

## **BILL ANALYSIS**

Senate Research Center

S.B. 2  
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Natural Resources  
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### **DIGEST AND PURPOSE**

Texas currently faces many water challenges. The 75th Texas Legislature enacted a major water planning bill, S.B. 1, in 1999. As proposed, S.B. 2 addresses the implementation and financing of the water strategies and recommendations identified in the last four years by Texas' 16 regional water planning groups.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 2.08 (Section 11.138, Water Code); the governing body of a water authority in SECTION 2.16 (Section 16.053, Water Code); groundwater conservation districts in SECTION 2.45 (Section 36.116, Water Code); the Texas Water Development Board in SECTION 4.01 (Section 15.907, Water Code) and SECTION 4.02 (Section 15.995, Water Code), and the Texas Water Policy Council in SECTION 5.02 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1.01. Amends Title 2A, Water Code, by adding Chapter 9, as follows:

#### **CHAPTER 9. TEXAS WATER POLICY COUNCIL**

Sec. 9.001. DEFINITION. Defines "authority," "board," "commission," and "council."

Sec. 9.002. CREATION AND MEMBERSHIP. Provides that the Texas Water Policy Council (council) is composed of certain members. Prohibits council members from delegating participation or council duties to staff.

Sec. 9.003. TERMS. Provides that council members, except for the commissioner of agriculture, who are officials of state agencies serve terms as determined by the chairman of each agency. Provides that council members who are members of the general public serve staggered six-year terms with the term of one member expiring at a certain date. Authorizes council members to be reappointed to serve additional terms. Requires a vacancy on the council to be filled by appointment by the original appointing authority for the unexpired term.

Sec. 9.004. OFFICERS OF THE COUNCIL. Requires the governor to appoint a council member as the chair of the council for a certain term expiring at a certain date. Requires the council to have a secretary of the council who, by virtue of the position, is to be a full-time employee of the Texas Natural Resource Conservation Commission (commission) but to serve at the pleasure of the council and be accountable only to the council.

Sec. 9.005. COUNCIL STAFF. Requires the commission and the Texas Water Development Board (TWDB), on request of the council, to provide any staff rather than the secretary of the council necessary to assist the council in the performance of its duties.

Sec. 9.006. MEETINGS. Requires the council to meet at certain times. Requires four members to constitute a quorum sufficient to conduct meetings and the business of the council. Provides that the council is subject to Chapters 551 (Open Meetings) and Chapter 2001 (Administrative Procedure), Government Code.

Sec. 9.007. COMPENSATION OF MEMBERS. Requires members of the council to serve without compensation but authorizes them to be reimbursed by legislative appropriation for actual and necessary expenses related to the performance of council duties. Requires reimbursement under this section to be subject to the approval of the chair.

Sec. 9.008. POWERS AND DUTIES OF COUNCIL. Requires the council to perform certain duties. Prohibits the council from performing certain acts. Requires the council to evaluate the need for and, if appropriate, develop a strategy for reorganizing or improving the efficiency of local, regional, and state water management entities and agencies.

Sec. 9.009. REPORT. Requires the council, not later than December 1 of each even-numbered year, to submit a report to certain persons with primary responsibilities over water resource management and financing. Requires the report to include findings of the council made in the periodic reviews of authorities during the preceding two-year period and any other findings and recommendations the council considers necessary.

Sec. 9.010. REVIEW OF AUTHORITIES. Requires the council, on a five-year cycle, to review authorities based on the administrative policies provided by Section 9.012 and performance standards described in Section 9.011. Requires the reviews to be conducted of groups described in this section, with group 1 being reviewed at the council's first quarterly meeting of the five-year period and group 2 being reviewed at the council's third quarterly meeting of the period. Requires the council to continue in numerical order to review one group at every other quarterly meeting until all ten groups have been reviewed and then to recommence the cycle. Requires authorities to be reviewed under this section in certain groups.

Sec. 9.011. PERFORMANCE STANDARDS. Requires the council to review and assess an authority described by Section 9.010 according to whether the authority meets certain criteria. Requires the council in addition to the review and assessment considerations under this section to consider whether certain criteria is developed. Requires an authority, prior to its five-year review under Section 9.010, to assess its compliance with the standards described by this section and to report the results to the council for use during the review.

Sec. 9.012. ADMINISTRATIVE POLICIES FOR AUTHORITIES. Requires each authority subject to this chapter to submit to the council a copy of its administrative policies and any subsequent amendments adopted by its board. Requires the council to file copies of the administrative policies and to make them available for public inspection. Authorizes the council to request additional documents from an authority or inspect records at the office of the authority to determine compliance with the adopted administrative policies. Requires certain provisions to be incorporated into the administrative policies adopted by the authorities subject to these rules.

Sec. 9.013. GIFTS AND GRANTS. Authorizes the council to accept gifts and grants from any source to carry out the purpose of the chapter. Provides that the use of gifts and grants other than legislative appropriations is subject only to limitations contained in the gift or grant.

Sec. 9.014. FUNDING. Provides that the interagency water policy account is a special account in the general revenue fund. Provides that the interagency water policy account consists of legislative appropriations, gifts, and grants received under Section 9.013, and other money required by law to be deposited in the account. Authorizes funds in the interagency water policy account to be used only as provided by this chapter.

