

## **BILL ANALYSIS**

Senate Research Center  
82R19158 E

C.S.S.B. 660  
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Government Organization  
3/31/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of this bill is to enact the recommendations of the Sunset Advisory Commission on the Texas Water Development Board (TWDB). TWDB was created in 1957 through a state constitutional amendment that authorizes TWDB to issue general obligation water development bonds to provide financial assistance to political subdivisions. To address the state's water needs, TWDB provides loans and grants through state and federal programs to Texas communities for water and wastewater projects, supports the development of regional water plans and prepares the State Water Plan, and collects, analyzes, and disseminates water-related data.

The Sunset Advisory Commission does not address the continuation of the agency because TWDB is not subject to abolishment under the Sunset Act.

C.S.S.B. 660 changes current law by removing any process to petition the reasonableness of a desired future condition (DFC) and instead requiring districts to adopt relevant DFCs through rule, with the proper adoption of the rule subject to challenge in district court, under the same procedures currently used to challenge district rules. The bill strengthens the public notice requirements for joint planning meetings in groundwater management areas and for the adoption of DFCs of aquifers and requires proof of notice to be included in the submission of conditions to TWDB.

The bill requires groundwater management areas to document factors or criteria considered in adopting DFCs and to submit that documentation in an explanatory report to TWDB. C.S.S.B. 660 also requires a representative of a district in each groundwater management area that overlaps with a regional water planning group to serve as a voting member of that regional water planning group. The bill requires that regional water planning groups use DFCs in place at the time of adoption of TWDB's State Water Plan in the next water planning cycle.

C.S.S.B. 660 requires TWDB to evaluate the state's progress in meeting its water needs as part of the State Water Plan. The bill also requires TWDB and the Texas Commission on Environmental Quality, in consultation with the Water Conservation Advisory Council, to develop uniform, detailed gallons per capita daily reporting requirements.

The bill clarifies how TWDB's development fund general obligation bonds are treated for purposes of calculating the constitutional debt limit. The bill also authorizes TWDB to request that the attorney general take legal action to compel a recipient of any of TWDB's financial assistance programs to cure or prevent default in payment. C.S.S.B. 660 clarifies the duties of the Texas Natural Resources Information System and abolishes the Texas Geographic Information Council.

C.S.S.B. 660 changes language in Section 6.114, Water Code, regarding defaults and remedies in TWDB's financial assistance programs, to more clearly define TWDB's right to secure proper performance of a borrower's obligations before a default arises. C.S.S.B. 660 also adds Section 6.115, Water Code, to require the attorney general, at the request of TWDB, to pursue a receivership to carry on the business of the financial assistance recipient—principally water supply corporations—and provides the powers needed to cure the default. The bill also adds provisions for the proper performance of the receiver's duties, including dissolving the receivership.

C.S.S.B. 660 amends current law relating to the review and functions of TWDB, including the functions of TWDB and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource 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 Natural Resource Conservation Commission (TNRCC) in SECTION 5 (Section 11.1271, Water Code) of this bill.

Rulemaking authority is expressly granted jointly to the Texas Water Development Board (TWDB) and TNRCC in SECTION 10 (Section 16.402, Water Code) of this bill.

Rulemaking authority is expressly granted to TWDB in SECTION 14 (Section 36.063, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 6.013, Water Code, as follows:

Sec. 6.013. SUNSET PROVISION. Provides that the Texas Water Development Board (TWDB) is subject to review under Chapter 325 (Texas Sunset Act), Government Code, but is not abolished under that chapter. Requires TWDB to be reviewed during the period in which state agencies abolished in 2023, rather than 2011, and every 12th year after 2023, rather than 2011, are reviewed.

SECTION 2. Amends Subchapter D, Chapter 6, Water Code, by adding Sections 6.113, 6.114, and 6.115, as follows:

Sec. 6.113. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TWDB to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TWDB rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the TWDB's jurisdiction.

(b) Requires that TWDB's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires TWDB to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

Sec. 6.114. FINANCIAL ASSISTANCE PROGRAMS: DEFAULT, REMEDIES, AND ENFORCEMENT. (a) Defines, in this section, "default" and "financial assistance program recipient."

(b) Requires the attorney general, in the event of a default and on request by TWDB, to seek:

(1) a writ of mandamus to compel a financial assistance program recipient or the financial assistance program recipient's officers, agents, and employees to cure the default; and

(2) any other legal or equitable remedy TWDB and the attorney general consider necessary and appropriate.

