the proposed project complied with the state and regional water plans. The application would have to include a water conservation program.

TWDB could not release funds for the construction phase of a project until the executive administrator found that a community proposing surface water development had the necessary water rights or that a community proposing groundwater development had the right to use the water that the project would provide. TWDB would have to adopt rules to administer the fund by January 1, 2002.

Rural water assistance fund. CSSB 2 would create the rural water assistance fund in the state treasury. It would consist of money transferred directly to the fund, repaid principal and interest not needed as a source of revenue, money transferred to the fund by TWDB from any available source, and investment interest and depository interest allocable to the fund in the general revenue fund. Political subdivisions eligible for assistance from the fund would include:

- a nonprofit water supply or sewer service corporation, district, or city that had a service area with a population of 10,000 or less or one that qualified for federal financing; and
- a county that did not contain an urban area with a population larger than 50,000.

The fund could be used only to:

- provide low-interest loans to eligible political subdivisions for water or water-related projects;
- enable eligible political subdivisions to obtain water supplied by a city, county, district, or authority, or other political subdivision;
- finance the consolidation or regionalization of water-related projects of neighboring eligible political subdivisions;
- contract for an outreach and technical assistance program to help eligible political subdivisions obtain assistance from the fund;
- refinance loans at lower rates; or
- pay debt service on water financial assistance bonds issued by the board, if the proceeds of the bond issuance were to be deposited in the fund.

An eligible political subdivision could submit a joint application with a federal or state agency for financial assistance from the fund.

The board could not deliver funds until the executive administrator found that an applicant proposing surface water development had the necessary water rights or that an applicant proposing groundwater development had the right to use water provided by the project.

In reviewing an application for financial assistance, the board would have to consider the needs of the area to be served by the project and the benefit of

the project to the area; the relationship of the project to the state's overall water needs and the state water plan; and the political subdivision's available revenue to repay the cost of the project.

The board could approve an application for assistance if it found that the public interest would be served by approving the project and the revenue or taxes pledged by the political subdivision would be sufficient to meet the subdivision's obligations for the next 50 years. Before approving an application, the board would have to require the applicant to adopt a water conservation program. Approved projects would be subject to construction contract requirements.

An item used by a nonprofit water supply or sewer service corporation for a project financed by the fund would be exempt from sales taxes.

TWDB would have to adopt rules to administer the fund by January 1, 2002.

Instream flow program. TNRCC, TWDB, TPWD, and other appropriate agencies would have to collaborate on an instream flow data collection and evaluation program. The agencies would carry out research to determine methodologies for determining river and stream flow conditions necessary to support a sound ecological environment. The program would not apply to a floodwater stream that was dry more than 75 percent of the year.

The agencies would have to develop a plan that prioritized the studies and set consistent interim deadlines for publication of flow rates. Priority studies would have to be completed by December 31, 2010. TNRCC would have to consider the results of the studies in its review of any management plan, water right, or interbasin transfer.

TWDB could authorize the use of money from the research and planning fund to carry out the program in cooperation with TPWD, TNRCC, other agencies, or private sector entities.

Joint Committee on Water Resources. This committee would have to conduct an interim study and make recommendations on:

- increasing efficient use of existing water resources;
- developing long-term funding strategies;
- improving water conveyance systems;
- continuing of the Texas Water Advisory Council;
- determining the appropriate role of environmental and wildlife concerns in water permitting and development; and
- protecting the natural condition of the beds and banks of state-owned waterways.

The committee would be composed of six members, including the chairs of the House and Senate Natural Resources Committees, two senators appointed by the lieutenant governor, and two representatives appointed by the House speaker.

The committee would have to meet at least annually with TNRCC and TWDB. It would receive information on encouraging development of water marketing and movement, prioritizing state funds for financing the development and conservation of water resources, and identifying mechanisms for protecting instream uses, including encouraging donation of water rights.

The committee would have to make a final report on its findings by November 1, 2002. It could request assistance from other state agencies to carry out its duties. The House and Senate Natural Resources Committees would have to provide staff for the committee. The appropriate administrative committees in the House and Senate would have to approve the committee's budget.

The committee would be abolished January 1, 2003.

Limited liability for application of aquatic herbicide. CSSB 2 would set a $2 million liability cap on damage claims — including for personal injury, property damage, or death — against a licensed aquatic herbicide applicator working under contract for a river authority.