Sec. 9.015. CONTINUING RIGHT OF SUPERVISION. Requires that nothing in this chapter affect the continuing right of supervising river authorities by the commission as provided by Section 12.081.

ARTICLE 2. SURFACE WATER AND GROUNDWATER  
CONJUNCTIVE MANAGEMENT;  
REGULATORY INCENTIVES

SECTION 2.01. Amends Section 11.002, Water Code, by adding Subdivisions (7), (11), (12), and (13), to define “instream use,” “river basin,” “agriculture,” and “agricultural use.”

SECTION 2.02. Amends, Section 11.023(a), Water Code, to authorize state water to be appropriated, stored, or diverted for certain purposes.

SECTION 2.03. Amends Section 11.024, Water Code, to provide that the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefor declared to be the public policy of this state that in appropriating state water preference to be given to certain uses, in order to conserve and properly utilize state water.

SECTION 2.04. Amends Section 11.085(p) and (s) through (v), Water Code, to delete text regarding a designation of a basin. Deletes text providing the transfer of water is junior in priority to water rights and written agreements or permits will be junior in priority. Provides that the provisions of this section, except Subsection (a), do not apply to a proposed transfer of newly developed water introduced into the basin through seawater desalination. Makes nonsubstantive and conforming changes.

SECTION 2.05. Amends Section 11.1271(b), Water Code, to require the commission to require the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet as year or more for municipal , industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses, to develop, submit, and implement a water conservation plan, consistent with the state, rather than appropriate approved regional, water plan, that adopts reasonable water conservation measures as defined by Section 11.002(8)(b).

SECTION 2.06. Amends Section 11.1272(a), Water Code, to make a conforming change.

SECTION 2.07. Amends Section 11.134(b), Water Code, to require the commission to grant the application only if the proposed appropriation considers the assessments performed under Sections 11.147(d) and (e) and Sections 11.150-11.152. Deletes text regarding an area proposed for appropriation. Makes a nonsubstantive change.

SECTION 2.08. Amends Section 11.138(a), Water Code, to authorize the commission by rule to authorize the beneficial use, without a permit, of not more than 25 acre-feet of water, for a term not to exceed one year, if the diversion of water will not effect existing water right holders and the user of the water registers the use with the commission in the manner required by the commission.

SECTION 2.09. Amends Section 11.142(a), Water Code, to provide that a person who temporarily stores more than 200 acre-feet of water in a dam or reservoir described by this subsection is not required to obtain a permit for the dam or reservoir if the person can demonstrate that the person has not stored in the dam or reservoir more than 200 acre-feet of water on average in any 12-month period. Makes a nonsubstantive change.

SECTION 2.10. Amends Section 11.146, Water Code, by adding Subsection (g), to provide that this section does not apply to a permit for construction of a reservoir designed for the storage of more than 75,000 acre-feet of water.

SECTION 2.11. Amends Section 11.1501, Water Code, to delete text regarding regional water plans

for the use of areas where the water is proposed to be stored, diverted, or used.

SECTION 2.12. Amends Section 11.173(b), Water Code, to expand the reasons for which a permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication may be exempt from cancellations under Subsection (a).

SECTION 2.13. Amends Section 11.177(b), Water Code, to require the commission, in determining what constitutes reasonable diligence or a justified nonuse as used in Subsection (a)(2), to give consideration to certain factors. Deletes text regarding the permit, certified filing, or certificate of adjudication being obtained to meet demonstrated public water supply and needs and obtained as the result of a construction of a reservoir.

SECTION 2.14. Amends Section 16.012, Water Code, by adding Subsections (l) and (m), as follows: (l) Requires the executive administrator to obtain or develop groundwater availability models for major and minor aquifers in coordination with regional water planning groups created under Section 16.053 that overlie the aquifers. Requires the executive administrator, on completing a groundwater availability model for the aquifer, to provide the model to each groundwater conservation district and each regional water planning group created under Section 16.053 overlying that aquifer. (m) Requires the executive administrator to conduct surveys of persons using groundwater and surface water at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Requires recipients to complete and return the survey to the executive administrator. Requires persons who fail to timely return the survey to not be eligible for funding from the board for board programs and to be ineligible to obtain permits, permit amendments, or permit renewals from the commission under Chapter 11.

SECTION 2.15. Amends Section 16.051(a), (f), (g), and (h), to require the board, no later than January 5, 2002, and before the end of each successive five-year period after that date, rather than every five years, to prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053 to the extent the board determines that such plans provide for the efficient use and development of the groundwater and surface water resources of the state. Provides that this designation solely means that a state agency or political subdivision of the state is prohibited from financing the construction of a reservoir in a stream segment designated by the legislature under this subsection. Authorizes the legislature to designate a site of unique value for the construction of a reservoir. Deletes text regarding destroying the unique ecological value of a river or stream. Authorizes the board, the commission, or the Parks and Wildlife Department or a political subdivision affected by an action taken in violation of Subsections (f) and (g) to bring a cause of action to remedy or prevent the violation. Makes nonsubstantive changes.

SECTION 2.16. Amends Section 16.053(d) and (e), Water Code, to require the board by rule to require certain permit holders, certificate holders, or water suppliers to report to the board information on certain water pipelines and other facilities that can be used for water conveyance. Requires each regional water planning group to submit to the board a regional water plan that identifies certain information.

