

## BILL ANALYSIS

Senate Research Center

S.B. 1  
By: Brown  
Natural Resources  
1-21-97  
As Filed

### DIGEST

Currently, water, more than any other natural resource, challenges Texas' future. Scarcity and competition for water, heightened environmental concerns, and the costliness of new water supply development make sound water management increasingly difficult to achieve; however, with Texas' population projected to double in the next 50 years and the water needs of its cities and industries increasing correspondingly, additional water development becomes essential.

This bill addresses Texas water policy in six general areas: drought response management; water management, marketing, and transfers; surface water and groundwater supplies; financial assistance to local governments; small communities assistance, and water data collection and dissemination.

#### *Article 1 - Drought Response Management*

Designates the Texas Water Development Board (TWDB) as the lead state drought response planning agency and creates the drought planning and monitoring committee. Allows TWDB to financially assist local governments in the development of drought response plans.

Authorizes the Texas Natural Resource Conservation Commission (TNRCC) to assess certain penalties for violations of surface water rights, dam safety, and levee construction provisions.

Allows the executive director of TNRCC to issue emergency permits or temporarily suspend or amend permit conditions without notice or hearing to address emergency drought conditions for not more than 120 days.

Consolidates all TNRCC emergency order and permitting provisions for water, and allows TNRCC to authorize emergency rate increases for a utility in emergency drought conditions.

Allows the executive director of TNRCC or a watermaster to mandate without notice or hearing, for not more than 120 days, and only in emergency drought conditions, the transfer of surface water from a permittee holding a permit for other than domestic or municipal use to a city or utility for domestic or municipal use.

#### *Article 2 - Water Management, Marketing, and Transfers*

Requires a TNRCC permit to convey developed groundwater in a state watercourse or stream, and requires water discharged in such a manner to meet quality standards while causing no adverse environmental impacts.

Allows TNRCC to issue a consolidated permit for water quality and bed and banks conveyance, and includes provisions for return of surplus water as conditions for granting a water right. Specifies that once surface water has been diverted under a water right and returned to a water course or stream, it is considered surplus water and subject to other appropriation.

Confirms the continued authority of TNRCC to issue multipurpose surface water rights.

Lessens liability concerns of water sellers regarding intended temporary water sales.

Removes the limit (50 percent of a water right) on deposits in the State Water Bank.

Maintains notification and hearing requirements in the cancellation of a water right.

Outlines the criteria to be used in determining whether an application for an interbasin transfer should be granted and specifies the administrative aspects of a surface water rights application for an interbasin transfer.

Directs TNRCC to develop a regulatory process to evaluate transfers and consider ways of mitigating significant adverse impacts of transfers.

### *Article 3 - Surface Water and Groundwater Supplies*

Authorizes the executive administrator of TWDB, TNRCC, and political subdivisions to prepare regional water management plans, and allows TWDB to provide financial assistance to local governments in the development of those plans.

Provides that all surface water right holders having an annual appropriation of 200 acre-feet/year or more, or who have been found in violation of rules prohibiting the waste of water, must implement a water conservation plan.

Allows TWDB to make loans for improving water efficiency use in irrigation systems and promoting dryland farming.

Expands the current sales tax exemption for the purchase of pollution control equipment to include water conservation and reuse equipment.

Allows for locations in Texas where aquifer storage and recovery projects proved feasible to petition and acquire permanent permits from TNRCC prior to June 1, 1999.

Streamlines the Priority Groundwater Management Areas process by removing statutory requirements that delay or discourage the creation of districts.

Requires completion of TWDB and TNRCC Priority Groundwater Management Area studies by a certain date and mandates TNRCC to report biannually to the legislature on their findings.

Establishes that groundwater conservation districts are the state's preferred governmental entity for the management of groundwater resources in Texas; strengthens the districts' authority; and aids districts through TWDB loans and technical assistance.

Provides accountability for the groundwater management system by setting statutory criteria and timelines for management plan development; requiring TNRCC approval of the plans; authorizing TNRCC to dissolve inactive districts; and requiring legislative audit review of operational districts.

### *Article 4 - Financial Assistance to Local Governments*

Pursuant to the passage of a constitutional amendment, provides for the consolidation of existing voter-approved bond authorizations, including water quality, water supply, flood control, and state participation, to fully maximize funds available to local governments in developing water projects.

Creates the Texas Water Development Fund II in the state treasury and stipulates that all water financial assistance bond proceeds be deposited into this fund.

Authorizes TWDB to enter into bond enhancement agreements with commercial banks in order to mitigate the risk of failure to recover the debt service cost of bond funds until the funds can be loaned.

### *Article 5 - Small Communities Assistance*

Authorizes TWDB to administer the Safe Drinking Water Revolving Fund and provide low-interest loans to small communities.

Provides TNRCC rate-setting flexibility for small public water systems.

Allows TNRCC to facilitate the merging of non-viable systems; to order other retail utilities; and to avoid future problems through a stronger impetus toward regionalization and increased financial and planning requirements.

#### *Article 6 - Water Data Collection and Dissemination*

Improves coordination and reduces duplication between agencies using the Texas Natural Resources Information System (TNRIS) and merges the TNRIS Task Force and the GIS Planning Council into a single entity, the Texas Geographical Information Council.

#### **PURPOSE**

As proposed, S.B. 1 sets forth provisions and provides penalties for misuse of the development and management of the water resources of the state.

#### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 1.02 (Section 11.272, Water Code), SECTION 1.07 (Section 16.238(a), Water Code), SECTION 3.37 (Section 36.0161(b)(2), Water Code), and to the Texas Water Development Board in SECTION 3.11 (Section 15.406(f), Water Code), SECTION 3.12 (Section 15.407, Water Code), SECTION 3.13 (Section 16.059(d), Water Code), SECTION 3.53 (Sections 36.372(b) and 36.374, Water Code), SECTION 4.03 (Sections 17.952, 17.956, 17.960(b) and (c), and 17.967(a), Water Code), SECTION 4.06 (Section 17.011(c), Water Code), SECTION 5.16 (Section 15.6041(d), Water Code) and to any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both, in SECTION 3.47 (Section 36.122, Water Code) of this bill.

#### **SECTION BY SECTION ANALYSIS**

SECTION 1.01. Amends Chapter 16C, Water Code, by adding Section 16.060, as follows:

Sec. 16.060. STATE DROUGHT PLANNING. Requires the executive administrator of the Texas Water Development Board (TWDB) to oversee the development and implementation of a comprehensive state drought plan. Provides that TWDB is the state agency primarily responsible for ongoing drought and water supply monitoring, technical, and financial assistance for drought planning, and administrative support of committee functions. Authorizes TWDB to provide cost-sharing financial assistance from the research and planning fund to assist local governments in developing regional and local drought response plans. Creates and sets forth the composition and responsibilities of the drought planning and monitoring committee (committee). Sets forth the factors that the committee is required to consider when determining whether a drought exists for purposes of this section.

SECTION 1.02. Amends Chapter 11D, Water Code, by amending Section 11.1271 and adding Section 11.1272, as follows:

Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS. Authorizes the Texas Natural Resource Conservation Commission (TNRCC) to require the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 200 acre-feet a year or more to develop and implement a water conservation plan that adopts reasonable water conservation measures, as defined by Section 11.002(8)(B), of this code.

Sec. 11.1272. ADDITIONAL REQUIREMENTS: DROUGHT CONTINGENCY PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS. Requires TNRCC, by

rule, to require wholesale and retail public water suppliers to develop drought contingency plans during periods of water shortages caused by drought.

