

BILL ANALYSIS

Senate Research Center

S.B. 2120
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Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, groundwater conservation districts (GCDs) across the state are working together within groundwater management areas (GMAs) to establish a desired future condition (DFC) for their region. This process, commonly referred to as the "GMA process," was established by the 79th Legislature, Regular Session, 2005, with the passage of H.B. 1763. GMAs have a statutory deadline of September 1, 2010, to establish their DFC.

S.B. 2120 is an attempt to reinforce the GMA process in anticipation of the establishment of DFCs for these regions.

As proposed, S.B. 2120 establishes a training program for GCD board members and general managers, clears up references in law to district management plans, and clarifies the authority of the Texas Commission on Environmental Quality to require a valid management plan be in place before a GCD amends or adopts rules.

S.B. 2120 requires a substantive review of district management plans and requires approval of these plans by the Texas Water Development Board. The bill also allows districts flexibility in whether they are required to fully permit up to their managed available groundwater once this amount is established under DFC, and requires exempt oil and gas and mining users to report annual groundwater usage to GCDs. S.B. 2120 requires the State Auditor's Office to perform a management audit of GCDs once every five years, rather than once every seven years as is currently required.

[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 successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 16 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 6, Water Code, by adding Section 6.113, as follows:

Sec. 6.113. DUTY TO ESTABLISH TRAINING PROGRAM. Requires the Texas Water Development Board (TWDB) to establish a training program for members of boards of directors and general managers of groundwater conservation districts (district) that includes education in certain subject matters.

SECTION 2. Amends Subchapter C, Chapter 36, Water Code, by adding Section 36.069, as follows:

Sec. 36.069. REQUIRED TRAINING FOR DIRECTORS AND GENERAL MANAGER. (a) Requires each director and general manager of a district to complete at least one hour of training in a program established by TWDB under Section 6.113 during each one-year period in which the person serves as a director or general manager.

(b) Requires TWDB or other entity providing the training to provide a certificate of course completion to persons who complete the training required by this section. Requires a district to maintain and make available for public inspection the record of its directors' and general manager's completion of the training.

(c) Provides that the failure of one or more of a district's directors or its general manager to complete the training required by this section does not affect the validity of an action taken by the district.

SECTION 3. Amends the heading to Section 36.1071, Water Code, to read as follows:

Sec. 36.1071. DISTRICT MANAGEMENT PLAN.

SECTION 4. Amends Section 36.1071, Water Code, by amending Subsections (a)-(c), (f), and (g), and adding Subsection (i), as follows:

(a) Requires the district, following notice and hearing, in coordination with surface water management entities on a regional basis, to develop a management plan, rather than a comprehensive management plan, that addresses certain management goals. Makes a nonsubstantive change.

(b) Requires the district management plan, rather than a district management plan, or any amendments to the district management plan, to be developed using the district's best available data and forwarded to the regional water planning group for use in their planning process. Makes a conforming change. Deletes text relating to the plan being developed by the district.

(c) Requires TNRCC and TWDB to provide technical assistance to a district in the development of the district management plan, rather than management plan, required under Subsection (a) which is authorized to include, if requested by the district, a preliminary review and comment on the plan prior to final approval by TWDB. Requires TCEQ, if such review and comment by TNRCC is requested, to provide comment not later than 30 days from the date the request is received.

(f) Requires the district to adopt rules necessary to implement the district management plan. Prohibits the district, prior to the development of the district's first management plan and approval of that plan under Section 36.1072, 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. 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. Authorizes the district to accept applications for permits under Section 36.113 (Permits For Wells; Permit Amendments), 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 conforming changes.

(g) Makes conforming changes.

(i) Prohibits the district, after the first district management plan is adopted, from amending rules, repealing rules, or adopting new rules unless its management plan has been approved and is in effect as provided in Section 36.1072. Authorizes TNRCC to take action under Section 36.303 (Action by Commission) if a district amends, repeals, or adopts a rule without an approved district management plan.