SECTION 2.17. Amends Section 16.053(h)(8), Water Code, to require notice required by Subdivisions (1), (3), or (6) of this subsection or by Section 16.0531 to be published or mailed to certain entities.

SECTION 2.18. Amends Section 16.053(j), Water Code, to delete text relating to a board determination regarding a projects consistency with the regional water plan.

SECTION 2.19. Amends Chapter 16A, Water Code, by adding Sections 16.0531 and 16.0532, as follows:

Sec. 16.0531. GROUNDWATER MANAGEMENT STANDARD. Requires each regional

water planning group, as part of a regional water plan required by Section 16.052(e), to adopt a groundwater management standard for each source of groundwater that is a source of water for the regional planning area in accordance with the guidelines provided by Sections 16.053(d) and (f). Requires the groundwater management standards to describe the desired condition of the groundwater source as indicated by indices of quantity of water in the source, quality of water produced from the source, or subsidence of the land surface. Requires the groundwater management standard to describe this condition for various time periods throughout the planning period. Requires a regional water planning group to consider the groundwater management standards contained in certified groundwater conservation plans submitted to the regional water planning group under Section 16.054. Requires a regional water planning group, prior to the adoption of groundwater management standards, to hold at least one public meeting at a central location to gather suggestions and recommendations from the public about what issues to consider with regard to groundwater management standards after providing notice in accordance with Section 16.053(h)(8).

Sec. 16.0532. GROUNDWATER WITHDRAWAL RATE. Requires each regional water planning group to determine groundwater withdrawal rates based on the groundwater management standard adopted under Section 16.0531(a) for each source of groundwater that is a source of water for the regional water planning area in accordance with the guidelines provided by Sections 16.053(d) and (f). Requires the regional water planning groups to use groundwater availability modeling information provided by the executive administrator to determine these rates. Requires the groundwater withdrawal rate to be the maximum rate of production that will allow the groundwater management standard to be realized. Requires a groundwater withdrawal rate to be set for various time periods throughout the planning period. Requires the regional water planning group to consider the groundwater withdrawal rates contained in certified groundwater conservation plans submitted to the regional water planning group under Section 16.054.

SECTION 2.20. Amends Section 16.054(a), (c), and (d), Water Code, to authorize the Department of Agriculture (TDA) to provide input and assistance, as appropriate, for local water planning. Requires a person, when preparing a plan to be submitted under this section, to consider the implementation of a desalination program if practicable. Provides that when preparing individual water plans that address drought or the development, management, or conservation of water resources from the holders of existing permits, certified filings, or certificates of adjudication, the water suppliers, groundwater districts, special districts, irrigation districts, and other water users should ensure that the plan is not in conflict with the state water plan, rather than for their region, after January 5, 2002. Makes conforming and nonsubstantive changes.

SECTION 2.21. Amends Section 18.081(b), Water Code, to authorize the commission, if requested by at least 25 persons, to hold at least one public meeting, rather than hearing, in the area where the operation is to be conducted prior to the issuance of permit.

SECTION 2.22. Amends Section 35.002(11), Water Code, to redefine "management area."

SECTION 2.23. Amends Section 35.004, Water Code, as follows:

Sec. 35.004. DESIGNATION OF MANAGEMENT AREAS. Requires the TWDB, with assistance and cooperation from the commission, to designate groundwater management areas covering all major and minor aquifers in the state. Requires the initial designation of management areas to be completed by September 1, 2003. Deletes text regarding the commission designating groundwater management areas. Deletes text regarding the executive director preparing evidence. Deletes text regarding Administrative Procedure Act, Subchapter B. Makes conforming changes.

SECTION 2.24. Amends Sections 35.007(a) and (f), Water Code, to require the executive director

and the executive administrator to meet periodically to identify, based on information gathered by the commission and the TWDB, those areas of the state that are experiencing or that are expected to experience, within the immediately following 25-year period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Requires the commission, with assistance and cooperation from the TWDB, by September 1, 2005, to complete the initial designation of priority groundwater management areas across all major and minor aquifers of the state for all areas that meet the criteria for such designation. Authorizes the studies to be prioritized considering information from the regional planning process, information from the TWDB groundwater management areas and groundwater conservation districts, and any other information available. Requires the commission and the TWDB, after the initial designation of priority groundwater management areas, to annually review the need for additional designations as provided by this subsection. Requires the report to include certain information.

SECTION 2.25. Amends Section 35.008, Water Code, as follows:

Sec. 35.008. New heading: PROCEDURES FOR DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA; CONSIDERATION OF CREATION OF NEW DISTRICT OR ADDITION OF LAND N PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT; COMMISSION ORDER. Requires the commission to call an evidentiary hearing to consider certain issues. Requires affected persons to include landowners and well owners in the proposed priority groundwater management area. Requires any evidentiary hearing to be concluded not later than the 75th day after the date notice of the hearing is published. Require the commission, at the conclusion of the hearing and the commission's consideration, to issue an order stating its findings and conclusions, including whether a priority groundwater management area should be designated in the area and recommendations regarding district creation as set forth in this section. Requires the commission's order designating a priority groundwater management area to recommend that the area be covered by a district in certain ways. Requires the commission, in recommending the boundaries of a district or districts under this section, to give preference to boundaries that are coterminous with those of the priority groundwater management area, but are authorized to recommend district boundaries along existing political subdivision boundaries at the discretion of the commission to facilitate district creation and confirmation. Makes a conforming change.

