

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1  
By: Brown  
Natural Resources  
3-25-97  
Committee Report (Substituted)

### **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 - Water Planning: Drought, Conservation, Development, and Management*

Requires the Texas Water Development Board (TWDB) to adopt a comprehensive state water plan to provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions.

Provides for the development of regional water plans, a drought response plan, and projections for water availability during times of drought.

Provides that all surface water right holders having an annual appropriation of 1,000 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.

Sets forth procedures for funding the cost of developing or revising regional water plans.

#### *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 - Emergency Authorizations; Enforcement*

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 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 TNRCC 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 4 - Surface Water and Groundwater Supplies*

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

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 5 - 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 bonds in order to mitigate the risk of failure to recover the debt service cost of bond funds until the funds can be loaned.

### *Article 6 - 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 7 - 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, C.S.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 SECTIONS 1.03, 2.07, 3.02, and 4.25 (Sections 11.1271(c), 11.1272, 11.085(f), 11.0843(b), and 36.0161(b)(2), Water Code) and to the Texas Water Development Board in SECTIONS 1.01, 1.02, 1.06, 1.07, 2.14, 4.35, 5.03, 5.10, and 6.16 (Sections 16.051(c) and (d), 16.053(f), 15.406(f), 15.4061(f), 15.7031(b), 36.372(b) and (c), 17.960(b), 17.952, and 15.6041(a), Water Code, and Section 44.010(b), Agriculture Code) of this bill.

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

#### ARTICLE 1. WATER PLANNING: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT

SECTION 1.01. Amends Section 16.051, Water Code, as follows:

Sec. 16.051. New heading: STATE WATER PLAN: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN. Requires the Texas Water Development Board (TWDB), rather than the executive administrator of TWDB, no later than September 1, 2001, and every five years thereafter, to adopt, rather than prepare, develop, and formulate, a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053 of this code. Requires the state water plan to provide for the meeting of certain goals. Requires the state water plan, as formally adopted by TWDB, to be a guide to state water policy. Requires the Texas Natural Resource Conservation Commission (TNRCC) to take the plan into consideration in matters coming before it. Provides that nothing in the state water plan or any amendment or modification of the plan affects any vested right existing before August 30, 1965. Requires TWDB, by rule, to define and designate river basins and watersheds. Requires TWDB, in coordination with TNRCC and the Parks and Wildlife Department (TPWD), to adopt, by rule, guidance principles for the state water plan which reflect the public interest of the entire state. Requires due consideration to be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources when adopting guidance principles. Requires TWDB, on adoption, to deliver the state water plan to certain individuals. Requires the plan to include legislative recommendations that TWDB believes are needed and desirable to facilitate more voluntary water transfers. Deletes existing text regarding development of the state water plan by the executive administrator of TWDB.

SECTION 1.02. Amends Sections 16.053-16.057, Water Code, as follows:

Sec. 16.053. New heading: REGIONAL WATER PLANS. Sets forth procedures for the development of regional water plans by the regional water planning group in each regional water planning area. Deletes existing text regarding a hearing on the preliminary plan of the executive administrator of TWDB.

Sec. 16.054. New heading: OTHER WATER PLANNING. Provides that it is the policy of the state that water resource management, water conservation, and drought planning should occur on an ongoing basis. Requires TWDB, TNRCC, and TPWD to make available where appropriate technical and financial assistance for such planning. Provides that certain persons and entities should ensure, when preparing individual water plans, that the plan is consistent with the applicable approved regional water plan. Deletes existing text regarding a hearing on the completed state water plan of the executive administrator of TWDB.

Sec. 16.055. New heading: DROUGHT RESPONSE PLAN. Requires the Division of Emergency Management of the Office of the Governor to be responsible for coordinating the drought response component of the state water plan. Provides that the drought response and monitoring committee is created and requires the committee to meet as necessary to carry out the provisions of this section. Sets forth composition of the drought response and monitoring committee. Sets forth responsibilities of the drought response and management committee. Sets forth criteria for determining if a drought exists. Deletes existing text regarding the effect of the state water plan of the executive administrator of TWDB.