SECTION 1.03. Amends Chapter 11C, Water Code, by adding Sections 11.0841-11.0843, as follows:

Sec. 11.0841. PRIVATE CIVIL REMEDY. Provides that this chapter does not affect any right of any private corporation or individual available at common law.

Sec. 11.0842. ADMINISTRATIVE PENALTY. Sets forth the guidelines and determination of sanctions TNRCC is authorized to impose for violations of this chapter, or rules or orders adopted under this chapter, or water rights issued under this chapter. Provides that all proceedings under this subsection are subject to Section 2001, Government Code. Sets forth the required actions regarding payments received from a person who has been charged with violation of this chapter. Sets forth the guidelines for appeal from the imposition of such penalties. Sets forth the legal consequences for noncompliance with TNRCC-imposed penalties.

Sec. 11.0843. FIELD CITATION. Sets forth the guidelines authorizing the executive director of TNRCC (executive director) or a watermaster to issue field citations for violations of this chapter, or rules or orders adopted under this chapter, or water rights issued under this chapter. Sets forth where penalties collected under this section are required to be deposited.

SECTION 1.04. Amends Section 11.139, Water Code, as follows:

Sec. 11.139. New heading: EMERGENCY AUTHORIZATIONS. Sets forth procedures by which TNRCC and the executive director are authorized to grant an emergency permit, order, or amendment to an existing water right. Authorizes TNRCC to grant emergency authorizations for the temporary transfer and use of all or part of a surface water right for other than domestic or municipal use to a retain or wholesale water supplier for domestic or municipal use. Provides that the person granted an authorization under Subsection (h) of this section is liable to the owner from whom the use is transferred for the fair market value of the water transferred as well as for any damages proximately caused by the transfer of use. Provides that an emergency authorization does not vest in the grantee any right to the diversion, impoundment, or use of water and shall expire and be cancelled in accordance with its terms.

SECTION 1.05. Amends Section 12.052(c), Water Code, to provide that an owner of a dam who willfully fails or refuses to follow an order of TNRCC relating to the construction, reconstruction, repair, or removal of the dam is liable for up to \$25,000, rather than \$1,000, a day for each day of the violation. Makes a conforming change.

SECTION 1.06. Amends Chapter 12C, Water Code, by adding Sections 12.053 and 12.054, as follows:

Sec. 12.053. ADMINISTRATIVE PENALTY. Sets forth the guidelines authorizing TNRCC to impose administrative penalties for violations of rules or orders adopted under Section 12.052, Water Code, regarding dam safety. Provides that all proceedings under this subsection are subject to Section 2001, Government Code. Sets forth the required actions regarding payments received from a person who has been charged with violation of Section 12.052. Sets forth the guidelines for appeal from the imposition of such penalties. Sets forth the legal consequences for noncompliance with TNRCC-imposed penalties.

Sec. 12.054. PRIVATE CIVIL REMEDY. Provides that nothing in this chapter affects the right of any private corporation or individual to pursue a common-law remedy.

SECTION 1.07. Amends Chapter 16G, Water Code, by adding Sections 16.237-16.239, as follows:

Sec. 16.237. ADMINISTRATIVE PENALTY. Sets forth procedures by which TNRCC may assess an administrative penalty against a person who violates a commission rule or order adopted under Section 16.236 of this code.

Sec. 16.238. LEVEE SAFETY. Requires TNRCC to make and enforce rules and orders and perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of levees located in this state. Requires rules and orders of TNRCC to be adopted or issued only after proper notice and hearing as provided in the rules of TNRCC. Sets forth penalties to be assessed for wilful failure or refusal to comply with the rules and orders promulgated under Subsection (a) of this section. Sets for guidelines for TNRCC to issue an emergency order, either mandatory or prohibitory in nature, directing the owner of a levee to repair, modify, maintain, dewater, or remove a levee which is unsafe. Provides that nothing in this section or in rules or orders adopted by the commission shall be construed to relieve an owner or operator of a levee of the legal duties, obligations, or liabilities incident to ownership or operation.

Sec. 16.239. PRIVATE CIVIL REMEDY. Provides that nothing in this chapter affects the right of any private corporation or individual to pursue a common-law remedy.

## ARTICLE 2. WATER MANAGEMENT, MARKETING AND TRANSFERS

SECTION 2.01. Amends Section 791.026, Government Code, to provide that contracts may require the purchaser to develop replacement supplies prior to the expiration of the contract. Provides that where a contract sets expiration provisions, no continuation of service is implied. Makes conforming changes.

SECTION 2.02. Amends Section 11.002, Water Code, to define "developed water" and "surplus water."

SECTION 2.03. Amends Section 11.023(e), Water Code, to provide that TNRCC may authorize an appropriation of a single amount or volume of water for more than one purpose. Prohibits water actually diverted for all purposes from exceeding total water appropriated, if a single amount of water is appropriated for more than one purpose of use.

SECTION 2.04. Amends Section 11.036, Water Code, to provide that if a contract sets expiration provisions, no continuation of service is implied. Authorizes the terms of a contract to provide that the person using stored or conserved water is required to develop alternative or replacement supplies prior to the expiration of the contract and may enforce such terms by court order. Makes a conforming changes.

SECTION 2.05. Amends Section 11.041(a), Water Code, to authorize a person entitled to use water from certain areas to show TNRCC that the person is willing to comply with all reasonable contractual provisions. Makes conforming changes.

SECTION 2.06. Amends Section 11.042, Water Code, to require a person who wishes to convey developed water in a watercourse or stream to obtain prior approval. Requires developed water discharged into a watercourse or stream to meet applicable water quality standards. Requires a person who has discharged groundwater into a watercourse or stream and who subsequently wished to divert and use such water must first obtain authorization for diversion and use from TNRCC subject to special conditions as necessary to protect existing water rights, instream uses, and freshwater inflows to bays and estuaries.

SECTION 2.07. Amends Section 11.046, Water Code, to authorize TNRCC to include conditions in the water right providing for the the return of surplus water and return point, in granting an application for a water right. Authorizes water appropriated under a water right to be beneficially used and reused by a water right holder. Provides that water diverted under a water right and returned to a watercourse and stream is surplus water and is subject to appropriation.

SECTION 2.08. Amends Section 11.085, Water Code, as follows:

Sec. 11.085. New heading: INTERBASIN TRANSFERS. Requires one public meeting to be held in both the basin of origin and the basin receiving water for the proposed transfer, prior to any action on an application for an interbasin transfer. Authorizes any person to present relevant information at the meeting. Requires TNRCC to hold an evidentiary hearing, if the application is contested. Sets forth persons to receive notice of an application for an interbasin transfer, and provides the manner in which notice is to be given. Requires the applicant to pay the cost of notice. Requires TNRCC to weigh the effects of the proposed transfer on the basin of origin and the receiving basin by considering certain factors. Authorizes TNRCC to grant the application, wholly or in part, only to the extent that the detriments to the basin of origin are less than the benefits to the receiving basin. Authorizes TNRCC to grant new or amended water rights. Provides that this section does not apply to transfers of less than 5,000 acre-feet of water per annum from the same water right, a request for an emergency transfer, or a proposed transfer from a basin to its adjoining coastal basin. Requires the new or amended water right authorizing the transfer to contain a condition for a period not greater than the contract term, if the transfer is based on a contractual sale of water. Authorizes the parties to a contract for an interbasin transfer to include provisions for compensation and mitigation. Provides that a person who diverts water in violation of this section is subject to a fine of not more than \$10,000, rather than not less than \$100 nor more than \$500. Makes conforming and nonsubstantive changes.