SECTION 2.26. Amends Sections 35.009(a) and (b), Water Code, to require notice to be published not later than the 30th day before the date set for the hearing. Deletes text regarding the creation of a district or an addition to an existing district. Deletes text regarding the commission considering the designation of priority groundwater management area. Makes a conforming change.

SECTION 2.27. Amends Section 35.012, Water Code, as follows:

Sec. 35.012. New heading: CREATION OF DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA. Authorizes the landowners in the priority groundwater management area, following the issuance of a commission order under Section 35.008 designating a priority groundwater management area and recommending the creation of one or more districts, or the addition of land to an existing district, to perform certain procedures. Deletes text regarding the commission issuing an order of its findings and conclusions. Requires the commission, within two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, to perform certain duties. Requires the Texas Agricultural Extension Service, following the issuance of a commission order under Section 35.008, to begin an educational program within such areas with the assistance and cooperation of certain entities to inform the residents of the status of the area's water resources and management options including formation of a district. Deletes text regarding the commission identifying the areas that

have not been incorporated. Requires the county commissioners court of each county in the priority groundwater management area to form a steering committee to provide assistance to the Texas Agricultural Extension Service in accomplishing the goals of the education program within the area. Deletes text regarding the commission issuing an order.

SECTION 2.28. Amends Section 35.013, Water Code, to require the commission, if the commission in its order under Section 35.008 recommends that the priority groundwater management area, or a portion of the priority groundwater district, be added to an existing district, to give notice to the board of the existing district recommended in its order and to any other existing districts adjacent to the priority groundwater management area. Deletes text a reference to the “executive director.” Deletes text regarding commission adding a priority area to an adjacent existing district. Requires the board, if the board votes to accept the addition of the priority groundwater management area to the district, to perform certain procedures. Provides that if the proposition is defeated, or if the board of the existing district votes not to accept the addition of the area to the district, then the commission is required, except as provided under this section, to create under Section 36.0151 one or more districts covering the priority groundwater management area within one year of the date on which the proposition is defeated or the board votes not to accept the area. Requires the commission, for an area which is not feasible for the creation of one or more districts as determined in the commission’s findings under Section 35.008, to include in its report under Section 35.018 recommendations for the future management of the priority groundwater management area. Makes nonsubstantive and conforming changes.

SECTION 2.29. Amends Section 35.018(c), Water Code, to authorize the commission, if the commission determines that a district created under Chapter 36 is not appropriate for, or capable of, the protection of the groundwater resources for a particular management area or priority groundwater management area, to recommend in its report to the legislature the creation of a special district or amendment of an existing district. Deletes text regarding voters failing to create a groundwater district. Deletes text regarding a requirement that the commission manage the priority groundwater management area.

SECTION 2.30. Amends Section 36.001, Water Code, by amending Subdivision (13) and adding Subdivisions (18), (19), and (20), to redefine “management area,” and define “river basin,” “agriculture,” and “agricultural use.”

SECTION 2.31. Amends Section 36.002, Water Code, to provide that the ownership and rights of the owners of the land and their leases and assigns in groundwater are hereby recognized, and nothing in this code is to be construed as depriving or divesting the owners of their leases and assigns of the ownership of rights, except as such rights are authorized to be limited or altered by rules promulgated by a district. Makes a nonsubstantive change.

SECTION 2.32. Amends Section 36.011(b), Water Code, to delete text regarding delineation of management areas.

SECTION 2.33. Amends Section 36.012, Water Code, by adding Subsection (f), to provide that this section does not apply to districts created under Section 36.0151.

SECTION 2.34. Amends Section 36.014, Water Code, to require the commission, if a petition is filed under Section 36.013, to give notice of an application as required by Section 49.011(a) and to require, rather than authorize, the commission to conduct an evidentiary hearing in a central location within the area of the proposed district on the application not later than the 120th day after the date the commission issues notice, rather than if the commission determines that a hearing is necessary, under Section 49.011(a). Requires the commission, at the evidentiary hearing, to receive evidence from affected persons. Deletes text regarding a petition containing a request. Makes nonsubstantive changes.

SECTION 2.35. Amends Section 36.015, Water Code, as follows:

Sec. 36.015. New heading: CREATION OF A DISTRICT BY PETITION; COMMISSION FINDING AND ORDER. Requires the commission, at the completion of an evidentiary hearing held under Section 36.014, to consider the evidence received at the hearing. Authorizes the commission, if the commission considers further information necessary, to request such information from any source. Deletes text regarding the commission finding a district feasible and practicable. Requires the commission, within 120 days of the date the commission held the evidentiary hearing under Section 36.014, to perform certain duties. Requires the commission, if the commission issues an order denying the petition, to provide the petitioners, in writing, the reasons for the action. Requires the commission, in delineating district boundaries, to give preference to boundary lines that are coterminous with those of a groundwater management area, but authorizes the desalination of such boundaries along existing political subdivision boundaries at the discretion of the commission to facilitate district creation and confirmation. Authorizes the commission, if the petition requests additional terms or conditions restricting the powers of the district that are different from the terms or conditions provided by this chapter and the commission finds that the requested restriction of powers would still allow the district to properly manage the groundwater resources within the district, to specify in its order creating the district the powers provided in this chapter that do not apply to the district. Deletes text regarding the commission acting on a petition.

