

BILL ANALYSIS

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S.B. 1306
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Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005, the 79th Legislature passed H.B. 1763, requiring districts in each groundwater management area (GMA) to jointly plan for the desired future condition (DFC) of each relevant aquifer and submit those conditions to the Texas Water Development Board (TWDB). The joint planning process allows districts to coordinate planned groundwater pumping, using data and models from TWDB and other sources, to gauge effects on groundwater levels aquifer-wide and avoid adverse effects to the aquifer. Districts within each GMA were required to adopt DFCs for each relevant aquifer in the GMA by September 1, 2010. Both TWDB and the Texas Commission on Environmental Quality (TCEQ) have petition processes related to DFCs—TWDB for the reasonableness of a DFC and TCEQ for other elements, mostly related to the implementation of the DFC.

The process for questioning the reasonableness of DFCs at TWDB lacks standard components of administrative processes designed to ensure a clear, fair resolution. Removing the process to challenge the reasonableness of the DFC and, instead, establishing a more rigorous process for adopting DFCs through rule would promote more input into the joint planning process during the establishment of DFC and create an improved process for local decision making in groundwater matters.

As proposed, S.B. 1306 amends current law relating to the procedures for and appeals of desired future conditions adopted by groundwater management areas.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resources Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 2 (Section 36.063, Water Code) of this bill.

Rulemaking authority is expressly granted to the groundwater conservation district in SECTION 4 (Section 36.108, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.001, Water Code, by adding Subdivision (30) to define "desired future condition."

SECTION 2. Amends Section 36.063, Water Code, as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Creates this subsection from existing text. Requires notice of meetings of the board of directors of any district that has the authority to regulate the spacing of water wells, the production from water wells, or both (board; district), except as provided by Subsections (b) and (c), to be given as set forth in the Open Meetings Act, Chapter 551 (Open Meetings), Government Code. Provides that neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

(b) Requires the board, at least 10 days before any meeting or hearing at which the board will consider or take public comments on the desired future condition for an aquifer, including a joint planning meeting under Section 36.108 (Joint Planning in Management Area) attended by a district representative, to post notice that includes:

- (1) the proposed desired future condition or conditions and a list of any other agenda items;
- (2) the date, time, and location of the meeting or hearing;
- (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
- (4) the names of the other districts in the district's management area; and
- (5) information on how the public may submit comments.

(c) Requires notice of a meeting or hearing described by Subsection (b) to be posted:

- (1) in the district office;
- (2) in the county courthouse of each county located wholly or partly in the district;
- (3) with the secretary of state; and
- (4) on the district's Internet website, if the district has an Internet website.

(d) Authorizes the Texas Water Development Board (TWDB) by rule to adopt additional notice provisions for a meeting described by Subsection (b) to ensure reasonable notice to and comment from affected stakeholders such as landowners, permit holders, local officials, and other members of the public.

SECTION 3. Amends Sections 36.1071(a) and (e), Water Code, as follows:

(a) Requires the district, following notice and hearing, to, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) addressing the desired future conditions adopted by the district under Section 36.108, rather than addressing in a quantitative manner the desired future conditions of the groundwater resources.

(e) Requires the district, in the management plan described under Subsection (a) to:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) managed available groundwater in the district based on the desired future condition adopted by rule, rather than established, under Section 36.108;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

SECTION 4. Amends Subchapter D, Chapter 36, Water Code, by amending Section 36.108 and adding Sections 36.1081, 36.1082, 36.1083, 36.1084, and 36.1085, as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) Defines "representative." Makes a nonsubstantive change.

(b) Makes no changes to this subsection.

(c) Requires the district representatives, rather than the presiding officer, or the presiding officer's designee, of each district located in whole or in part in the management area, to 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. Requires the districts, in reviewing the management plans, the districts to 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 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) Requires the districts, not later than September 1, 2010, and every five years thereafter, to consider groundwater availability models and other data or information for the management area and to propose for adoption desired future conditions for the relevant aquifers within the management area. Requires the districts, before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), rather than in establishing the desired future conditions of the aquifers under this section, to 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 (Ownership of Groundwater);
- (8) whether the desired future conditions are physically possible; and
- (9) any other information relevant to the specific desired future conditions, rather than uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another.

(d-1) Creates this subsection from existing text. Makes no further changes.

(d-2) Redesignates existing Subsection (d-1) as Subsection (d-2). Requires the desired future conditions proposed under Subsection (d) to be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. Provides that a 30-day period for public comments begins on the day the proposed desired future conditions are mailed to the districts. Requires each district, during the public comment period and after posting notice as required by Section 36.063, to hold a public hearing on the proposed desired

future conditions relevant to that district. Requires the district, during the public comment period, to 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. Requires the district, after the public hearing, to prepare for consideration at the next joint planning meeting a district report that includes comments received, suggested revisions to the proposed desired future conditions, and the basis for the revisions.

Deletes existing text requiring the desired future conditions established under Subsection (d) to be adopted by a two-thirds vote of the district representatives present at a meeting at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance and for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code. Deletes existing text requiring each district in the management area to ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

(d-3) Requires the district representatives, after the districts have submitted their district reports under Subsection (d-2), to 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. Requires the desired future conditions to be adopted as a resolution by a two-thirds vote of all the district representatives. Requires the district representatives to produce a desired future conditions explanatory report for the management area and submit to TWDB and each district in the management area proof that notice was posted for the adoption meeting, a copy of the resolution, and a copy of the explanatory report. Requires the report to:

- (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 districts and a discussion of how the adopted desired future conditions impact each factor;
- (4) list other desired future condition options considered and the reasons why those options were not adopted; and
- (5) discuss reasons why recommendations made by advisory committees and public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) Requires the district by rule, as soon as possible after a district receives the desired future conditions resolution and explanatory report under Subsection (d-3), to adopt the desired future conditions in the resolution and report that apply to the district.