SECTION 2.09. Amends Section 11.124(a), Water Code, to make conforming and nonsubstantive changes.

SECTION 2.10. Amends Section 11.135(b), Water Code, to require a permit to include, among other information, a special condition limiting the total amount of water to be diverted for all purposes to the amount of water appropriated, if the appropriated water is authorized for multiple purposes.

SECTION 2.11. Amends Sections 11.176 and 11.177, Water Code, as follows:

Sec. 11.176. HEARING. Provides that a hearing on the cancellation of a water right as provided by this chapter is unnecessary if such hearing is waived by the affected water right holder. Provides that a water right for a term does not vest in the water right holder any right to the diversion, impoundment, or use of water for longer than the term of the water right and shall expire and be cancelled in accordance with its terms without further need for notice or hearing. Makes conforming changes.

Sec. 11.177. COMMISSION FINDING; ACTION. Sets forth the conditions TNRCC is required to consider in determining what constitutes reasonable diligence or a justified nonuse. Makes conforming and nonsubstantive changes.

SECTION 2.12. Amends Section 15.704(a), Water Code, to authorize the deposit of a water right, rather than up to 50 percent of a water right, in the water bank for an initial term of up to 10 years.

SECTION 2.13. Provides that all permits approved by TNRCC before the effective date of this Act that allow the multiple use of the appropriation of a specific amount of water and which are no longer subject to appeal are validated in all respects as if they originally had been legally authorized or accomplished.

### ARTICLE 3. SURFACE WATER AND GROUNDWATER SUPPLIES

SECTION 3.01. Amends Section 11.134(b), Water Code, to require TNRCC to grant an application only if the proposed appropriation addresses a water supply need in a manner that is consistent with the state water plan or an approved regional water management plan for the area in which the proposed appropriation is located, unless TNRCC determines that conditions warrant waiver of this requirement. Makes a conforming change.

SECTION 3.02. Amends Chapter 11D, Water Code, by adding Section 11.151, as follows:

Sec. 11.151. EFFECTS OF PERMITS ON GROUNDWATER. Authorizes TNRCC to assess the effects on groundwater in considering an application for a permit to store, take, or divert surface water.

SECTION 3.03. Amends Section 11.153, Water Code, by amending the section heading and Subsection (d), as follows:

Sec. 11.153. New heading: PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. Requires TNRCC to issue a final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use only where completed pilot projects or historically demonstrated projects have been shown to be feasible under the criteria provided in Sections 11.154(c) and (d). Makes a conforming change.

SECTION 3.04. Amends Sections 11.154(a)-(c), and (e), to make conforming and nonsubstantive changes.

SECTION 3.05. Amends Section 11.155(b), Water Code, to make conforming changes.

SECTION 3.06. Amends Section 11.173(b), Water Code, to make a conforming change.

SECTION 3.07. Amends Section 15.001(6), Water Code, to redefine "project."

SECTION 3.08. Amends Section 15.002(b), Water Code, to authorize projects to be in the state or outside the state. Requires out-of-state projects to be funded through a Texas political subdivision and result in water being available for use in or for the benefit of Texas or maintain and enhance the quality of water in Texas.

SECTION 3.09. Amends Section 15.401, Water Code, to provide that the research and planning program (program) is created to provide money for research into the state's water resources for regional planning by political subdivisions. Authorizes the program to provide money for research and planning by Texas political subdivisions related to the proper conservation and development of water resources of areas outside Texas if such research or planning will result in water being available for use in or for the benefit of Texas or will maintain and enhance the quality of water in Texas. Requires priority to be given to research and planning for projects within the state.

SECTION 3.10. Amends Section 15.404(a), Water Code, to authorize the TWDB to enter into a contract with any person for research by Texas political subdivisions related to the proper conservation and development of water resources of areas outside Texas if such research will result in water being available for use in or for the benefit of Texas or will help maintain and enhance the quality of water in Texas.

SECTION 3.11. Amends Section 15.406(f), Water Code, to require the TWDB to adopt rules establishing criteria of eligibility for regional facility planning money that considers the degree to which the regional facility planning by the political subdivision is consistent with an approved regional water management plan for the area in which the subdivision is located.

SECTION 3.12. Amends Chapter 15F, Water Code, by adding a new Section 15.0407 and renumbering existing Section 15.407 as Section 15.408, as follows:

Sec. 15.407. REGIONAL WATER MANAGEMENT PLANNING. Authorizes TWDB to enter into contracts with political subdivisions to pay from the research and planning fund all or part of the cost of developing or revising comprehensive regional water management plans as defined in Section 16.059 of this code. Requires a political subdivision that desires money from the research and planning fund for regional management planning to submit an application to TWDB in the manner and form required by TWDB rules. Sets forth the required contents of the application. Authorizes TWDB, after notice and hearing, to award the applicant all or part of the requested funds. Sets forth the required contents of a contract between TWDB and the political subdivision if TWDB grants application. Requires TWDB

to adopt rules establishing criteria for eligibility for regional water management planning money and sets forth the requirements for the criteria. Requires TWDB to require that regional water management plans developed or revised under contracts entered into under this section be made available to TNRCC.

Sec. 15.408. FACILITY ENGINEERING IN ECONOMICALLY DISTRESSED AREAS.  
Created from existing Section 15.407.

SECTION 3.13. Amends Chapter 16C, Water Code, by adding Section 16.059, as follows:

Sec. 16.059. REGIONAL WATER MANAGEMENT PLANS. Requires the executive administrator of the TWDB (executive administrator) to encourage the development and periodic revision, as necessary, of regional water management plans and authorizes the executive administrator to provide technical assistance with the development or revision of such plans. Requires regional water management plans to be prepared by political subdivisions under this section to assure an adequate, reliable, and affordable long-term water supply for all of the communities and public water supply systems within a designated regional water management planning area. Requires regional water management plans to be developed and revised with the substantive participation of all area communities, public water systems, and water suppliers. Sets forth requirements for regional water management plans. Requires TWDB, in coordination with the Parks and Wildlife Department and TNRCC, to develop guidance consistent with the state water plan. Requires the executive administrator to designate the areas for which regional water management plans will be developed, and sets forth what factors the administrator must take into consideration. Authorizes the executive administrator to designate political subdivisions within each designated regional water management planning area to serve as the coordinating body for planning. Requires TWDB to adopt rules to provide for the procedures for approval of regional water management plans and to govern the procedures to be followed by the executive administrator. Requires the executive administrator in formulating the state water plan, to give consideration to and incorporate as appropriate, regional water management plans approved by TWDB. Authorizes TWDB to provide financial assistance to political subdivisions under Chapters 15C-F and J, 16E and F, and 17D, I, K, and L, Water Code, for water projects only if certain conditions are met, unless TWDB determines that conditions warrant waiver of this requirement.

SECTION 3.14. Amends Section 16.341(3), Water Code, to make a conforming change.

SECTION 3.15. Amends Section 16.343(g), Water Code, to make conforming changes.

SECTION 3.16. Amends Section 16.345(a), Water Code, to make a conforming change.

SECTION 3.17. Amends Sections 16.350(a) and (d), Water Code, to make conforming changes.