(c) Requires that a proceeding authorized by this section be brought and provides that venue is in a district court in Travis County.

(d) Authorizes the attorney general, in a proceeding under this section, to recover reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant.

Sec. 6.115. RECEIVERSHIP. (a) Requires the attorney general, at the request of TWDB, in addition to the remedies provided under Section 6.114 and in the event of a default by an entity other than a city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, to bring suit for the appointment of a receiver to collect the assets and carry on the business of the financial assistance program recipient if necessary to cure the default.

(b) Requires the court to appoint a receiver with such powers and duties as are necessary to cure the default, including but not limited to:

(1) performing audits;

(2) raising wholesale or retail water or sewer rates or other fees;

(3) funding reserve accounts;

(4) making payment of the principal of or interest on bonds, securities, or other obligations purchased or acquired by TWDB; and

(5) taking any other action necessary to prevent or to remedy the default.

(c) Requires the receiver to execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) Requires the receiver, after appointment and execution of bond, to take possession of the books, records, accounts, and assets of the financial assistance program recipient specified by the court. Requires the receiver, until discharged by the court, to perform the duties that the court directs and to strictly observe the final order involved.

(e) Authorizes the court, on a showing of good cause by the financial assistance program recipient, to dissolve the receivership.

(f) Requires that a proceeding authorized by this section be brought and venue is in a district court in Travis County.

SECTION 3. Amends Section 6.154, Water Code, as follows:

Sec. 6.154. COMPLAINT FILE. (a) Requires TWDB to maintain a system to promptly and efficiently act on complaints filed with TWDB, rather than requires TWDB to maintain a file on each written complaint filed with TWDB. Requires TWDB to

maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

Deletes existing text requiring that the file include the name of the person who filed the complaint, the date the complaint is received by TWDB, the name of each person contacted in relation to the complaint, and an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint. Makes nonsubstantive changes.

(b) Requires TWDB to make information available describing its procedures for complaint investigation and resolution, rather than requires TWDB to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of TWDB's policies and procedures relating to complaint investigation and resolution.

SECTION 4. Amends Section 6.155, Water Code, to require TWDB to periodically notify the complaint parties of the status of the complaint until final disposition, rather than requires TWDB, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 5. Amends Section 11.1271, Water Code, by amending Subsection (f) and adding Subsection (g), as follows:

(f) Requires the Texas Natural Resource Conservation Commission (TNRCC) to adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the uniform water use calculation system developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) Requires that, at a minimum, rules adopted under Subsection (f)(2) require an entity to report the most detailed level of municipal water use data currently available to the entity. Prohibits TNRCC from adopting a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 6. Amends Section 16.021, Water Code, by amending Subsections (c), (d), and (e) and adding Subsections (d-1) and (g), as follows:

(c) Requires the executive administrator of TWDB (executive administrator) to designate the director of the Texas Natural Resources Information System to serve as the state geographic information officer. Requires the state geographic information officer to:

(1) coordinate the acquisition and use of high-priority imagery and data sets;

(2) establish, support, and disseminate authoritative statewide geographic data sets;

(3) support geographic data needs of emergency management responders during emergencies;

(4) monitor trends in geographic information technology; and

(5) support public access to state geographic data and resources.

Deletes existing text creating the Texas Geographic Information Council (TGIC) to provide strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies in the State of Texas. Deletes existing text requiring the executive administrator and the executive director of the Department of Information Resources (DIR) to designate entities to be members of TGIC. Deletes existing text requiring the chief administrative officer of each member entity to select one representative to serve on the TGIC. Deletes existing text requiring that the duties of TGIC include providing guidance to the executive administrator in carrying out the executive administrator's duties under this section and guidance to DIR for development of rules related to statewide geo-spatial data and technology standards.

(d) Requires TWDB, not later than December 1, 2016, and before the end of each successive five-year period after that date, to submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

(1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6) (requiring the executive administrator, under the guidance of TGIC, to coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features);

(2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;

(3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and

(4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data.

Deletes existing text requiring member entities of the TGIC that are state agencies, and authorizing member entities that are not state agencies, to provide information to the TGIC about their investments in geographic information and plans for its use. Deletes existing text requiring the TGIC, not later than November 1 of each even-numbered year, to prepare and provide to TWDB, DIR, the governor, and the legislature a report that describes the progress made by each TGIC member entity toward achieving geographic information system goals and in implementing geographic information systems initiatives, and recommends additional initiatives to improve the state's geographic information systems programs.