SECTION 2.36. Amends Section 36.0151(a), Water Code, to provide that if the commission is required to create a district under Section 35.012(b), rather than 35.012(d), it is required, without an evidentiary hearing, to issue an order creating the district and to provide in its order that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to authorize the district to assess taxes, rather than confirm the creation of the district, and to elect permanent directors. Makes nonsubstantive changes.

SECTION 2.37. Amends the Section heading and Sections 36.017(a) and (d), Water Code, as follows:

Sec. 36.017. New heading: CONFIRMATION AND DIRECTORS' ELECTION FOR DISTRICT IN A MANAGEMENT AREA. Requires the temporary directors, for a district created under Section 36.015, not later than the 120th, rather than the 60th, day after the date all temporary directors have been appointed and have qualified, to meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors. Provides that if the district levies a maintenance tax for payment of its expenses, then an additional proposition is required to be included with certain language. Makes nonsubstantive changes.

SECTION 2.38. Amends Chapter 36B, Water Code, by adding Section 36.0171, as follows:

Sec. 36.0171. TAX AUTHORITY AND DIRECTORS' ELECTION FOR DISTRICT IN A PRIORITY GROUNDWATER MANAGEMENT AREA. Requires the temporary directors, for a district created under Section 36.0151, not later than the 120th day after the date all temporary directors have been appointed and have qualified, to meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors. Require the temporary directors to publish notice of the election at least once in at least one newspaper with general circulation within the boundaries of the proposed district. Requires the notice to be published before the 30th day preceding the date of the election. Requires the ballot for the election to be printed to provide for voting or against a proposition with certain language. Requires the presiding judge of the polling place, immediately after the election, to deliver the returns of the election to the temporary board, and the board to canvass the returns and declare the result. Requires the board to file a copy of the election result with the commission. Requires the temporary board, if a majority of the votes cast at the election favor the levy of a maintenance tax, to declare the levy approved and to enter the result in its minutes. Requires the temporary board, if a majority of the votes cast at the election are



against the levy of a maintenance tax, to declare the levy defeated and to enter the result in its minutes. Requires the district, if the majority of the votes cast at the election are against the levy of a maintenance tax, to set permit fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 2.39. Amends Section 36.019, Water Code, to provide that this section does not apply to districts created under Section 36.0151.

SECTION 2.40. Amends Section 36.066(g), Water Code, to provide that the district, if the district prevails in any suit other than a suit in which it voluntarily intervenes, may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. Makes conforming changes.

SECTION 2.41. Amends Section 36.101(a), Water Code, to authorize a district to make and enforce rules, including rules limiting groundwater production based on the tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence or prevent waste of groundwater and to carry out the powers and duties provided by this chapter.

SECTION 2.42. Amends Sections 36.102(b) and (d), Water Code, to authorize the board by rule to set reasonable civil penalties for breach of any rule of the district not to exceed \$5,000 per day per violation, and provides that each day of a continuing violation constitutes a separate violation. Authorizes the district, in addition to this penalty or any other penalty provided by law, to seek and the court to grant a penalty equal to 115 percent of the economic benefit gained from the violation. Deletes text regarding jurisdiction of a justice court. Provides that the district, if the district prevails in any suit to enforce its rules, may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court.

SECTION 2.43. Amends Section 36.1071, Water Code, by amending Subsections (a), (b), and (e), to require the 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 conservation. Requires a district management plan, after January 5, 2002, or any amendments to a district management plan, to be consistent with the state, rather than regional, water plan. Deletes text regarding a regional water plan. Requires the district, in the management plan described under this section, to perform certain procedures. Requires the groundwater management plan standard to describe the desired condition of the groundwater source as indicated by indices of quantity of water in the source, quality of water produced from the source, and subsidence of the land surface for various periods throughout the time period covered by the plan.

SECTION 2.44. Amends Section 36.108, Water Code, to require each district, on completion and certification of the plan as required by Section 36.1072, to forward a copy of the new or revised management plan to the other districts in the management area. Requires the boards of the districts to consider the plans individually and to compare them to other management plans then force in the management area. Provides that the board of directors of each district in the management area is authorized, by resolution, to call for joint planning, rather than a meeting, with other districts in the management area to review the management plans and accomplishments for the management area. Deletes text regarding boards of directors. Deletes text requiring the boards to meet. Requires the meeting, if a joint meeting of the boards of directors is called, to be held in accordance with Chapter 551 (Open Meetings), Government Code. Authorizes a district in the management area to file with good cause a petition with the commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning, and other district or districts either refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence that certain conditions exist. Requires the commission, if the petition is not dismissed under this section, to appoint a review panel consisting of a chairman and four other members. Requires the review panel, not later than the 120th day after the appointment, to review the petition and any evidence relevant to the

petition and, in a public meeting, consider and adopt, rather than prepare, a report to be submitted to the commission. Requires the review panel to submit its report to the commission. Authorizes districts located within the same management areas or in adjacent management areas, to contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. Authorizes such joint efforts to include certain studies of groundwater availability and quality. Authorizes the districts to contract under existing authorization including those of Chapter 791 (Interlocal Cooperation Contracts), Government Code, provided, however, that their contracting authority is not limited by Sections 791.011(c)(2) (An interlocal contract may provide a governmental function or service), 791.011(d)(3) (An interlocal contract must specify certain function or services), and Section 791.014 (Approval Requirement for Counties), Government Code. Makes a nonsubstantive change.