SECTION 3.18. Amends Section 17.895, Water Code, by adding Subsection (c), to authorize TWDB to make conservation loans to borrower districts for the cost of purchasing and installing devices, on public or private property, designed to indicate the amount of water withdrawn for irrigation purposes.

SECTION 3.19. Amends Section 17.926, Water Code, to make a conforming change.

SECTION 3.20. Amends Section 27.0511, Water Code, by adding Subsection (h), to require the Texas Railroad Commission (RCC), upon receipt of an application for an injection well using fresh water for enhanced recovery purposes and the well is to be located in a groundwater conservation district, to give notice to the district in which the well is to be located. Requires RCC to determine whether the permit application is consistent with the district's management plan.

SECTION 3.21. Amends Section 35.002(12), Water Code, to define "priority groundwater management area" rather than "critical area."



SECTION 3.22. Amends Section 35.007, Water Code, as follows:

Sec. 35.007. New heading: IDENTIFYING, DESIGNATING, AND DELINEATING PRIORITY GROUNDWATER MANAGEMENT AREAS. Requires the executive director and the executive administrator to meet at least once a year to identify, based on the information available to TNRCC and TWDB, those areas of the state that are experiencing or that are expecting to experience, within the immediately following 50-year period, critical groundwater problems, including shortages of surface water. Requires the executive director to prepare a report to TNRCC if the executive director concludes that an area of the state should be considered for designation as a priority groundwater management area (area). Requires the executive director to begin preparation of a priority groundwater management area report (report) by requesting a study from the executive administrator, which must assess the area's immediate, short-term, and long-term water supply and needs; and be completed and delivered to the director on or before the 180th day following the date of request. Requires the executive director to request a study from the director of the Parks and Wildlife Department for the purpose of preparing the report required by this section. Sets forth the requirements of the study. Requires the report to include certain items. Requires the executive director to complete the report and file it with TNRCC on or before the 240th day following the date on which the executive administrator was requested to produce a study. Makes conforming changes.

SECTION 3.23. 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 DISTRICT OR ADDITION OF LAND IN PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT. Requires TNRCC to designate areas using the procedures provided by this chapter in lieu of those provided by Chapter 2001B, Government Code. Requires TNRCC to call an evidentiary hearing (hearing) to consider the designation and physical dimensions of an area. Requires the hearing to be held at a location in one of the counties in which the area is located, or proposed to be located, or in the nearest convenient location if adequate facilities are not available in those counties. Requires TNRCC to hear testimony and receive evidence from all affected persons and consider the director's report, supporting information, the testimony and evidence received at the hearing. Authorizes TNRCC to request such information from any source, if TNRCC considers further information necessary. Makes conforming changes.

SECTION 3.24. Amends Section 35.009, Water Code, to require TNRCC to publish notice of the hearing in at least one newspaper with general circulation in the county or counties in which the area being designated a priority groundwater management area or the area within a priority groundwater management area being considered for district creation or for addition to an existing district is located. Sets forth the provisions of the notice. Requires TNRCC to give written notice of the date, time, place, and purpose of the hearing to the governing body of certain entities which supply public drinking water located either partially or entirely in the area or proposed area before the 30th day preceding the date set for the hearing. Makes conforming and nonsubstantive changes.

SECTION 3.25. Amends Sections 35.012(b)-(e), Water Code, to authorize the landowners in the area, following the issuance of a TNRCC order under Subsection (b), to set forth certain provisions relating to the creation and maintenance of priority groundwater management areas. Makes conforming and nonsubstantive changes.

SECTION 3.26. Amends Section 35.013, Water Code, as follows:

Sec. 35.013. New heading: ADDING PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT. Makes conforming changes.

SECTION 3.27. Amends Sections 35.014(b) and (c), Water Code, to make conforming changes.

SECTION 3.28. Amends Section 35.015, Water Code, to delete text prohibiting a political

subdivision from being eligible to receive any financial assistance from the state. Makes conforming and nonsubstantive changes.

SECTION 3.29. Amends Section 35.016(b), Water Code, to provide that a district is considered active unless TNRCC has determined under Section 36.302 that the district is not operational, rather than if the district meets the requirements in Section 36.301(c).

SECTION 3.30. Amends Section 35.017, Water Code, to make a conforming change.

SECTION 3.31. Amends Chapter 35, Water Code, by adding Section 35.018, as follows:

Sec. 35.018. REPORTS. Requires TNRCC in conjunction with TWDB to prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a comprehensive report concerning activities during the preceding two years relating to the designation of areas by TNRCC and the creation and operation of districts under Chapter 36, Water Code, not later than January 31 of each odd-numbered year. Sets forth the required contents of the report.

SECTION 3.32. Amends Section 36.001, Water Code, to define "priority groundwater management area," "loan fund," and "applicant."

SECTION 3.33. Amends Section 36.012(c), Water Code, to make a conforming change.

SECTION 3.34. Amends Section 36.013(d), Water Code, to make a conforming change.

SECTION 3.35. Amends Chapter 36B, Water Code, by adding Section 36.0151, as follows:

Sec. 36.0151. CREATION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. Requires TNRCC to provide that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors, if TNRCC proposes that a district be created under Section 35.012(d). Requires TNRCC to notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order creating the district.

SECTION 3.36. Amends Section 36.016, Water Code, to set forth requirements for the appointment of temporary directors. Makes conforming and nonsubstantive changes.

SECTION 3.37. Amends Chapter 36B, Water Code, by adding Section 36.0161, as follows:

Sec. 36.0161. METHOD FOR APPOINTING TEMPORARY DIRECTORS FOR DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA. Sets forth the apportionments for appointment of temporary directors for a district in an area that is contained within a certain amount of counties. Defines "estimated groundwater use." Requires the apportionment of appointments under Subsection (a) to be made by TNRCC so as to reflect the proportion each county's estimated groundwater use bears to the sum of the estimated groundwater use for the district as determined under Subsection (c). Requires TNRCC, by rule, to determine the method it will use to implement this subdivision. Requires TNRCC to develop an estimate of annual groundwater use in acre-feet for each county area within the district if the district is contained within two, three, or four counties.

SECTION 3.38. Amends Section 36.102, Water Code, to delete text authorizing the board of directors of a district to set reasonable civil penalties for breach of any rule of the district. Deletes text regarding a penalty under this section. Authorizes the district to issue orders in accordance with Chapter 2001, Government Code, to enforce the terms and conditions of permits, orders, or rules issued or adopted under this chapter.

SECTION 3.39. Amends Chapter 36D, Water Code, by adding Section 36.1021, as follows:

Sec. 36.1021. ADMINISTRATIVE PENALTY. Sets forth the procedures for assessment of an administrative penalty.

SECTION 3.40. Amends Section 36.104, Water Code, to authorize limitation of an export of groundwater if there is an existing and foreseeable need for the water that is identified in the district's management plan and there is no alternative within the district. Makes a conforming change.

SECTION 3.41. Amends Chapter 36D, Water Code, by amending Section 36.107 and adding Sections 36.1071-36.1073 as follows:

Sec. 36.107. New heading: RESEARCH. Makes no change.

Sec. 36.1071. MANAGEMENT PLAN. Sets forth the procedures for development of a comprehensive management plan by any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water well, the production from water wells, or both (district) in coordination with surface water management entities on a regional basis. Requires the board of directors of a district (board) to adopt amendments to the management plan as necessary after notice and hearing. Requires amendments to comply with the requirements of this section. Makes conforming changes.

