

BILL ANALYSIS

C.S.H.B. 2215
By: Price
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note a need to make changes to the process for the proposal and adoption of desired future conditions for aquifers in a groundwater management area in order to increase stakeholder certainty and better synchronize the five-year joint groundwater and regional water planning cycles. C.S.H.B. 2215 seeks to make such changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2215 amends the Water Code to change the desired future conditions with which a regional water planning group's regional water plan is required to be consistent from the desired future conditions adopted as of the date the Texas Water Development Board (TWDB) most recently adopted a state water plan or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan to the desired future conditions adopted as of the most recent deadline for the TWDB to adopt the state water plan or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan.

C.S.H.B. 2215 changes the deadlines by which groundwater conservation districts are required to consider groundwater availability models and other data or information for a management area and propose for adoption desired future conditions for the relevant aquifers within the management area from not later than September 1, 2010, and every five years thereafter to not later than May 1, 2021, and every five years thereafter. The bill revises the timeframe for a district's compilation of a summary regarding proposed desired future conditions that addresses relevant comments received, any suggested revisions to the proposed conditions, and the basis for the revisions and the timeframe for district representatives to reconvene to review certain reports, consider any district's suggested revisions to the proposed conditions, and finally adopt the desired future conditions. The bill provides a deadline of not later than January 5, 2022, by which the desired future conditions must be approved by a resolution adopted by a two-thirds vote of all the district representatives and requires subsequent desired future conditions to be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date. The bill replaces the requirement that a district in the management area adopt the applicable desired future conditions as soon as possible after the district receives the desired future conditions resolution and explanatory report with the

requirement that the district adopt the applicable desired future conditions after the district receives notification from the TWDB that the resolution and explanatory report are administratively complete.

C.S.H.B. 2215 repeals Section 36.108(d-5), Water Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2215 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 16.053(e), Water Code, as amended by Chapters 756 (H.B. 2031), 990 (H.B. 30), and 1180 (S.B. 1101), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions most recently adopted under Section 36.108 for the relevant aquifers located in the regional water planning area, ~~[as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;]~~ provided, however, that if no groundwater conservation district exists within the area of the regional water planning group, the regional water planning group shall determine the supply of groundwater for regional planning purposes; the Texas Water Development Board shall review and approve, prior to inclusion in the regional water plan, that the groundwater supply for the regional planning group without a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 16.053(e), Water Code, as amended by Chapters 756 (H.B. 2031), 990 (H.B. 30), and 1180 (S.B. 1101), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the most recent deadline for [date] the board to adopt the [most recently adopted a] state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan; provided, however, that if no groundwater conservation district exists within the area of the regional water planning group, the regional water planning group shall determine the supply of groundwater for regional planning purposes; the Texas Water Development Board shall review and approve, prior to inclusion in the regional water plan, that the groundwater supply for the regional planning group

groundwater conservation district in its area is physically compatible, using the board's groundwater availability models, with the desired future conditions adopted under Section 36.108 for the relevant aquifers in the groundwater management area that are regulated by groundwater conservation districts;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region and potential impacts on public health, safety, or welfare in this state;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

without a groundwater conservation district in its area is physically compatible, using the board's groundwater availability models, with the desired future conditions adopted under Section 36.108 for the relevant aquifers in the groundwater management area that are regulated by groundwater conservation districts;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region and potential impacts on public health, safety, or welfare in this state;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements;

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; and

(J) opportunities for and the benefits of developing large-scale desalination facilities for:

(i) marine seawater that serve local or regional entities; and

(ii) ~~[(J) opportunities for and the benefits of developing large-scale desalination facilities for]~~ seawater or brackish groundwater that serve local or regional brackish groundwater production zones identified and designated under Section 16.060(b)(5);

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists;

(8) describes the impact of proposed water projects on water quality; and

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands.

SECTION 2. Sections 36.108(d) and (d-3), Water Code, are amended to read as follows:

(d) The ~~[Not later than September 1, 2010, and every five years thereafter, the]~~ districts shall consider groundwater availability models and other data or information for the

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements;

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; and

(J) opportunities for and the benefits of developing large-scale desalination facilities for:

(i) marine seawater that serve local or regional entities; and

(ii) ~~[(J) opportunities for and the benefits of developing large-scale desalination facilities for]~~ seawater or brackish groundwater that serve local or regional brackish groundwater production zones identified and designated under Section 16.060(b)(5);

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists;

(8) describes the impact of proposed water projects on water quality; and

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands.

SECTION 2. Sections 36.108(d), (d-2), (d-3), and (d-4), Water Code, are amended to read as follows:

(d) Not later than May 1, 2021 ~~[September 1, 2010]~~, and every five years thereafter, the districts shall consider groundwater availability models and other data or

management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider:

- (1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
- (2) the water supply needs and water management strategies included in the state water plan;
- (3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
- (4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
- (5) the impact on subsidence;
- (6) socioeconomic impacts reasonably expected to occur;
- (7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;
- (8) the feasibility of achieving the desired future condition; and
- (9) any other information relevant to the specific desired future conditions.

No equivalent provision.

information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider:

- (1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
- (2) the water supply needs and water management strategies included in the state water plan;
- (3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
- (4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
- (5) the impact on subsidence;
- (6) socioeconomic impacts reasonably expected to occur;
- (7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;
- (8) the feasibility of achieving the desired future condition; and
- (9) any other information relevant to the specific desired future conditions.

(d-2) The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period

of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the close of the public comment period ~~hearing~~, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

(d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports and ~~;~~ consider any district's suggested revisions to the proposed desired future conditions. Not later than January 5, 2022, the district representatives shall ~~;~~ ~~and~~ finally adopt the desired future conditions for the management area. Subsequent desired future conditions shall be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives.

The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

(d-3) After ~~the earlier of the date on which~~ all the districts have submitted their district summaries ~~or the expiration of the public comment period under Subsection (d-2)~~, the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and

finally adopt the desired future conditions for the management area.

The desired future conditions must be approved by ~~adopted as~~ a resolution adopted by a two-thirds vote of all the district representatives not later than January 5, 2022. Subsequent desired future conditions must be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

- (1) identify each desired future condition;
- (2) provide the policy and technical justifications for each desired future condition;
- (3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;
- (4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
- (5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

No equivalent provision.

No equivalent provision.

SECTION 3. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

- (1) identify each desired future condition;
- (2) provide the policy and technical justifications for each desired future condition;
- (3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;
- (4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
- (5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) After ~~[As soon as possible after]~~ a district receives notification from the Texas Water Development Board that the desired future conditions resolution and explanatory report under Subsection (d-3) are administratively complete, the district shall adopt the applicable desired future conditions in the resolution and report ~~[that apply to the district]~~.

SECTION 3. Section 36.108(d-5), Water Code, is repealed.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.