SECTION 2.45. Amends Section 36.116, Water Code, to authorize a district by rule to take certain actions to regulate the spacing of wells, in order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste.

SECTION 2.46. Amends Section 36.122, Water Code, to authorize the district, if a permit or an amendment to a permit under Section 36.113 proposes to transfer groundwater outside of a district's boundaries, to also consider the provisions of this section in determining whether to grant or deny the permit. Authorizes a district to promulgate rules requiring a person to obtain a permit or an amendment to a permit under Section 36.113 from the district for the transfer of groundwater out of the district to achieve certain conditions. Prohibits the district from imposing more restrictive permit conditions on transporters than the district imposes on existing in-district use. Prohibits the fee from exceeding fees that the district imposes for processing other applications under Section 36.113. Requires an application filed to comply with this section to be considered and processed under the same procedures as other applications filed to obtain a permit for in-district water use under Section 36.113 from the same applicant. Authorizes a district to impose a reasonable fee or surcharge for an export fee not to exceed certain amounts. Prohibits a district from imposing a fee under this section on withdrawal of water from land owned prior to March 1, 2001, by a political subdivision if the political subdivision pays a tax mitigation fee under Section 36.206(c). Deletes text regarding the district giving notice of the application. Prohibits the district from denying a permit based on the fact that the applicant seeks to transfer groundwater outside of the district. Deletes text regarding limiting a permit issued. Requires the specified period to be at certain intervals. Requires a term of five years under this section to automatically be extended to 30 years if construction of a conveyance system is begun before the expiration of the initial five-year term. Require the district, in its determination of whether to renew a permit issued under this section, to consider relevant and current data for the conservation of groundwater resources and to consider the permit in the same manner it would consider any other permit in the district. Provides that a district is prohibited from using revenues obtained under this section to prohibit the transfer of groundwater outside of a district. Requires a district that charges a fee under this section to provide 50 percent of any revenues resulting such fee to the water infrastructure fund annually beginning September 1, 2002. Deletes text stating a district may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997. Makes a conforming change.

SECTION 2.47. Amends Section 36.206, Water Code, by adding Subsection (c), to require political subdivisions that own property that is suitable for groundwater development to annually pay a district in which the property is located a fee that is equal to the taxes that would be paid to the district if the land were not owned by a political subdivision.

SECTION 2.48. Amends Chapter 36I, Water Code, by adding Section 36.3011, as follows:

Sec. 36.3011. FAILURE OF A DISTRICT TO CONDUCT JOINT PLANNING. Requires the commission, if the board of a district within a common management area fails to forward a copy of its new or revised certified management plan under Section 36.108, to take appropriate action under Section 36.303. Requires the executive director or the commission,

within 45 days after receiving the review panel's report under Section 36.108, to take action to implement any or all of the panel's recommendations. Authorizes the commission to take any action it considers necessary in accordance with Section 36.303, if the commission finds that a district in the joint planning area has failed to adopt rules, the groundwater in the management area is not adequately protected by the rules adopted by the district, or the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

SECTION 2.49. Amends Section 36.303(a), Water Code, to add additional items to the list of actions the commission may take, after notice and hearing in accordance with Chapter 2001 (Administrative Procedure), Government Code, if Section 36.109, 36.301, or 36.302(f) applies.

SECTION 2.50. Amends Chapter 36I, Water Code, by adding Section 36.3035, as follows:

Sec. 36.3035. APPOINTMENT OF A RECEIVER. Requires a district court, if the attorney general brings a suit for the appointment of a receiver for a district, to appoint a receiver if an appointment is necessary to protect the assets of the district. Requires the receiver to execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties. Requires the receiver, after appointment and execution of bond, to take possession of the assets of the district specified by the court. Requires the receiver, until discharged by the court, to perform the duties that the court directs to preserve the assets and carry on the business of the district to strictly observe the final order involved. Authorizes the court, on a showing of good cause by the district, to dissolve the receivership and order the assets and control of the business returned to the district.

SECTION 2.51. Amends Section 51.149, Water Code, as follows:

Sec. 51.149. CONTRACTS. Provides that no approvals other than those specified in this section and in Section 1, Chapter 778 (Relating to contracts from proceeds), Acts of the 74th Legislature, Regular Session, 1995, need to be obtained in order for a contract between a district and a municipality to be valid, binding, and enforceable against all parties to the contract. Authorizes a district, after approval by a majority of the electors voting at an election conducted in the manner of a bond election, to make payments under a contract from taxes for debt that does not exceed 30 years.

### ARTICLE 3. DISTRICT RATIFICATIONS

Provides for the ratification of the following districts created by the 76th Legislature, 1999:

The Cow Creek Groundwater Conservation District; Crossroads Groundwater Conservation District; Hays Trinity Groundwater Conservation District; Middle Pecos Groundwater Conservation District; Refugio Groundwater Conservation District; and the Texana Groundwater Conservation District.