The bill would not waive, limit, or restrict the governmental immunity of river authorities in performing their essential governmental functions,

including the control and elimination of invasive weeds, grasses, and vegetation in state waterways or reservoirs.

Concentrated animal feeding operations. TNRCC would have to follow specific environmental permitting procedures if any part of a concentrated animal feeding operation proposed in a permit application was located within the protection zone of a sole-source surface drinking water supply. TNRCC would have to designate a surface water body a sole-source drinking water supply if it had been classified as a public water supply under TNRCC rules and was the sole source of supply for a public water supply system. It also would have to designate as a protection zone any area within a sole-source drinking supply watershed that was:

- within two miles of a sole-source drinking water supply;
- within two miles of a perennial stream that was a tributary and within three miles upstream of a sole-source drinking water supply; or
- within two miles of a stream that was a sole-source drinking water supply.

TNRCC would have to identify surface water bodies that were sole-source drinking water supplies within 45 days of the bill's effective date.

Provisions applicable to certain districts. CSSB 2 would ratify the following groundwater conservation districts created by SB 1911 during the 76th Legislature: Cow Creek; Crossroads; Hays Trinity; Lone Wolf; Lost Pines; McMullen; Middle Pecos; Red Sands; Refugio; Southeast Trinity; Texana; and Tri-County.

The North Harris County Regional Water Authority could establish classifications of fee and ratepayers. The authority could not require fees to be paid for well classifications not subject to groundwater reduction requirements by the Harris-Galveston Coastal Subsidence District, until the district declared those classes subject to groundwater reduction requirements.

Edwards Aquifer Authority (EAA). CSSB 2 would add the definitions of "agricultural use" and "nursery grower" for the purposes of the EAA. it would define agricultural use to include:

- cultivating the soil to produce crops;
- the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in a nursery;
- wildlife management;
- raising animals for breeding or production;
- planting cover crops or leaving land idle for crop rotation; and
- raising or keeping equine animals.

It would define a nursery grower as a person who grew more than 50 percent of the products that the person sold.

CSSB 2 would change the maximum fee rate for agricultural use to $2 per acre-foot from its current rate, 20 percent of the municipal fee rate.

The EAA would have to provide notice of a proposed rule to all applicants and permit holders and publish notice in a newspaper at least 14 days before a hearing on the rule. The notice would have to include the location and time of the meeting, the subject matter of the proposed rule, procedures for obtaining a copy of the rule, and the deadline for submitting comments.

The EAA would have to wait at least 45 days for comment before adopting a rule, except for an emergency rule, and would have to justify its responses to any comments on the rule. The rule would have to be adopted at an open meeting and would become effective 10 days after adoption. Emergency rules to prevent imminent harm to public health, safety, or welfare would be effective immediately upon adoption for 120 days. An emergency rule could be renewed for up to 60 days.

The EAA would have to hold a contested case hearing on a permit if a person with an interest in the application requested a hearing. CSSB 2 would repeal a provision in the EAA's authorizing act that subjects the EAA to the open meetings law, open records law, and the Administrative Procedure Act.

Miscellaneous provisions. A water control and improvement district would not need voter approval for a contract between a district and city to be valid and enforceable against both parties. Only a contract in which the district made payments from tax revenue, other than maintenance tax, would require

voter approval. Contracts to repay debt with tax revenue could not exceed 30 years.

A $1 per acre-foot water fee for non-specified uses would be waived for instream-use water rights deposited into the Texas Water Trust.

Property on which approved desalination or brush-control projects had been implemented would be exempt from taxation.

CSSB 2 would exempt from limited sales, excise, and use taxes:

- equipment and supplies used for rainwater harvesting, water recycling and reuse, or other activities to eliminate water waste; and
- equipment, services, and supplies for desalination, brush control, precipitation enhancement, or specific water or wastewater facilities.

SUPPORTERS SAY:

CSSB 2 is a necessary follow-up to the water planning and development process initiated by the 75th Legislature through SB 1. It would clean up provisions enacted by SB 1 and would implement recommendations of the regional planning groups. Its cleanup provisions include specifying procedures for designating PGMAs, clarifying administrative procedures for groundwater conservation districts, providing for conflict resolution in the regional planning process, and facilitating joint planning among districts. It would implement the regional planning groups' recommendations, including continuing the planning process, identifying funding strategies for regional water plans, and clarifying provisions on unique stream segments.

