

BILL ANALYSIS

Senate Research Center

C.S.S.B. 302
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Natural Resources
3/27/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Groundwater conservation districts (GCD) across the state are working together within groundwater management areas (GMA) to establish desired future conditions (DFC) for their aquifers and regions. C.S.S.B. 302 requires a GCD to adopt or amend rules as necessary to limit production or allocate groundwater accordingly in order to meet and achieve the DFC. The intent is simple—that management plans establish necessary components in order for the region to actually meet the DFC.

C.S.S.B. 302 requires that the management plan be submitted to the executive administrator of the Texas Water Development Board (TWDB) for administrative approval. TWDB is then required to review the management plan to determine whether the goals of the management plan are consistent to achieve the DFC. If TWDB determines that the management plan is not adequate to achieve the DFC, TWDB may recommend that a GCD make changes to that plan. After changes are made, and TWDB has confirmed that the management plan in place will achieve the DFC, the GCD must readopt the management plan. C.S.S.B. 302 allows for the Texas Commission on Environmental Quality to take enforcement action against a GCD that does not adopt a management plan that achieves the DFC.

C.S.S.B. 302 amends current law relating to the management, operation, rulemaking authority, and oversight of groundwater conservation districts.

[**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 (TCEQ), as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.1071, Water Code, by amending Subsections (c) and (f) and adding Subsections (f-1) and (i), as follows:

(c) Requires the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Water Development Board (TWDB) to provide technical assistance to a district in the development of the management plan required under Subsection (a) (relating to requiring a district to develop a management plan) that may include, if requested by the district, a preliminary review and comment on the plan prior to final approval by TWDB. Makes nonsubstantive changes.

(f) Authorizes the district, prior to the development of the district's management plan and the final approval of that plan under Section 36.1072 (Texas Water Development Board Review and Approval of Management Plan), to:

(1) accept applications for permits submitted to the district under Section 36.113 (Permits for Wells; Permit Amendments);

(2) issue interim permits as provided by Section 36.1133;

(3) adopt rules relating to the registration of, interim permitting of, metering of, reporting of production from, spacing of, and assessment of fees based on authorized or actual production of water from new and existing wells and procedure before the district's board; and

(4) prohibits the district from adopting any rules limiting the production of wells, except rules requiring that groundwater produced from a well be put to a nonwasteful, beneficial use or take any action regarding a permit application, other than an application for an interim permit.

Deletes existing text requiring the district to adopt rules necessary to implement the management plan, prohibiting the district from adopting rules other than rules pertaining to the registration and interim permitting of new and existing wells and rules governing spacing and procedure before the district's board, and authorizing the district to accept applications for permits under Section 36.113, provided the district does not act on any such application until the district's management plan is approved as provided in Section 36.1072. Makes nonsubstantive changes.

(f-1) Requires the district, after the district's management plan is finally approved under Section 36.1072, to adopt or amend rules limiting the production of wells or allocating groundwater and review and amend the terms of any interim permits issued by the district as necessary to implement the management plan and achieve the applicable desired future conditions. Prohibits the district from adopting or amending rules limiting the production of wells or allocating groundwater if the district fails to adopt a management plan as required by this section, submit a management plan to the executive administrator of the Texas Water Development Board (executive commissioner) as required by Section 36.1072, and receive approval of the management plan under Section 36.1072.

(i) Requires TNRCC to take action under Section 36.303 (Action by Commission) pursuant to a petition filed under Section 36.1082 (Petition for Inquiry) to ensure that all districts in the state comply with the requirements of this section.

SECTION 2. Amends Section 36.1072, Water Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Deletes existing text authorizing the executive administrator to request additional information from the district if the information is necessary to qualify, modify, or supplement previously submitted material, but a request for additional information does not render the management plan unapproved. Makes nonsubstantive changes.

(c-1) Requires the executive commissioner, not later than the 60th day after the date of the administrative approval of a district's management plan under Subsection (c), to review the management plan to determine whether goals of the management plan are consistent with the achievement of the desired future conditions established under Section 36.108(d) (relating to groundwater availability models), that are applicable to all or part of the district, considering any available information regarding groundwater levels and request additional information from the district, recommend that the district make substantive changes to the management plan, or approve the management plan.

SECTION 3. Amends Section 36.1073, Water Code, to make nonsubstantive changes.

SECTION 4. Amends Section 36.1082(b), Water Code, to authorize an affected person to file a petition with TNRCC requesting an inquiry for certain reasons, including if the rules adopted by the district do not achieve the applicable desired future condition.

SECTION 5. Amends Section 36.1083(d), Water Code, to require the districts to prepare revised conditions, rather than a revised plan, in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the management area.

SECTION 6. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1133, as follows:

Sec. 36.1133. INTERIM PERMITS. (a) Authorizes a district, before a district's first management plan is finally approved under Section 36.1072, to issue an interim permit for any activity regulated by the district for which a permit is required, subject to rules adopted by the district and modification of the terms of the interim permit as necessary to implement the district's management plan and achieve the applicable desired future conditions after the management plan is finally approved under that section.

(b) Provides that Section 36.113 and the provisions of this chapter relating to permits issued under that section apply to a permit issued under this section to the extent those provisions may be made applicable.

SECTION 7. Amends Section 36.301, Water Code, as follows:

Sec. 36.301. New heading: VIOLATIONS RELATED TO MANAGEMENT PLAN. Requires TNRCC to take appropriate action under Section 36.303 if a district adopts or amends a rule in violation of Section 36.1071(f-1), a district fails to submit a management plan or to receive approval of the management plan under Section 36.1072, a district fails to timely readopt the management plan or to submit the readopted management plan to the executive administrator for approval in accordance with Section 36.1072(e) (relating to a district annually reviewing the plan), the executive administrator determines that a readopted management plan does not meet the requirements for approval, and the district has exhausted all appeals, or a district fails to submit or receive approval of an amendment to the management plan under Section 36.1073 (Amendment to Management Plan). Makes nonsubstantive changes.

SECTION 8. (a) Makes application of Section 36.1071 (Management Plan), Water Code, as amended by this Act, prospective.

(b) Makes application of Section 36.301, Water Code, as amended by this Act, prospective.

SECTION 9. Effective date: upon passage or September 1, 2013.