### ARTICLE 4. WATER INFRASTRUCTURE FINANCING

SECTION 4.01. Amends Chapter 15, Water Code, by adding Subchapter O, as follows:

#### SUBCHAPTER O. WATER INFRASTRUCTURE FUND

Sec. 15.901. DEFINITIONS. Defines "eligible political subdivision," "fund," "metropolitan statistical area," "political subdivision," and "project."

Sec. 15.902. FINDINGS. Sets forth legislative findings.

Sec. 15.903. WATER INFRASTRUCTURE FUND. Provides that the water infrastructure fund is created as a special account in the general revenue account, to consist of certain revenues and fees.

Sec. 15.904. USE OF WATER INFRASTRUCTURE FUND. Sets forth provisions for the use of funds by the board. Prohibits funding from exceeding a certain amount. Authorizes principal and interest payments on loans to be deferred for a certain amount of time.

Sec. 15.905. APPROVAL OF APPLICATIONS. Sets forth provisions by which the board is authorized to approve an application. Requires a program of water conservation to be in the same manner as an application for financial assistance. Authorizes the board to deliver funds for a project relating to surface water development if the executive director makes a written finding of certain information.

Sec. 15.906. APPLICABLE PROVISIONS. Provides that the provision of Chapter 17E, apply to financial assistance made available from the fund.

Sec. 15.907. RULES. Requires the board to establish rules related to certain board duties.

Sec. 15.908. SALE OF POLITICAL SUBDIVISION BONDS. Authorizes the board to sell or dispose of political subdivision bonds at the price and under terms the board considers reasonable. Authorizes the board to sell political subdivision bonds without making a previous offer to the political subdivision that issued the bonds and without advertising, soliciting, or receiving bids for sale. Authorizes the board to sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the fund and to apply the proceeds of a sale in the manner provided by this section. Requires the proceeds from the sale of the political subdivision bonds to be deposited in the fund. Authorizes the board to agree to perform functions required to ensure that the political subdivision pays the debt service on political subdivision bonds sold and conserves the conditions and requirements stated in those bonds. Authorizes the board to exercise certain powers to carry out the authority.

Sec. 15.909. FUNDING FOR LOCAL ECONOMIC DEVELOPMENT. Authorizes the board to use the fund for certain purposes. Prohibits the board from purchasing political subdivision bonds that are secured by ad valorem taxes unless the political subdivision submits evidence satisfactorily to the board that the issuance of the bonds has been approved by the voters.

Sec. 15.910. AUTHORITY TO ESTABLISH ECONOMIC DEVELOPMENT PROGRAMS. Authorizes an eligible political subdivision to establish development programs and make loans and grants of public funds for certain purposes. Authorizes financial assistance received from the fund to be used by an eligible subdivision to make loans or grants to persons for certain project purposes. Authorizes the political subdivision to determine terms and conditions governing the loan or grant of money and determine whether to approve an agreement.

Sec. 15.911. Prohibits an eligible political subdivision from selling or incurring obligations to fund an economic development program that are payable in whole or in part from ad valorem taxes unless the residents of the political subdivision approve the issuance of obligations to fund an economic development program for certain purposes.

SECTION 4.02. Amends Chapter 15, Water Code, by adding Subchapter P, as follows:

#### SUBCHAPTER P. RURAL WATER ASSISTANCE FUND

Sec. 15.951. PURPOSE. Sets forth legislative purpose.

Sec. 15.952. DEFINITIONS. Defines “federal agency,” “fund,” “rural political subdivision,” and “state agency.”

Sec. 15.953. CREATION OF FUND. Establishes the rural water assistance fund, and provides that it consists of funds from different sources.

Sec. 15.954. USE OF FUND. Authorizes the fund to be used to provide low-interest loans to rural subdivisions for certain projects. Authorizes the fund to be used to enable or finance certain purposes. Authorizes a rural political subdivision to enter into an agreement with certain entities to submit an application for financial assistance. Provides that a nonprofit water supply or sewer service corporation is exempt from payment of any sales tax. Authorizes the fund to be used as a source for the payment of certain costs.

Sec. 15.955. FINANCIAL ASSISTANCE. Requires the board to adopt rules to administer this subchapter. Requires the board to not deliver funds to an application for financial assistance until the executive administrator makes certain findings. Requires the board to consider certain criteria. Authorizes the board to approve an application if the board finds certain conditions exist. Requires a program of water conservation to be required to meet the same conditions as an application for financial assistance under Section 15.106. Provides that Sections 17.183-17.187 apply to the construction of projects funded pursuant to this subchapter.

SECTION 4.03. Amends Chapter 11D, Water Code, by adding Section 11.1352, as follows:

Sec. 11.1352. ANNUAL WATER RIGHTS FEE. Requires the commission to assess a fee for water rights held under the authority of this chapter. Prohibits a fee from being assessed for water rights for municipal use. Requires the fee to be paid annually and based on certain criteria. Requires fees to be assessed for certain uses and to not exceed certain amounts. Requires fees to be deposited to a special fund. Provides that a water right holder is not subject to a fee for a water right under certain conditions. Requires a political subdivision, under certain conditions, to pay fees. Requires a groundwater conservation district to pay annual fees to receive funding. Requires the fees to be used for certain uses and limits those fees to certain amounts.