Texas Water Advisory Council. The council would make recommendations on state water policies and could help to coordinate a unified state response to any national or international water issues that arise. For instance, establishing a new reservoir requires complying with many federal permitting requirements, including those relating to the Endangered Species Act. TPWD, TNRCC, and TWDB must send reports to various federal regulatory agencies. The council would play a valuable role by acting as a unified presence to represent various state agencies and other entities in federal permitting matters. The council also could play a valuable role in negotiations with Mexico in regard to Rio Grande water allocation.

The council also would serve a valuable purpose in coordinating analyses of river authorities statewide. The authorities would report to the council on their progress in achieving goals, meeting customer needs, and addressing audit recommendations and also on their role in the regional planning process. The reports also would identify any problematic regional issues. The council would help to ensure that river authorities are meeting the needs of Texas citizens.

Surface water permits. CSSB 2 would retain the junior water rights provision — which makes surface water rights for the interbasin transfer of water junior to other rights granted before the transfer — enacted by SB 1. This provision protects water resources for local communities during times of drought and ensures that supplies are not sold off to the highest bidder. It protects water supplies in many rural areas from the thirsty reach of large metropolitan areas.

Also, the junior water-rights provision brings all parties to the negotiating table. An example is the agreement recently reached between San Antonio and the Lower Colorado River Authority to pipe water from the Colorado River to San Antonio. The agreement also will provide rice farmers downstream with reservoirs that will help to stabilize river levels. Dealing with junior water rights required the participation of parties other than the water supplier and purchaser. Because of the junior water-rights provisions, parties downstream benefited from an agreement from which they otherwise might have been excluded.

Regional plans. CSSB 2 would establish procedures for resolving any conflicts between a regional water plan and a groundwater conservation district water management plan. SB 1 established procedures for dealing with conflicts between regional water plans but did not specify a procedure for resolving conflicts with groundwater district management plans. CSSB 2 would authorize TWDB to resolve a conflict after attempts to coordinate resolution of the conflict between the entities. Required revisions to either entity's plans would have to go through a public hearing process. The bill also would set up procedures for a political subdivision to request changes to a regional water plan.

To maximize use of alternatives to state funding for water projects, regional planning groups would be responsible for identifying funding strategies for their regional water plans. This would continue the ground-up approach to state water planning initiated by SB 1. The groups would have to report to TWDB by June 1, 2002, on how local and regional entities planned to pay for water projects identified in the regional water plan. The groups also would report on the state's role in funding such projects. TWDB would have to report to the Legislature by October 1, 2002, on the groups' findings. Regional planning groups would provide the groundwork for funding strategies for the state water plan.

Groundwater conservation districts. CSSB 2 would provide groundwater conservation districts with additional tools to manage groundwater resources. The Legislature has established that groundwater conservation districts are the state's preferred method of groundwater management. Districts are formed at the request of local citizens and confirmed in local elections. The districts keep control of groundwater resources at the local level and ensure that groundwater supplies are managed properly to meet the needs of the present as well as the future.

Although districts could charge export fees, they could not discriminate against applications to transfer groundwater out of the district. The bill would ensure that exporters were treated fairly and that the district did not impose more severe restrictions for export than for in-district water use.

CSSB 2 also would facilitate joint planning among groundwater districts. Districts in the same groundwater management area would have to compare their management plans and could undertake joint studies, research, or projects. TNRCC could take action if districts sharing a groundwater management area failed to cooperate.

Water infrastructure and rural water assistance funds. The water infrastructure fund would provide a source of funding for water projects recommended in the state and regional water plans. Political subdivisions would benefit from zero-interest and low-interest loans to implement the recommended projects.

The rural water assistance fund would provide low-interest loans for water projects in rural areas. Of about 4,500 community water systems in Texas, nearly 4,300 serve populations below 10,000. The cost of an adequate and reliable water supply for rural citizens is significantly higher than for their urban counterparts. An urban water system can spread the cost for a capital-intensive water project among hundreds of thousands of customers, while a rural system may have only a few hundred meters among which to spread capital costs.

CSSB 2 would allocate money from the fund to outreach and technical assistance. Many rural areas are unaware of available assistance for water projects. In addition, they often lack the sophistication to develop such projects without outside assistance from lawyers and engineers.

Instream flows. CSSB 2 would help to ensure the ecological health of Texas' rivers and streams by implementing a program to study instream flow requirements. Other water issues have received more extensive study. TPWD, TNRCC, and TWDB, along with other state agencies, would work together to collect and analyze data on instream flow requirements and methodologies. Results of the studies would help to establish accurate instream flow requirements. The studies also would help to determine how to establish instream flow requirements during periods of flood or drought.