SECTION 5. Amends Section 36.1072, Water Code, as follows:

Sec. 36.1072. New heading: TEXAS WATER DEVELOPMENT BOARD REVIEW AND APPROVAL OF DISTRICT MANAGEMENT PLAN. (a) Defines "development board" as TWDB. Requires a district, not later than three years after the creation of the district or, if the district required confirmation, after the election confirming the district's

creation, to submit the district management plan required under Section 36.1071 to the executive administrator for review and approval.

(b) Requires the executive administrator, within 60 days of receipt of a district management plan adopted under Section 36.1071, readopted under Subsection (g) or (i), rather than (e) or (g), of this section, or amended under Section 36.1073, to approve the district management plan if the plan is administratively complete. Provides that a management plan is administratively complete when it contains the information required to be submitted under Section 36.1071(a) and (e). Authorizes the executive administrator to waive, rather than determine whether conditions justify waiver of, the requirements under Section 36.1071(e)(4) if the executive administrator determines that conditions justify the waiver. Makes conforming and nonsubstantive changes.

(c) Provides that once the executive administrator has granted administrative approval to, rather than approved, a management plan, the executive director may not revoke but may require, revisions to the approved groundwater conservation district management plan as provided by Subsection (g). Authorizes the executive administrator, once the executive administrator has granted administrative approval to a management plan, to request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material. Deletes text regarding a request for additional information not rendering the management plan unapproved.

(d) Requires the executive administrator, not later than the 60th day after the date of the administrative approval of a district management plan under Subsection (c), to perform a substantive review of the plan and request additional information from the district, request that the district make substantive changes to the plan, or recommend approval of the plan.

(e) Requires TWDB, if the executive administrator recommends approval of a district management plan under Subsection (d), to review the plan, conduct a hearing on the plan, and either approve or reject the plan.

(f) Provides that a district management plan takes effect on approval by TWDB, rather than the executive administrator or, if appealed, on approval by TWDB.

(g) Redesignates Subsection (e) as Subsection (g). Authorizes the district to review the district management plan annually and requires the district to review and readopt the plan with or without revisions at least once every five years. Provides that approval of the preceding district management plan remains in effect until the district fails to timely readopt a district management plan; the district fails to timely submit the district's readopted management plan to the executive administrator for administrative approval under Subsection (b); or TWDB, rather than the executive administrator, determines under Subsection (e) that the readopted district management plan does not meet the requirements for approval, and the district has exhausted all appeals. Deletes existing text providing that the district has exhausted all appeals to TWDB or appropriate court. Makes nonsubstantive changes.

(h) Redesignates Subsection (f) as Subsection (h). Requires TWDB, rather than the executive administrator, if TWDB does not approve the district management plan, to provide to the district, in writing, the reasons TWDB does not approve, rather than the reasons for the action. Authorizes the district, not later than the 180th day after the date a district receives notice that TWDB has not approved the district management plan, rather than that the plan has not been approved, to submit a revised management plan for review and approval. Authorizes the district, if TWDB decides not to approve the revised district management plan, rather than approve the management plan on appeal, to request that the conflict be mediated. Deletes existing text authorizing the executive administrator's decision to be appealed to TWDB. Makes conforming and nonsubstantive changes.

- (i) Redesignates Subsection (g) as Subsection (i). Deletes existing text defining "development board." Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 36.1073, Water Code, as follows:

Sec. 36.1073. New heading: AMENDMENT TO DISTRICT MANAGEMENT PLAN. Requires that any amendment to a district management plan be submitted to the executive administrator within 60 days following adoption of the amendment by the district's board. Requires the executive administrator and TWDB to review and approve any amendment that substantially affects the district management plan in accordance with the procedures established under Section 36.1072. Makes nonsubstantive changes.

SECTION 7. Amends Sections 36.108(b), (c), and (n), Water Code, as follows:

(b) Requires each district, if two or more districts are located within the boundaries of the same management area, to forward a copy of the district's management plan to the other districts in the management area. Deletes existing text requiring each district, if two or more districts are located within the boundaries of the same management area, to prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. Deletes existing text requiring each district, on completion and approval 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. Makes a conforming change.

(c) Makes conforming changes.

(n) Requires the districts to prepare revised conditions, rather than 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 (GMA).