Sec. 36.1072. COMMISSION REVIEW AND APPROVAL OF MANAGEMENT PLAN. Sets forth procedures for review and approval of the management plan by TNRCC. Requires the board to readopt the plan with or without revisions at least once every five years. Prohibits TNRCC from taking enforcement action against a district until a certain date.

Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Requires any amendment to the management plan to be submitted to TNRCC within 60 days following adoption of the amendment by the board. Requires TNRCC to review and approve any amendment which substantially affects the management plan in accordance with the procedures established under Section 36.1072.

SECTION 3.42. Amends Section 36.108(a), Water Code, to make a conforming change.

SECTION 3.43. Amends Section 36.113, Water Code, to require a district to require an application for a permit be in writing and a sworn statement must be signed. Authorizes the district to set forth the required contents of the permit application. Requires the district to make certain considerations in granting a permit. Authorizes a district to prohibit changes in the withdrawal and use of groundwater under a permit from being made without prior approval of a permit amendment issued by the district. Makes conforming and nonsubstantive changes.

SECTION 3.44. Amends Chapter 36D, Water Code, by adding Section 36.1131, as follows:

Sec. 36.1131. REQUIRED ELEMENTS OF PERMIT. Requires a permit issued by the district to the applicant under Section 36.113 to state the terms and provisions prescribed by the district. Sets forth the authorized contents of the permit.

SECTION 3.45. Amends Sections 36.117(a) and (c)-(e), Water Code, to provide that the injection of gas, saltwater, or other fluid, except fresh water, under permits issued by the RCC are exempt from this chapter. Requires permits issued by RCC for an injection well using fresh water for enhanced recovery purposes to comply with the district's management plan. Makes conforming and nonsubstantive changes.

SECTION 3.46. Amends Section 36.121, Water Code, to make a conforming change.

SECTION 3.47. Amends Chapter 36D, Water Code, by adding Sections 36.122 and 36.123, as follows:

Sec. 36.122. PREFERENCE IN USE OF WATER. Authorizes a district, by rule, to

establish and apply a preference-of-use listing for the district's groundwater, provided that domestic and livestock uses and, among municipal uses, public health and safety uses receive the highest priority.

Sec. 36.123. TECHNICAL ASSISTANCE. Authorizes TNRCC to provide technical assistance to districts during their initial operational phase. Authorizes such assistance to include, but is not limited to, demonstrations of how to adopt rules, how to set up permitting programs, and how to initiate enforcement actions.

SECTION 3.48. Amends Chapter 36E, Water Code, by adding Sections 36.159-36.161, as follows:

Sec. 36.159. MANAGEMENT PLAN FUNDS. Authorizes TWDB to allocate funds from the research and planning fund created under Chapter 15F, to a district to conduct initial data collections under this chapter, to develop and implement a long-term management plan under Section 36.1071, and to participate in regional plans that provide for the conjunctive management of surface water and groundwater.

Sec. 36.160. FUNDS. Sets forth certain activities to which TWDB, TNRCC, and the Texas Parks and Wildlife Department (TPWD) are authorized to allocate funds to carry out the objectives of this chapter and Chapter 35.

Sec. 36.161. ELIGIBILITY FOR FUNDING. Sets forth requirements for eligibility to receive funding and procedures for denying funding to a district.

SECTION 3.49. Amends Chapter 36G, Water Code, by adding Section 36.206, as follows:

Sec. 36.206. DISTRICT FEES. Sets forth procedures for fees to be charged by the district.

SECTION 3.50. Amends Chapter 36I, Water Code, as follows:

#### SUBCHAPTER I. New heading: PERFORMANCE REVIEW AND DISSOLUTION

Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. Requires TNRCC to take appropriate action under Section 36.303, if a board fails to submit a management plan or to receive approval of its management plan under Section 36.1072 or fails to submit or receive approval of an amendment to the management plan under Section 36.1073.

Sec. 36.302. DETERMINATION OF WHETHER DISTRICT IS OPERATIONAL. Requires TNRCC to make a determination of whether a district is actively engaged in achieving the objectives of the district's management plan based on an audit of the district's performance under the plan. Requires TNRCC to conduct such audits following the second anniversary of the initial approval of the plan by TNRCC. Requires TNRCC, by rule, to establish a schedule for the audit of district under this section. Requires TNRCC to take appropriate action under Section 36.303, if TNRCC finds under Subsection (a) that the district is not operational.

Sec. 36.303. ACTION BY COMMISSION. Authorizes TNRCC, after notice and hearing, to take any action TNRCC deems appropriate to enforce compliance with any rule or order of TNRCC or any provisions of this chapter, including certain actions.

Sec. 36.304. New heading: DISSOLUTION OF DISTRICT. Authorizes TNRCC to dissolve certain districts. Makes conforming changes.

Sec. 36.305. New heading: NOTICE OF HEARING FOR DISSOLUTION OF BOARD OR DISTRICT. Makes conforming changes.

Sec. 36.306. INVESTIGATION. Requires the executive director to investigate the facts and circumstances of any violations. Requires the executive director to prepare and file a written report with TNRCC and the district and include any actions the executive director

believes TNRCC should take under Section 36.303.

Sec. 36.307. ORDER OF DISSOLUTION OF BOARD. Sets forth procedures to be followed if TNRCC enters an order to dissolve the board. Makes conforming changes.

Sec. 36.308. CERTIFIED COPY OF ORDER. Created from existing Section 36.305.

Sec. 36.309. APPEALS. Requires appeals from any TNRCC order to be filed and heard in the district court of Travis County in accordance with Chapter 2001, Government Code. Deletes a requirement that trial appeal be de novo and that the substantial evidence rule does not apply.

Sec. 36.310. ASSETS ESCHEAT TO STATE. Requires assets that escheat to the State of Texas upon dissolution of a district to be administered by the comptroller, rather than the state treasurer.

SECTION 3.51. Amends Section 36.325(b), Water Code, to require a petition for inclusion in a district to be signed by the commissioners court of the county in which the area is located if the area is identified as a priority groundwater management area, rather than critical area.

SECTION 3.52. Amends Section 36.331, Water Code, to make a conforming change.

SECTION 3.53. Amends Chapter 36, Water Code, by adding Subchapter L, as follows:

#### SUBCHAPTER L. GROUNDWATER DISTRICT LOAN ASSISTANCE FUND

Sec. 36.371. GROUNDWATER DISTRICT LOAN ASSISTANCE FUND. Creates the groundwater district loan assistance fund, to be funded by direct appropriation and by TWDB, at its discretion, from the water assistance fund. Requires repayments of loans to be deposited in the water assistance fund.

Sec. 36.372. FINANCIAL ASSISTANCE. Authorizes the loan fund to be used by TWDB to provide loans to newly confirmed districts to pay for their creation and initial operations. Requires TWDB to establish rules for the use and administration of the loan fund.

Sec. 36.373. APPLICATION FOR ASSISTANCE. Sets forth information required to be included in an application to TWDB for financial assistance from the loan fund. Prohibits TWDB from accepting a loan application from the loan fund unless it is submitted in affidavit form by the applicant's board. Requires TWDB to prescribe the affidavit form in its rules. Prohibits the rules from restricting or prohibiting TWDB from requiring additional factual material from an applicant.

Sec. 36.374. APPROVAL OF APPLICATION. Authorizes TWDB, by resolution, to approve an application if it finds that granting financial assistance to the applicant will serve the public interest and that the revenue pledged by the applicant will be sufficient to meet obligations assumed by the applicant.