(d-5) Authorizes a district's adoption of a desired future condition to be appealed in district court in the manner provided under Subchapter H for a challenge to a district rule.

(e) Requires a joint meeting under this section, except as provided by this section, to be held in accordance with Chapter 551, Government Code. Requires each district to comply with Chapter 552 (Public Information), Government Code. Requires each district in the management area to post uniform notice of the

meeting in accordance with Section 36.063, rather than requiring the notice of the meeting to be given in accordance with the requirements for notice of district board of directors meetings under that Act.

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) Requires the Texas Natural Resource Conservation Commission (TNRCC) and TWDB, on request, to make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process under Section 36.108.

(b) Authorizes the district representatives, during the joint planning process under Section 36.108, to appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Sec. 36.1082. PETITION FOR INQUIRY. (a) Defines, in this section, "affected person."

(b) Authorizes an affected person, rather than a district or person with a legally defined interest in the groundwater within the management area, to file a petition with TNRCC requesting an inquiry for any of the following reasons:

- (1) a district fails to submit its management plan to the executive administrator;
- (2) a district fails to participate in the joint planning process under Section 36.108, rather than if a district or districts refused to join in the process;
- (3) a district fails to adopt rules;
- (4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
- (5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
- (6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
- (7) the rules adopted by a district are not designed to achieve the desired future conditions adopted by the management area during the joint planning process;
- (8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or
- (9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

Deletes existing text authorizing a district to file a petition if the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that a district in the groundwater management area has failed to adopt rules; or the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area established during the joint planning process.

(c) Redesignates existing Subsection (g) as Subsection (c). Requires TNRCC, not later than the 90th day after the date the petition is filed, to review the petition and either:

(1) dismiss the petition if TNRCC finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (d), rather than Subsection (h).

(d) Redesignates existing Subsection (h) as Subsection (d). Makes conforming changes.

(e) Redesignates existing Subsection (i) as Subsection (e). Makes conforming changes.

(f) Redesignates existing Subsection (j) as Subsection (f). Makes no further changes to this subsection.

(g) Redesignates existing Subsection (k) as Subsection (g). Requires the review panel to submit its report to TNRCC. Authorizes TNRCC to take action under Section 36.3011 (Failure of District to Conduct Joint Planning).

Sec. 36.1083. **MANAGED AVAILABLE GROUNDWATER.** Requires TWDB to require the districts in a management area to submit the desired future conditions resolution adopted under Section 36.108, proof that notice was posted for the adoption meeting, and the desired future conditions explanatory report to the executive administrator. Requires the executive administrator of TWDB (executive director) to provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon those desired future conditions, rather than condition of the groundwater resources established under this section.

Deletes existing text authorizing a person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area to file a petition with TWDB appealing the approval of the desired future conditions of the groundwater resources established under this section. Deletes existing text requiring the petition to provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area. Deletes existing text requiring TWDB to review the petition and any evidence relevant to the petition. Deletes existing text requiring TWDB to hold at least one hearing at a central location in the management area to take testimony on the petition. Deletes existing text authorizing TWDB to delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. Deletes existing text requiring TWDB, if TWDB finds that the conditions require revision, to submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources. Deletes existing text requiring the districts to prepare a revised plan in accordance with TWDB recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. Deletes existing text requiring the districts, after consideration of all public and TWDB comments, to revise the conditions and submit the conditions to TWDB for review.

Sec. 36.1084. **MANAGEMENT PLAN GOALS AND OBJECTIVES.** Requires each district in the management area to ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

Sec. 36.1085. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. Creates this section from text of existing Section 36.108(p). Makes a conforming change.

SECTION 5. Amends Section 36.3011, Water Code, as follows:

Sec. 36.3011. New heading: COMMISSION ACTION REGARDING DISTRICT DUTIES. Requires the executive director or TNRCC, not later than the 45th day after receiving the review panel's report under Section 36.1082, rather than Section 36.108, to take action to implement any or all of the panel's recommendations. Authorizes TNRCC to take any action against a district it considers necessary in accordance with Section 36.303 if TNRCC finds that:

- (1) the district has failed to submit its management plan to the executive administrator;
- (2) the district has failed to participate in the joint planning process under Section 36.108;
- (3) the district has failed to adopt rules;
- (4) the district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
- (5) the district has failed to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
- (6) the district has failed to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
- (7) the rules adopted by the district are not designed to achieve the desired future conditions adopted by the management area during the joint planning process, rather than condition of the groundwater resources in;
- (8) the groundwater in the management area is not adequately protected by the rules adopted by the district; or
- (9) the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

SECTION 6. Makes application of Sections 36.063(b) and (c), prospective.

SECTION 7. Provides that the requirement that a groundwater conservation district's management plan under Section 36.1071(e), Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive director before the plan is considered administratively complete applies only to a district management plan submitted to the executive director on or after the effective date of this Act. Provides that a management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

SECTION 8. Provides that the procedures for the adoption and reporting of desired future conditions of groundwater resources in a management area under Section 36.108, Water Code, as amended by this Act, and 36.1083, Water Code, as added by this Act, apply only to the adoption of desired future conditions that occurs on or after the effective date of this Act. Provides that desired future conditions adopted before the effective date of this Act are governed by the law in effect on the date the desired future conditions were adopted, and that law is continued in effect for that purpose.

SECTION 9. Requires that a petition filed and pending on the effective date of this Act before TWDB to appeal the adoption of desired future conditions by a groundwater management area under former Section 36.108(l), Water Code, be handled by TWDB in compliance with Sections 36.108(l), (m), and (n), Water Code, as those sections existed before the effective date of this Act.

SECTION 10. Effective date: September 1, 2011.