SECTION 8. Amends Section 36.1132, Water Code, to authorize a district, rather than requiring a district to the extent possible, to issue permits up to the point that the total volume of groundwater permitted equals the managed available groundwater, if administratively complete permit applications are submitted to the district.

SECTION 9. Amends Section 36.116(b), Water Code, to authorize the district, in promulgating any rules limiting groundwater production, to preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's management plan, rather than comprehensive management plan, under Section 36.1071 and as provided by Section 36.113 (Permits For Wells; Permit Amendments).

SECTION 10. Amends Section 36.117, Water Code, by adding Subsection (e-1), to require an operator of a water well exempt under Subsection (b)(2) (relating to the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well) or (3) (relating to the drilling of a water well authorized under a permit) to annually report to the district for each exempt well the total amount of groundwater withdrawn during the year.

SECTION 11. Amends Section 36.207, Water Code, to authorize a district to use funds obtained from permit fees collected pursuant to the special law governing the district for any purpose consistent with the district's certified management plan, rather than certified water management plan, including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

SECTION 12. Amends Section 36.301, Water Code, as follows:

Sec. 36.301. New heading: FAILURE TO SUBMIT A DISTRICT MANAGEMENT PLAN. Requires TNRCC, if a district, rather than TWDB, fails to submit a management plan or to receive certification of its management plan under Section 36.1072, or fails to

submit or receive certification of an amendment to the district management plan under Section 36.1073, to take appropriate action under Section 36.303 (Action by Commission). Makes a nonsubstantive change.

SECTION 13. Amends Section 36.3011, Water Code, to authorize TNRCC to take any action against a district it considers necessary in accordance with Section 36.303 if TNRCC finds that a district has failed to submit its management plan, rather than its plan, to the executive administrator among other conditions.

SECTION 14. Amends Sections 36.302(c), (d), and (f), Water Code, as follows:

(c) Requires the state auditor to make a determination, in a review performed under Subsection (a), based on an analysis of a district's activities, of whether the district is actively engaged in achieving the objectives of the district's management plan, including a desired future condition established under Section 36.108(d) (relating to the requirement that districts consider information for the management area and establishing desired future conditions for the relevant aquifers within the management area) that is applicable to all or part of the district, rather than based on an analysis of the district's activities. Makes a nonsubstantive change.

(d) Requires, rather than authorizes, the state auditor to perform the review under Subsection (a) (relating to a district being subject to review by a state auditor) following the first anniversary of the initial approval of the plan under Section 36.1072 and at least as often as once every five, rather than seven, years after that date, subject to a risk assessment and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013 (Powers and Duties of State Auditor), Government Code.

(f) Requires TNRCC to take appropriate action under Section 36.303 if it is determined under Subsection (c) that a district is not actively engaged in achieving the objectives of the district's management plan, including a desired future condition established under Section 36.108(d) that is applicable to all or part of the district. Deletes existing text requiring TNRCC to take appropriate action if it is determined under Subsection (c) that the district is not operational.

SECTION 15. Amends Section 36.303(a), Water Code, to require TNRCC, if Section 36.1071(i), among other sections, applies, after notice and hearing in accordance with Chapter 2001 (Administrative Procedure), Government Code, to take certain actions TNRCC considers appropriate.

SECTION 16. (a) Provides that Section 36.069, Water Code, as added by this Act, applies to a member of the board of directors of a district who qualifies for office and to a general manager of a district who begins employment with the district before, on, or after the effective date of this Act. Requires a person who is serving as a member of the board of directors or as a general manager of a district on the effective date of this Act to complete the first hour of training as required by Section 36.069, Water Code, as added by this Act, not later than September 1, 2010.

(b) Makes application of this Act prospective.

(c) Requires TWDB, as soon as practicable after the effective date of this Act, to adopt rules to implement Section 36.1072, Water Code, as amended by this Act.

(d) Provides that the first report under Subsection (e-1), Section 36.117, Water Code, as added by this Act, is due not later than September 1, 2010.

(e) Makes application of Section 36.302, Water Code, as amended by this Act, prospective.

SECTION 17. Effective date: upon passage or September 1, 2009.