SECTION 3.54. Amends Section 151.318(g), Tax Code, to provide that each person engaged in manufacturing, processing, fabricating, or repairing personal property for sale is entitled to a refund or reduction of tax imposed by this chapter for the purchase of machinery if the machinery has certain criteria.

SECTION 3.55. (a) Repealer: Sections 35.010 and 35.011, Water Code (Consideration of Creation of District or Addition of Land in Critical Area to Existing District, and Notice of Hearing to Create District or Add Critical Area to Existing District).

(b) Repealer: Section 5.02, Chapter 133 (Critical Areas Groundwater Districts).

SECTION 3.56. Defines "district." Requires a district which was created or, if the district required

a confirmation election, a district whose creation was confirmed before the effective date of this Act, to submit a management plan for approval to TNRCC within two years after the effective date of this Act.

SECTION 3.57. Requires an area designated as a critical area under Chapter 35, Water Code, as it existed before the effective date of this Act, or under other prior law, to be known and referred to as a priority groundwater management area on or after the effective date of this Act.

SECTION 3.58. Requires TNRCC to make all designations of priority groundwater management areas for which critical area reports were required to have been completed, under Chapter 35, Water Code, before the effective date of this Act under Section 35.007, Water Code, as that section existed immediately before the effective date of this Act, not later than December 31, 1997.

#### ARTICLE 4. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

SECTION 4.01. Amends Section 15.431, Water Code, by amending Subsection (d) and adding Subsection (g), to authorize TWDB to use money maintained as principal in the agricultural trust fund to make conservation loans to borrower districts and loans to lender districts for the purposes listed in Section 17.895 of this code. Provides that loans and conservation loans are subject to the provisions of Sections 17.896 through 17.903 of this code. Requires repayments of principal and interest on loans and conservation loans made under this subchapter to be deposited in the agricultural trust fund. Defines "borrower district," "conservation loan," "individual borrower," "lender district," and "loan." Deletes text prohibiting money in the agricultural trust fund from being spent for any purpose.

SECTION 4.02. Amends Section 16.189, Water Code, to require TWDB to require payments that will recover over the lease period not less than the total of all principal and interest requirements to the debt incurred by the state in leasing a state facility. Makes conforming changes.

SECTION 4.03. Amends Chapter 17, Water Code, by adding Subchapter L, as follows:

##### SUBCHAPTER L. WATER FINANCIAL ASSISTANCE BOND PROGRAM

Sec. 17.951. Defines "fund" and "resolution."

Sec. 17.952. ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS. Authorizes TWDB by resolution to provide for the issuance of water financial assistance bonds, which are required to be general obligation bonds of the state, in an aggregate principal amount not to exceed the principal amount authorized to be issued by Section 49-d-8, Article III, Texas Constitution.

Sec. 17.953. CONDITIONS FOR ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS. Sets forth terms by which water financial assistance bonds are issued.

Sec. 17.954. BOND ENHANCEMENT AGREEMENTS; PAYMENT OF EXPENSES. Sets forth provisions by which TWDB is authorized to enter into bond enhancement agreements and pay expenses in connection with the issuance of water financial assistance bonds and to provide financial assistance to political subdivisions. Sets forth items that bond enhancement agreements are authorized to include.

Sec. 17.955. PERSONS DESIGNATED TO ACT AS AGENTS OF THE BOARD. Sets forth the duties of certain persons authorized to act as agents of TWDB.

Sec. 17.956. TEXAS WATER DEVELOPMENT FUND II. Provides that the fund is a special assistance fund in the state treasury, and all water financial assistance bond proceeds are required to be deposited in the state treasury to the credit of the fund. Sets forth accounts required to be included in the fund and requires proceeds from the sale of water financial assistance bonds issued to provide financial assistance to political subdivisions to be credited to such accounts as provided by the resolution by TWDB. Authorizes TWDB to create

additional accounts within the fund as TWDB determines are necessary or convenient for the administration of the fund.

Sec. 17.957. STATE PARTICIPATION ACCOUNT. Defines "state participation account." Requires transfers to be made from this account as provided by this subchapter. Sets forth items included in the state participation account. Authorizes moneys on deposit in the state participation account to be used by TWDB for certain projects in the manner TWDB determines necessary for the administration of the fund.

Sec. 17.958. ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT. Defines "economically distressed areas program account." Sets forth items included in the economically distressed areas program account. Authorizes moneys on deposit in the economically distressed areas program account to be used by TWDB for certain purposes. Makes conforming changes.

Sec. 17.959. FINANCIAL ASSISTANCE ACCOUNT. Defines "financial assistance account." Sets forth items included in the financial assistance account. Authorizes moneys on deposit in the financial assistance account to be used by TWDB for certain purposes. Makes conforming changes.

Sec. 17.960. BOND RESOLUTIONS. Authorizes TWDB to make additional covenants with respect to water financial assistance bonds and sets forth instances for which the covenants may to provide. Authorizes TWDB to invest money in the fund and any account therein in any obligations or securities as provided by the resolution or by rule adopted by TWDB. Authorizes TWDB to adopt and execute any other proceedings, agreements, or instruments necessary in the issuance of water financial assistance bonds, including bond enhancement agreements.

Sec. 17.961. TRANSFERS TO REVOLVING FUNDS. Authorizes TWDB to direct the comptroller to transfer amounts from the financial assistance account to the state water pollution control revolving fund to provide financial assistance in order to implement a revolving loan program. Sets forth provisions by which TWDB is required to use the state water pollution control revolving fund. Requires TWDB to use the additional state revolving fund in the event amounts are transferred to any additional state revolving fund.

Sec. 17.962. STATE APPROVALS. Prohibits the issuance of water financial assistance bonds under this subchapter unless approved by the bond review board. Provides that the proceedings relating to the water financial assistance bonds are subject to review and approval by the attorney general in the same manner as provided by Article 717q, V.T.C.S. Provides that after approval by the attorney general of the proceedings relating to the issuance of water financial assistance bonds, registration of the proceedings by the comptroller, and delivery of the water financial assistance bonds to the purchasers, water financial assistance bonds are incontestable and constitute general obligations of the state.

Sec. 17.963. PAYMENT OF BOARD OBLIGATIONS. Sets forth terms by which TWDB is required to cooperate with the comptroller to develop procedures for the payment of principal and interest on water financial assistance bonds and any obligation under a bond enhancement agreement.

Sec. 17.964. ELIGIBLE SECURITY. Provides that water financial assistance bonds are eligible to secure deposits of public funds of the state and political subdivisions of the state. Provides that water financial assistance bonds are lawful and sufficient security for deposits to the extent of their face value.

Sec. 17.965. LEGAL INVESTMENTS. Sets forth the entities for which water financial assistance bonds are legal and authorized investments.

Sec. 17.966. MUTILATED, LOST, OR DESTROYED BONDS. Authorizes TWDB to provide for the replacement of mutilated, lost, or destroyed water financial assistance bonds.

Sec. 17.967. REFUNDING BONDS. Sets forth the terms, by resolution, by which TWDB is authorized to provide for the issuance of water financial assistance bonds to refund outstanding bonds.

Sec. 17.968. SALE OF POLITICAL SUBDIVISION BONDS BY THE BOARD; USE OF PROCEEDS. Sets forth the terms under which TWDB is authorized to sell or dispose of political subdivision bonds purchased with money in the fund and apply the proceeds of the sale of political subdivision bonds held by TWDB. Requires TWDB to sell the political subdivision bonds at the price and under the terms that it determines to be reasonable.

