

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 2120  
By: Seliger  
Natural Resources  
4/20/2009  
Committee Report (Substituted)

### **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.

C.S.S.B. 2120 amends current law relating to the management, operation, and review 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, as successor agency to TNRCC.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 17 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. (a) 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.

(b) Authorizes TWDB, as TWDB considers appropriate, to consult with stakeholders in the development of the training program under Subsection (a).

SECTION 2. Amends Section 36.0171(h), Water Code, to require the district, if the majority of the votes cast at the election are against the levy of a maintenance tax, to set production fees, rather than 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to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.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 3. 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 or 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 the directors or the general manager of a district to complete the training required by this section does not affect the validity of an action taken by the district.

SECTION 4. Amends the heading to Section 36.1071, Water Code, to read as follows:

Sec. 36.1071. DISTRICT MANAGEMENT PLAN.

SECTION 5. Amends Section 36.1071, Water Code, by amending Subsections (a)-(c), (f), and (g), and adding Subsection (f-1), 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) Deletes existing text requiring the district to adopt rules necessary to implement the management plan. Prohibits the district, prior to the development of the district's first district 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.

- (f-1) Requires the district, after a district management plan is approved under Section 36.1072, to adopt or amend rules limiting the production of wells or allocating groundwater as necessary to implement the district management plan. Prohibits the district from adopting rules limiting the production of wells or allocating groundwater or amend the district's rules limiting the production of wells or allocating groundwater if the district fails to adopt a district management plan as required by this section, submit a district management plan to the executive administrator as required by Section 36.1072, and receive approval of the district management plan under Section 36.1072.

- (g) Makes conforming changes.

SECTION 6. 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 (f), 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 review the district management plan to determine whether the district management plan is adequate to achieve a desired future condition established under Section 36.108(d) (relating to the requirement that districts consider certain data to establish desired future conditions for the relevant aquifers within the management area) that is applicable to all or part of the district, considering any available information regarding groundwater levels, and request additional information from the district, request that the district make substantive changes to the plan, or approve the plan.

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

(f) Redesignates Subsection (e) as Subsection (f). 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 the executive administrator determines that the readopted district management plan does not meet the requirements for approval, and the district has exhausted all appeals to TWDB. Deletes existing text providing that the district has exhausted all appeals to TWDB or appropriate court. Makes nonsubstantive changes.

(g) Redesignates Subsection (f) as Subsection (g). Requires the executive administrator, if the executive administrator does not approve the district management plan, to provide to the district, in writing, the reasons the executive administrator 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 the executive administrator has not approved the district management plan, rather than that its management plan has not been approved, to submit a revised district management plan for review and approval. Authorizes the executive administrator's decision to be appealed to TWDB. 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. Makes conforming and nonsubstantive changes.

(h) Redesignates Subsection (g) as Subsection (h). Deletes existing text defining "development board." Requires the district to consider all public and TWDB comments, prepare, revise, and adopt its district management plan, and submit the revised district management plan to the development board for approval. Makes conforming and nonsubstantive changes.

SECTION 7. 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 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 8. 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 district 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 9. Amends Section 36.1132, Water Code, as follows:

Sec. 36.1132. New heading: DISTRICT PLANS AND RULES TO ACHIEVE DESIRED FUTURE CONDITION; PERMITS BASED ON MANAGED AVAILABLE GROUNDWATER. (a) Requires each district in the management area, not later than the second anniversary of the date that the districts in a management area establish one or more desired future conditions under Section 36.108(d), to review its district management plan and rules and adopt any amendments necessary to ensure that the district will achieve a desired future condition applicable to all or part of the district.

(b) Creates this subsection from existing text. Authorizes a district, for purposes of this subsection, to adjust the amount of managed available groundwater provided to the district under Section 36.108(o) or adjust the amount of groundwater issued under permits to account for exempt uses and known demands for groundwater in the district based on a state or regional water plan.

SECTION 10. 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 its district management plan, rather than the district's comprehensive management plan, under Section 36.1071 and as provided by Section 36.113 (Permits For Wells; Permit Amendments).

SECTION 11. 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 12. Amends Section 36.207, Water Code, as follows:

Sec. 36.207. New heading: USE OF PRODUCTION FEES AUTHORIZED BY SPECIAL LAW. (a) Authorizes a district to use funds obtained from production fees, rather than permit fees, collected pursuant to the special law governing the district for any purpose consistent with the district's district 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 13. Amends Section 36.301, Water Code, as follows:

Sec. 36.301. New heading: VIOLATIONS RELATED TO DISTRICT MANAGEMENT PLAN. Requires the Texas Natural Resources Conservation Commission (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, rather than TWDB, fails to submit a district management plan or to receive certification of the district management plan under Section 36.1072; a district fails to timely readopt the district management plan or to submit the readopted district management plan to the executive administrator for approval in accordance with Section 36.1072(f); the executive administrator determines that a readopted district management plan does not meet the requirements for approval, and the district has exhausted all appeals; or a district fails to submit or receive certification of an amendment to the district management plan under Section 36.1073, rather than requiring TNRCC to take appropriate action under Section 36.303 (Action by Commission). Makes a nonsubstantive change.

SECTION 14. 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 district management plan to the executive administrator among other conditions.

SECTION 15. Amends Sections 36.302(c), Water Code, to require 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 management plan, rather than 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.

SECTION 16. Amends Section 36.303(a), Water Code, to require TNRCC, if Section 36.108, 36.301, or 36.302(f) applies and if the state auditor has performed a review of the district under Section 36.302(a), after notice and hearing in accordance with Chapter 2001 (Administrative Procedure), Government Code, to take certain actions TNRCC considers appropriate.

SECTION 17. (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 36.301, Water Code, as amended by this Act, prospective.

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

SECTION 18. Provides that this Act does not make an appropriation. Provides that a provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

SECTION 19. Effective date: upon passage or September 1, 2009.