SECTION 4.04. Amends Chapter 15B, Water Code, by adding Section 15.013, as follows:

Sec. 15.013. WATER FEE. Requires each county to annually remit to the comptroller a certain fee in a certain amount as determined by the most recent federal census. Authorizes a county to collect fees in a manner and in amounts determined by the county.

SECTION 4.05. Amends Section 15.002(a), Water Code, to set forth additional legislative findings.

SECTION 4.06. Amends Section 15.011(b), Water Code, to authorize the board to transfer money from the fund to the rural water assistance fund.

SECTION 4.07. Amends Sections 15.102(a) and (b), Water Code, to set forth that the loan fund is authorized to be used for certain purposes.

SECTION 4.08. Amends Section 15.105, Water Code, to require the board to consider certain factors in passing on an application.

SECTION 4.09. Amends Section 15.106(a), Water Code, to authorize the board to approve an application for financial assistance if the board finds that certain conditions exist.

SECTION 4.10. Amends Section 15.107, Water Code, as follows:

Sec. 15.107. New heading: METHOD OF MAKING FINANCIAL ASSISTANCE AVAILABLE. Authorizes the board to make financial assistance available to certain applicants and in any manner that is economically feasible, including certain contracts or agreements.

SECTION 4.11. Amends Section 15.406(f), Water Code, to make a conforming change.

SECTION 4.12. Amends Section 15.434, Water Code, to require money deposited to the credit of certain entities to be used for certain purposes.

SECTION 4.13. Amends section 15.471, Water Code, to authorize the board to make grants of money to certain groundwater, rather than underground water, conservation districts and to political subdivisions for purchasing equipment required for certain purposes.

SECTION 4.14. Amends Section 15.602, Water Code, to define “person.”

SECTION 4.15. Amends Section 15.603(a), Water Code, to provide that the estuary fund is provided to provide financial assistance to certain entities for construction of treatment works and to persons for nonpoint source pollution control and estuary management projects.

SECTION 4.16. Amends Section 15.604(a), Water Code, to authorize the board to use the fund for certain purposes.

SECTION 4.17. Amends Section 15.607, Water Code, to authorize the board to approve an application by the applicant, rather than political subdivision, if certain requirements are met.

SECTION 4.18. Amends Section 17.853(c), Water Code, to provide that the board is authorized to use the fund only for certain purposes.

SECTION 4.19. Amends Sections 17.871(2) and (6), Water Code, to redefine “borrower district,” and “lender.”

SECTION 4.20. Amends Section 17.895, Water Code, to set forth the application of this section. Authorizes a lender district, rather than districts, to make conservation loans for certain purposes.

SECTION 4.21. Amends Chapter 17J, Water Code, by adding Section 17.8955, as follows:

Sec. 17.8955. CONSERVATION LOANS FOR BRUSH CONTROL AND PRECIPITATION ENHANCEMENT. Authorizes a board or lender district to make a conservation loan for certain costs under certain criteria. Authorizes a conservation loan to be made by a lender district to an individual borrower for use on private property or by the board to a borrower district.

SECTION 4.22. Amends Chapter 17L, Water Code, by adding Section 17.9615, as follows:

Sec. 17.9615. TRANSFERS TO RURAL WATER ASSISTANCE FUND. Authorizes the board to direct the comptroller to transfer amounts from the financial assistance account to the rural assistance fund. Requires the board to use the rural water assistance fund for certain purposes.

SECTION 4.23. Amends Section 11.32, Tax Code, to authorize certain properties to be exempt from taxation. Makes a conforming change.

SECTION 4.24. Amends Section 151.0048(a), Tax Code, to redefine “real property service.”

SECTION 4.25. Amends Section 151.315, Tax Code, to provide that water is exempted from taxes

except as provided in Section 151.0048(a)(8).

SECTION 4.26. Amends Chapter 151H, Tax Code, by adding Section 151.355, as follows:

Sec. 151.355. WATER-RELATED EXEMPTIONS. Sets forth that certain equipment, services, and supplies are exempt from taxation.

SECTION 4.27. Amends Section 151.801, Tax Code, by adding Subchapter (f), to require the proceeds from the collection of taxes on the sale of domestic sewage service and domestic potable water service to be deposited in the general revenue fund to the credit of the water infrastructure fund.

#### ARTICLE 5. REPEALER; TRANSITION; SAVING; EFFECTIVE DATE

SECTION 5.01. Repealer: Section 35.005 (Petition to Designate a Groundwater Management Area), Water Code.

Repealer: Section 35.006 (Notice for Designation of Management Area), Water Code.

Repealer: Section 36.013(d) (Petition to Create District), Water Code.

Repealer: Chapter 453 (relating to the creation, administration, powers, duties, operation, and financing of the Presidio County Underground Water Conservation District), Acts of the 73rd Legislature, Regular Session, 1993, provided the results of the Hays Trinity Groundwater Conservation District are canvassed.

SECTION 5.02. Makes application of this Act to Sections 11.085, 17.895, and 17.8955, Water Code prospective. Requires the Texas Water Policy Council and the TWDB to adopt rules required by this Act not later than January 1, 2002.

SECTION 5.03. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. Sets forth provision that notice has been furnished to certain persons or entities. Provides that the TNRCC has filed its recommendations with certain persons. Provides that all requirements of the constitution and laws are fulfilled and accomplished.

SECTION 5.04. Severability clause.

SECTION 5.05. Effective date: September 1, 2001.