Sec. 17.969. TAX EXEMPT BONDS. Provides that water financial assistance bonds, interest income and any profit made on the sale of water assistance financial bonds issued under this subchapter are free from taxation and any assessments by this state and any other political subdivision of this state.

Sec. 17.970. ENFORCEMENT BY MANDAMUS. Authorizes payment of water financial assistance bonds and obligations incurred under bond enhancement agreements and performance of official duties prescribed by Section 49-d-8, Article III, Texas Constitution, to be enforced in a court of competent jurisdiction by mandamus or other appropriate proceedings.

Sec. 17.971. SUBCHAPTER CUMULATIVE OF OTHER LAWS. Provides that this subchapter is cumulative of other laws on the subject, and TWDB is authorized to use provisions of other applicable laws in the issuance of water financial assistance bonds and the execution of bond enhancement agreements, but this subchapter is wholly sufficient authority for the issuance of water financial assistance bonds, the execution of bond enhancement agreements, and the performance of all other acts and procedures authorized by this subchapter. Authorizes TWDB to exercise the authority granted to the governing body of an issuer with regard to the issuance of obligations under Article 717q, V.T.C.S. Authorizes TWDB to exercise any powers granted to it under this chapter and Chapter 16, including Chapters 16D-G, and K, notwithstanding any provision inconsistent with the provisions of this subchapter.

SECTION 4.04. Amends Section 17.001(7), Water Code, to redefine "water supply project."

SECTION 4.05. Amends Section 17.001, Water Code, by amending Subdivision (17) and adding Subdivision (25), to redefine "financial assistance" and defines "water financial assistance bonds."

SECTION 4.06. Amends Section 17.011, Water Code, by adding Subsection (c), to authorize TWDB, by resolution, to issue water financial assistance bonds. Sets forth purposes for the bonds to be issued.

SECTION 4.07. Amends Section 17.0111, Water Code, to provide that no more than \$250,000,000 in principal, rather than 50 percent of the amount of bonds authorized by Article III, Section 49-d-7, of the Texas Constitution, and issued under either that section or Article III, Section 49-d-8, of the Texas Constitution, may be dedicated to the purposes provided by Chapter 17K. Makes conforming changes.

SECTION 4.08. Amends Section 17.182, Water Code, to require proceeds from the sale of political subdivision bonds held by TWDB either to be credited to the account from which financial assistance was made or to be deposited to the credit of the Texas Water Development Fund II. Sets forth requirements for the proceeds.

SECTION 4.09. Amends Section 17.278, Water Code, to prohibit TWDB, if an application includes a proposal for a wastewater treatment plant that is located outside the jurisdiction of this state and that is not subject to the permitting authority of TNRCC, from delivering funds for the wastewater treatment plant until after the board reviews the plans and specifications in coordination with TNRCC and finds that the wastewater treatment plant is capable of producing effluent that will



meet federal and Texas-approved water quality standards.

## ARTICLE 5. SMALL COMMUNITIES ASSISTANCE

SECTION 5.01. Amends Section 5.311, Water Code, to authorize TNRCC to delegate to an administrative law judge of the State Office of Administrative Hearings the authority to issue orders related to interim rates under Chapter 13. Requires the administrative law judge to report to TNRCC on a hearing in the manner provided by law, except for a hearing related to interim rates as provided in Subsection (a). Makes conforming changes.

SECTION 5.02. Amends Sections 13.002(11), (21), and (24), Water Code, to redefine "member," "service," and "water supply or sewer service corporation."

SECTION 5.03. Amends Section 13.181, Water Code, to require this subchapter to apply only to a utility and not to municipalities, counties, districts, or water supply or sewer service corporations, except as stated in Section 13.192. Deletes the requirement that this subchapter apply only to a utility and not be applied to municipalities, counties, districts, or water supply or sewer service corporations.

SECTION 5.04. Amends Section 13.183, Water Code, by adding Subsection (c), to authorize the regulatory authority to develop methodologies for water or wastewater rates using factors other than rate of return and those specified in Section 13.185, to ensure that retail customers receive higher quality or more reliable water or sewer service. Sets forth requirements for overall revenues determined pursuant to a methodology developed under this section.

SECTION 5.05. Amends Section 13.184(a), Water Code, to prohibit the regulatory authority from prescribing any rate that yields more than a fair return, unless the regulatory authority adopts rules to further the purposes stated in Section 13.183(c). Makes a conforming change.

SECTION 5.06. Amends Section 13.185(a), Water Code, to require components of invested capital and net income to be determined according to the rules stated in this section, except as provided in Sections 13.183(c) and 13.184(a). Makes a conforming change.

SECTION 5.07. Amends Chapter 13G, Water Code, by adding Section 13.241, as follows:

Sec. 13.241. GRANTING OR AMENDING CERTIFICATES. Requires TNRCC to ensure that the groundwater and surface water resources in Texas are adequately protected and efficiently used and to consider regionalization or consolidation of systems when economically feasible or in the public interest, when determining whether to grant or amend a certificate of public convenience and necessity (certificate). Sets forth requirements for a retail public utility requesting a certificate of public convenience and necessity.

SECTION 5.08. Amends Section 13.246, Water Code, by amending Subsection (c) and adding Subsections (d) and (e), to include the efforts of the applicant to extend service to any economically distressed areas to the criteria for granting or amending a certificate. Defines "economically distressed areas." Authorizes TNRCC to require that an applicant submit a business plan for providing service for areas currently certificated to the applicant, and allows TNRCC to include conditions in a certificate. Authorizes TNRCC to require an applicant to provide financial assurance to ensure continuous and adequate service.

SECTION 5.09. Amends Section 13.253, Water Code, to authorize TNRCC to order any retail public utility that possesses a certificate to provide specified improvement in its service defined area; or to order retail public utilities that hold or are required to hold a certificate to establish specified facilities for the interconnecting service. Makes a conforming change.

SECTION 5.10. Amends Section 13.254, Water Code, to set forth the conditions which authorize TNRCC to revoke or amend any certificate of public convenience and necessity. Prohibits a retail public utility from rendering retail water or sewer service to the public in an area that has been decertified without proper consent from the retail public utility previously holding the certificate. Requires TNRCC to determine the extent to which any utility facilities currently used for providing

service or utility facilities constructed to serve the area being decertified will be rendered useless as a result of TNRCC's action. Requires TNRCC to determine the impact on the retail public utility's ability to repay any debts owed for facilities or services dedicated to serve the area being decertified. Requires TNRCC to require the new utility service provider to compensate the decertified retail public utility. Sets forth considerations to be used by TNRCC in determining the amount of compensation. Authorizes TNRCC to require payment of the compensation to a decertified retail public utility in a lump sum or to allow payment to be made by the newly certificated retail public utility on a per-customer basis.

SECTION 5.11. Amends Section 13.301(a), Water Code, to require a utility or a water supply or sewer service corporation to notify TNRCC by filing a written application and to give public notice unless public notice is waived by the director. Requires the application to include a business plan and its requirements of the person acquiring the water or sewer system for providing continuous and adequate service to any areas currently certificated.

SECTION 5.12. Amends Section 13.302(a), Water Code, to set forth requirements for an application for a person acquiring controlling interest in a utility.

SECTION 5.13. Amends Section 13.412, Water Code, by adding Subsections (f) and (g), to authorize a receiver appointed under this section to seek TNRCC approval to acquire the water or sewer utility facilities and transfer the certificate of the system in receivership. Requires application to be in accordance with Subchapter H. Sets forth conditions for abandonment under this section and Section 13.4132 of this code.