(d-1) Requires TWDB to consult with stakeholders in preparing the report required by Subsection (d).

(e) Requires the executive administrator, rather than requires the executive administrator under the guidance of the TGIC, to:

(1) further develop the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;

(2) obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;

(3) make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature

subject to the limitations provided by Subsection (f) (prohibiting a recommendation from being made to the Board on Geographic Names of the United States Department of Interior for certain features);

(4) make recommendations to DIR to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;

(5) acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and

(6) coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.

(g) Authorizes TWDB to establish one or more advisory committees to assist TWDB or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection (d). Requires TWDB, in appointing members to an advisory committee, to consider including representatives of: state agencies that are major users of geographic data, federal agencies, local governments, and DIR.

SECTION 7. Amends Section 16.023(b), Water Code, as follows:

(b) Authorizes the strategic mapping account in the general revenue fund to be appropriated only to TWDB to, among other purposes, administer, implement, and operate other programs of the Texas Natural Resources Information System, including the production, storage, and distribution of other digital base maps, as determined by the executive administrator, rather than as determined by the executive administrator or a state agency that is a member of TGIC.

SECTION 8. Amends Section 16.051, Water Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Requires that the state water plan include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress; and

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from TWDB.

(a-2) Authorizes TWDB, to assist TWDB in evaluating the state's progress in meeting future water needs, to obtain implementation data from the regional water planning groups.

SECTION 9. Amends Sections 16.053(c) and (e), Water Code, as follows:

(c) Requires, in addition, the groundwater conservation districts located in each management area, as defined by Section 36.001 (Definitions), located in the regional water planning area to appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group.

(e) Requires each regional water planning group to submit to TWDB a regional water plan that meets certain conditions, including that it is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date TWDB most recently adopted a state water plan under

Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan.

SECTION 10. Amends Section 16.402, Water Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Requires TWDB and TNRCC jointly to adopt rules:

- (1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b) (requiring each entity that is required to submit a water conservation plan to the executive administrator, TWDB, or TNRCC under this code to report annually to the executive administrator on the entity's progress in implementing the plan);
- (2) requiring the uniform water use calculation system developed under Section 16.403 to be used in the reports required by Subsection (b); and
- (3) providing for the enforcement of this section and rules adopted under this section.

Makes nonsubstantive changes.

(f) Requires that rules adopted under Subsection (e)(2), at a minimum, require an entity to report the most detailed level of municipal water use data currently available to the entity. Prohibits TWDB and TNRCC from adopting a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 11. Amends Subchapter K, Chapter 16, Water Code, by adding Section 16.403, as follows:

Sec. 16.403. UNIFORM WATER USE CALCULATION SYSTEM. Requires TWDB and TNRCC, in consultation with the Water Conservation Advisory Council, to develop a uniform system for calculating municipal water use in gallons per capita per day to be used by each entity required to submit a water conservation plan to TWDB or TNRCC under this code.

SECTION 12. Amends Section 17.003, Water Code, by adding Subsections (c), (d), (e), and (f), as follows:

(c) Provides that water financial assistance bonds that have been authorized but have not been issued are not considered to be state debt payable from the general revenue fund for purposes of Section 49-j (Limit on State Debt Payable from General Revenue Fund), Article III, Texas Constitution, until the legislature makes an appropriation from the general revenue fund to TWDB to pay the debt service on the bonds.

(d) Requires the executive administrator, in requesting approval for the issuance of bonds under this chapter, to certify to the Texas Bond Review Board (BRB) the debt service on the bonds that is reasonably expected to be paid from the general revenues of the state, and revenue sources other than the general revenues of the state.

(e) Requires BRB to determine the portion of the debt service on bonds to be issued by TWDB under this chapter that is state debt payable from the general revenues of the state, in accordance with the findings made by BRB in the resolution authorizing the issuance of the bonds and the certification provided by the executive administrator under Subsection (d).

(f) Requires that bonds issued under this chapter that are designed to be paid from the general revenues of the state cease to be considered bonds payable from those revenues if:

(1) the bonds are backed by insurance or another form of guarantee that ensures payment from a source other than the general revenues of the state; or

(2) TWDB demonstrates to the satisfaction of BRB that the bonds no longer require payment from the general revenues of the state and BRB so certifies to the Legislative Budget Board.