Sec. 16.056. New heading: FEDERAL ASSISTANCE IN FINANCING REGIONAL WATER PLANS. Authorizes the executive administrator of TWDB to take all necessary action to qualify for federal assistance in financing the development and improvement of the regional water plans. Deletes existing text regarding amendment of plan.

SECTION 1.03. Amends Chapter 11D, Water Code, by amending Section 11.1271 and adding Section 11.1272, as follows:

Sec. 11.1271. ADDITIONAL REQUIREMENT: WATER CONSERVATION PLANS. Requires, rather than authorizes, TNRCC to require the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures, as defined by Subdivision (8)(B), Section 11.002, of this code. Requires 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 1,000 acre-feet a year or more to develop, submit, and implement a water conservation plan, consistent with the appropriate regional water plan, that adopts reasonable water conservation measures, as defined by Section 11.002(8)(B), of this code. Prohibits the requirement for a water conservation plan under this section from resulting in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

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 and irrigation districts to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought.

SECTION 1.04. 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, management, 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.

SECTION 1.05. 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 1.06. 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 plan for the area in which the political subdivision is located.

SECTION 1.07. Amends Chapter 15F, Water Code, by adding Section 15.4061, as follows:

Sec. 15.4061. FUNDING FOR REGIONAL WATER PLANS. Sets forth procedures for funding the cost of developing or revising regional water plans. Requires the board to adopt rules establishing criteria for eligibility for regional water planning money that includes certain items.

SECTION 1.08. Requires the state water plan in effect on the effective date of this Act to remain in effect until a new state water plan is adopted pursuant to Subsection (a), Section 16.051, Water Code, as amended by Section 1.01 of this Act.

## ARTICLE 2. WATER MANAGEMENT, MARKETING AND TRANSFERS

SECTION 2.01. Amends Section 791.026, Government Code, to authorize contracts to require the purchaser to develop replacement supplies prior to the expiration of the contract and authorizes the contract to provide for the enforcement of such terms by court order. Provides that where a contract sets forth explicit expiration provisions, no continuation of service obligation is implied. Makes conforming changes.

SECTION 2.02. Amends Section 11.002, Water Code, to redefine "beneficial use," and to define "livestock," "conserved 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 11.042, Water Code, to authorize a water control and improvement district supplying stored or conserved water to use the bank and bed of any flowing natural stream in the state to convey the water. Deletes a provision requiring TNRCC to prescribe rules for this purpose. Requires a person who wishes to convey and subsequently divert water in a watercourse or stream to obtain prior approval, except as provided by Subsection (a) of this section. Requires the authorization to allow to be diverted only a certain amount of water subject to certain special conditions. Prohibits water discharged into a watercourse or stream under this chapter from causing a degradation of water quality to the extent that the stream segment's classification would be lowered. Authorizes authorizations under this section and water quality authorizations to be approved in a consolidated permit proceeding. Provides that nothing in this section shall be construed to affect an existing project for which water rights and reuse authorizations have been granted by TNRCC before September 1, 1997.

SECTION 2.06. Amends Section 11.046, Water Code, as follows:

Sec. 11.046. New heading: RETURN SURPLUS WATER. Requires a person who takes or diverts water from a watercourse or stream to conduct surplus water back to the watercourse or stream from which it was taken under certain circumstances. Authorizes TNRCC to include conditions in the water right providing for the return of surplus water and the return point, in granting an application for a water right. Authorizes water appropriated under a permit, certified filing, or certificate of adjudication 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 considered surplus water and is subject to reservation for instream uses or beneficial inflows or appropriation. Prohibits water appropriated under a permit, certified filing, or certificate of adjudication which is recirculated within a reservoir for cooling purposes from being considered to be surplus for purposes of this chapter.