SECTION 5.14. Amends Sections 13.4132(a) and (c), Water Code, to authorize TNRCC, after providing to the utility an opportunity to be heard at a TNRCC meeting as an item on its agenda, to authorize a person to manage certain facilities. Provides that a person appointed under this section has the power and duty to access all system components.

SECTION 5.15. Amends Section 15.602, Water Code, to define "community water system," "disadvantaged community," "nonprofit noncommunity water system," "public water system," "Safe Drinking Water Act," and "safe drinking water revolving fund," and to redefine "political subdivisions." Makes conforming changes.

SECTION 5.16. Amends Chapter 51J, Water Code, by adding Section 15.6041, as follows:

Sec. 15.6041. FINANCIAL ASSISTANCE UNDER THE SAFE DRINKING WATER REVOLVING FUND. Requires the safe drinking water revolving fund to be administered by TWDB. Requires the fund to be held and administered by TWDB, as provided by Section 15.603, except that the fund shall be used in accordance with the Safe Drinking Water Act (SDWA) and shall be used to provide financial assistance for certain purposes. Authorizes TWDB to establish accounts in the fund and sets forth types of accounts. Sets forth authorization provisions for financial assistance from the disadvantaged community account. Requires TWDB to determine the amount of a loan which the political subdivision cannot repay. Requires TWDB to forgive repayment of that portion of the principal of the loan which it determines the political subdivision cannot repay. Prohibits financial assistance from the disadvantaged community account from exceeding the allowable percentage of the amount of the capitalization grant received by the state as stipulated in SDWA.

SECTION 5.17. Amends Sections 15.603(c) and (g), Water Code, to make conforming and nonsubstantive changes.

SECTION 5.18. Amends Section 341.031, Health and Safety Code, to require TNRCC, in order to preserve the health, safety, and welfare of the citizens of the state, to ensure that public drinking water supply systems provide a continuous, adequate, and safe supply of drinking water, and are financially stable and technically sound. Requires TNRCC to encourage and promote the development and use of regional and area-wide drinking water supply systems. Deletes the provision requiring that public drinking water comply with the standards established by the United States Public Health Service. Makes conforming changes.

SECTION 5.19. Amends Section 341.035, Health and Safety Code, to require a person establishing a drinking water supply system for public use, unless the person is a political subdivision or has agreed to transfer the ownership and operation of the water supply system to a political subdivision, to submit a business plan to TNRCC for review and approval prior to beginning construction demonstrating the capability of the system management and ownership. Authorizes TNRCC to require an applicant to provide financial assurance to ensure a continuous and safe supply of drinking water. Sets forth the terms by which completed plans and specifications are required to be submitted to TNRCC for review and approval. Deletes the provision requiring TNRCC to approve plans that conform to the state's water safety laws. Authorizes the water supply system to be constructed only after TNRCC's approval is received. Makes conforming and nonsubstantive changes.

SECTION 5.20. Amends Chapter 341C, Health and Safety Code, by adding Section 341.0351, as follows:

Sec. 341.0351. CONTINUOUS AND SAFE DRINKING WATER SUPPLY REQUIREMENTS. Provides that the owner or manager of a drinking water supply system may be required, if the public drinking water supply system has a history of noncompliance or negligence, to demonstrate that resources are available to ensure proper future operation of the system. Authorizes TNRCC to require both submission of a business plan demonstrating the capability of the system management and financial assurance in an acceptable form. Sets forth the terms by which a public water supply system which has been constructed without approval or which the director of TNRCC deems an imminent health hazard may be required to temporarily cease operations. Prohibits operations from resuming until authorized by TNRCC or the director. Provides that a public water system ordered to cease operations is entitled to an expedited hearing before TNRCC on written request. Makes conforming changes.

SECTION 5.21. Amends Sections 341.047(a) and (b), Health and Safety Code, to delete the provision making a violation under Sections 341.031, 341.032(a) or (b), 341.033(a)-(f), 341.035(a)-(d) and (f), and 341.036 an offense punishable by a fine of not less than \$100. Makes conforming changes.

SECTION 5.22. Amends Section 341.048, Health and Safety Code, to require a person who causes, suffers, allows, or permits a violation under this subchapter to be assessed a civil penalty of not less than \$50 nor more than \$10,000, rather than \$500, for each violation. Deletes the provision which establishes the penalties ascribed to subsequent violations. Makes conforming changes.

SECTION 5.23. Amends Section 341.049(a), Health and Safety Code, to make a conforming change.

## ARTICLE 6. WATER DATA COLLECTION AND DISSEMINATION

SECTION 6.01. Amends Section 16.012, Water Code, to require the executive administrator, in cooperation with other entities of the state, to guide the development of a statewide water resource data collection and dissemination network. Requires the staff to facilitate access to basic data and summary information concerning state water resources and provide guidance required to access and understand Texas water resource data. Requires the executive administrator to investigate instream flows including groundwater resources hydrologically connected to ecologically sensitive areas; lead a statewide effort, in coordination with federal, state, and local governments and other interested parties, to develop the network; make recommendations for optimizing its efficiency and effectiveness; and make basic data and summary information accessible to state agencies and other interested persons. Requires all entities of the state that collect or use water data to cooperate with TWDB in the development of the network. Makes conforming changes.

SECTION 6.02. Amends Section 16.021, Water Code, to provide that the Texas Geographical Information Council (TGIC), rather than the Natural Resources Information System Task Force, is created to provide strategic planning and coordination in the acquisition and use of geographical data and related technologies in the State of Texas. Sets forth the method by which entities will be

designated as members of TGIC and select representatives to serve on TGIC. Requires the duties of the TGIC to include providing guidance to the executive administrator in carrying out duties and to the Department of Information Resources in developing rules. Deletes the provision regarding the composition of the Natural Resources Information System Task Force. Sets forth the terms by which, under the guidance of TGIC, the executive administrator is required to further develop the Texas Natural Resources Information System; make recommendations to the Department of Information Resources; acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and develop mutually compatible statewide digital base maps depicting natural resources and man-made features. Makes conforming and nonsubstantive changes.

SECTION 6.03. Provides that on September 1, 1997, the Texas Natural Resources Information System Task Force and the Texas Geographic Information Systems Planning Council are merged into the Texas Geographical Information Council. Requires all designated member agencies of both predecessor entities to continue to serve as member agencies of the Texas Geographical Information Council.

#### ARTICLE 7. EFFECTIVE DATE; EMERGENCY

SECTION 7.01. (a) Effective date: September 1, 1997, except as provided by Subsections (b)-(e) of this section.

(b) Provides that this section and Sections 2.03, 2.09, 2.10, and 2.13 of this Act take effect immediately.

(c) Provides that Section 3.54 of this Act takes effect on the first day of the first calendar quarter beginning on or after the date that it may take effect under Section 39, Article III, Texas Constitution.

(d) Establishes that the change in law made by Section 3.54 of this Act to Section 151.318, Tax Code, does not affect taxes imposed before the effective date of Section 3.54 of this Act.

(e) Provides that Sections 4.03 and 4.05-4.07 of this Act take effect on the date on which the constitutional amendment proposed by \_\_.J.R. No. \_\_, 75th Legislature, Regular Session, 1997, takes effect. Provides that if the amendment is not approved by the voters, those sections have no effect.

SECTION 7.02. Emergency clause.