SECTION 13. Amends Section 36.001, Water Code, by adding Subdivision (30), to define "desired future condition."

SECTION 14. Amends Section 36.063, Water Code, as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Requires that notice of meetings of TWDB, except as provided by Subsections (b) and (c), be given as set forth in the Open Meetings Act, Chapter 551 (Open Meetings), Government Code. Requires that neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting affect the validity of any action taken at the meeting. Makes a nonsubstantive change.

(b) Requires TWDB, at least 10 days before any meeting or hearing at which TWDB will consider or take public comments on the desired future condition for an aquifer, including a joint planning meeting under Section 36.108 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 that notice of a meeting or hearing described by Subsection (b) 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 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 15. Amends Sections 36.1071(a) and (e), Water Code, as follows:

(a) Requires any district or authority created under Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III, or Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production

from water wells, or both (district), following notice and hearing, in coordination with surface water management entities on a regional basis, to develop a comprehensive management plan which addresses certain management goals, as applicable, including 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 a 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 affect 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 16.** 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, in this section, "district representative." Makes nonsubstantive changes.

(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 of 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, rather than to review management plans and

accomplishments for the management area. Requires the districts, in reviewing management plans, to consider certain factors.

(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, rather than to establish, 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. Authorizes the districts to 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) Redesignates existing Subsection (d-1) as Subsection (d-2). Requires that the desired future conditions proposed under Subsection (d) 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 district. 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 that the desired future conditions established under Subsection (d) 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 Subsection (d-2) 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 that the desired future conditions 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 that the report:

- (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 appeal in district court in the manner provided under Subchapter H for a challenge to a district rule.

(e) Requires that a joint meeting under this section, except as provided by this section, 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 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 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) Redesignates existing Subsection (f) as Subsection (b). Authorizes an affected person to file a petition with TNRCC requesting an inquiry for any of the following reasons, rather than authorizes a district or person with a legally defined interest in the groundwater within the management area to file a petition with TNRCC commission requesting an inquiry:

- (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 district refused to join in the planning 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, rather than 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;
- (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 relating to the process failing to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition providing evidence that a

district in the groundwater management area has failed to adopt rules. Makes conforming and nonsubstantive changes.

(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 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 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 a conforming change.

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

(g) Redesignates existing Subsection (k) as Subsection (g). Makes no further changes.

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 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 the desired future condition of the groundwater resources established under this section.

Deletes existing Subsection (l) 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 that the petition provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.

Deletes existing Subsection (m) 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 finds and recommended revisions to the desired future conditions of the groundwater resources.

Deletes existing Subsection (n) requiring the district 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 required 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 existing Section 36.108(p). Makes a conforming change.

SECTION 17. Amends Section 36.3011, Water Code, as follows:

Sec. 36.3011. New heading: COMMISSION ACTION REGARDING DISTRICT DUTIES. Requires the executive director of TNRCC (executive director), 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 (Action by Commission) 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 the rules adopted by the district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area;
- (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.

Makes nonsubstantive changes.

SECTION 18. Requires groundwater conservation districts, as soon as practicable after the effective date of this Act, to appoint initial representatives to regional water planning groups as required by Section 16.053(c), Water Code, as amended by this Act.

SECTION 19. (1) Requires the Texas Commission on Environmental Quality (TCEQ), not later than January 1, 2013, to adopt rules under Section 11.1271(f), Water Code, as amended by this Act;

- (2) Requires TWDB and TCEQ jointly, not later than January 1, 2013, to adopt rules under Section 16.402(e), Water Code, as amended by this Act; and
- (3) Requires TWDB and TCEQ, not later than January 1, 2013, in consultation with the Water Conservation Advisory Council, to develop the water use calculation system required by Section 16.403, Water Code, as added by this Act.

SECTION 20. Provides that the notice provisions of Sections 36.063(b) and (c), Water Code, as added by this Act, apply only to a meeting or hearing of a groundwater conservation district or a joint planning meeting of groundwater conservation districts held on or after the effective date of this Act. Provides that a meeting or hearing held before the effective date of this Act is subject to the notice provisions in effect at the time of the meeting or hearing, and those provisions are continued in effect for that purpose.

SECTION 21. 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 administrator before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator 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 22. 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 23. 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 24. Effective date: September 1, 2011.