Liability cap for aquatic herbicide application. CSSB 2 would help river authorities combat invasive plant species, such as hydrilla, water hyacinth, and giant salvinia. These aquatic plants are indigenous to foreign bodies of water but have spread vigorously across Texas because of the absence of the natural controls in their native environments. Without natural controls to check their growth, the species overpropagate and threaten the health of rivers and lakes by choking off sunlight and oxygen and altering pH levels necessary to support native Texas species. Especially problematic is giant salvinia, an invasive newcomer that doubles its mass every seven days.

River authorities have had difficulty hiring contractors to apply aquatic herbicides, which can check the plants' growth, because there is no limit on their liability. Although aquatic herbicides are a safe and effective means of combating invasive species and contractors are licensed by TDA, the lack of a liability cap leaves contractors open to potentially devastating frivolous or

unfounded lawsuits. The unlimited liability exposure discourages many applicators from contracting with river authorities to combat invasive species. Many river authorities and reservoir operations do not have the technical capability to combat these species on their own and can only watch as their waterways are taken over.

OPPONENTS SAY:

Texas Water Advisory Council. This council simply would add another layer of cumbersome bureaucracy to the water planning process. It is difficult to see what valuable service the council could provide with no real authority and serving only in an advisory capacity. TWDB already has the resources and technical expertise in place to coordinate self-assessment reports by water authorities. Without specific appropriations or identification of a revenue source for the interagency water account, the council essentially would be an unfunded mandate to perform a function that could be administered better by an existing state agency.

Surface water permits. Retaining the junior water-rights provision virtually would eliminate interbasin transfers of water because those receiving the water have no assurance that it will be available when they need it most, such as during a drought. Interbasin transfers could play a key role in meeting Texas' future water needs, especially for rapidly growing areas such as Houston and San Antonio. By not enabling this critical water management strategy, CSSB 2 would fail to address fully Texas' future water needs.

Regional planning. CSSB 2 would not provide funding for needs identified in the regional water plans. The regional groups identified $17 billion in capital costs needed to meet Texas' additional water needs for the next 50 years. CSSB 2 not only would fail to provide funding but simply would return the funding issue to the regional groups.

Groundwater conservation districts. Additional authority granted to groundwater districts under CSSB 2 would infringe on the rights of property owners. Texas adheres to the "rule of capture," which allows, with only a few exceptions, landowners to pump as much groundwater as they choose from their land. This bill would undermine the rule of capture by allowing groundwater districts to impose stricter requirements on new permit applications and increased use by existing users, as well as by requiring

more property owners to obtain permits to pump groundwater from their land.

Instream flows. CSSB 2 would not do enough to protect instream flow requirements necessary to support a healthy habitat for fish and wildlife. The bill should establish specific instream flow requirements to be met in any surface water permit application.

Limited liability for aquatic herbicide application. Aquatic herbicides pose a significant health risk to public drinking water supplies. The danger and potential impact of chemicals used to kill invasive plants entering a municipal water supply is too great to impose a liability cap on the application of aquatic herbicide. If the chemicals entered a local water supply, they could shut down water treatment facilities and cause a significant health hazard. The herbicide chemicals also could have unknown effects on fish and wildlife. Imposing a liability cap could encourage some contractors to be less careful in applying herbicide. The public should be able to seek full compensation for any harm suffered due to improper or careless application of aquatic herbicides.

NOTES:

Major changes made by the committee substitute to the Senate engrossed version of SB 2 include:

- allowing the Texas Water Advisory Council and interagency water advisory account to expire September 1, 2003, unless extended by the 78th Legislature;
- removing provisions related to deposit of water rights into the Texas Water Trust;
- adding provisions requiring the regional planning groups to report on how local and regional entities can pay for water projects identified in the regional water plans and the state's role in financing such projects; and
- providing that requirements regarding the transport of groundwater out of a groundwater conservation district would apply only to a transfer initiated after September 1, 1997.

According to the bill's fiscal note, CSSB 2 would cost the state an estimated $10.8 million in general revenue in fiscal 2002-03 biennium, mainly because of a decrease of $9 million in sales and use tax revenue due to exemptions

for weather modification and water conservation equipment. Other significant costs would be incurred for designating PGMAs for all major and minor aquifers in the state, groundwater availability modeling costs, and private-sector contracts to collect instream flow data.