SECTION 2.07. Amends Section 11.085, Water Code, as follows:

Sec. 11.085. New heading: INTERBASIN TRANSFERS. Provides that no person may take or divert any state water from a river basin in this state and transfer such water into any other river basin without first applying for and receiving a water right or an amendment to a permit, certified filing, or certificate of adjudication for the commission authorizing the transfer. Deletes existing text regarding interwatershed transfers. Requires TNRCC to conduct one public meeting 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. Requires notice to be provided pursuant to Subsection (e). Authorizes any person to present relevant information at the meeting. Requires TNRCC to give notice and 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. Authorizes TNRCC, by rule, to establish procedures for payment of those costs. Requires TNRCC to take certain actions, in addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication. Authorizes TNRCC to grant the application, wholly or in part, only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period. Provides that this section does not apply to certain transfers. Requires the new water right or amended permit, certified filing, or certificate of adjudication 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 interbasin transfer to include provisions for compensation and mitigation. Authorizes each county judge of a county located in whole or in part in the basin of origin, if the party from the basin of origin is a governmental entity, to provide input on the appropriate compensation and mitigation for the interbasin transfer. Provides that a basin is designated as provided in accordance with Section 16.051 of this code. Prohibits a basin from being redesignated in order to allow a transfer or diversion of water otherwise in violation of this section. 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 2.08. Amends Section 11.124(a), Water Code, to make conforming and nonsubstantive changes.

SECTION 2.09. 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 2.10. Amends Section 11.142(a), Water code, to authorize a person to construct on the person's own property a dam or reservoir with a normal conservation storage capacity of, rather than a dam or reservoir to impound or contain, not more than 200 acre-feet of water for domestic and livestock purposes, without obtaining a permit.

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 permit, certified filing, or certificate of adjudication as provided by this chapter is unnecessary if such hearing is waived by the affected holder of a permit, certified filing, or certificate of adjudication. Provides that a permit, certified filing, or certificate of adjudication for a term does not vest in the holder of a permit, certified filing, or certificate of adjudication any right to the diversion, impoundment, or use of water for longer than the term of the permit, certified

filing, or certificate of adjudication 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. Requires TNRCC at the conclusion of the hearing, to cancel the permit, certified filing, or certificate of adjudication if TNRCC makes certain findings. 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 15.701, Water Code, to define "trust."

SECTION 2.13. Amends Section 15.702, Water Code, to require TWDB to administer the Texas Water Bank (water bank) to facilitate water transactions, rather than facilitate the transfer of water from all sources as necessary, to provide sources of adequate water supplies for use within the State of Texas.

SECTION 2.14. Amends Section 15.703(a), to authorize TWDB to take all actions necessary to operate the water bank and to facilitate the transfer of water rights from the water bank for future beneficial use including, but not limited to, certain actions.

SECTION 2.15. Amends Chapter 15K, Water Code, by adding Section 15.7031, as follows:

Sec. 15.7031. TEXAS WATER TRUST. Provides that the Texas Water Trust is established within the water bank to hold water rights dedicated to environmental needs, including instream flows, water quality, fish and wildlife habitats, or bay and estuary inflows. Requires TWDB, in consultation with TPWD and TNRCC, to adopt rules governing the process for holding and transferring water rights. Requires the dedication of any water rights placed in trust to be reviewed and approved by TNRCC, in consultation with TWDB and TPWD. Authorizes water rights to be held in the trust for a term specified by contractual agreement or in perpetuity.

SECTION 2.16. Amends Section 15.704, Water Code, by amending Subsection (a) and adding Subsection (c), to authorize a water right, rather than up to 50 percent of a water right, to be deposited in the water bank for an initial term of up to 10 years, unless otherwise held in the Texas Water Trust. Authorizes a contract or option contract to allow use of a water right to include a requirement that the purchaser show diligence in pursuing feasible and practicable alternative water supplies; and does not vest any right in the purchaser beyond the stated terms and conditions of the contract or option contract.

SECTION 2.17. 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. Provides that this article does not apply to an application for an interbasin transfer filed and pending before March 2, 1997. Requires any subsequent renewals of such applications to be subject to the provisions of this Act. Provides that nothing in this Act shall affect the validity of any interbasin transfer permitted or authorized before the effective date of this Act.

### ARTICLE 3. EMERGENCY AUTHORIZATIONS; ENFORCEMENT

SECTION 3.01. Amends Section 11.082(a), Water Code, to provide that a person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is liable to a civil penalty of not more than \$10,000, rather than \$1,000, for each day the person continues the taking, diversion, or appropriation.

SECTION 3.02. Amends Chapter 11C, Water Code, by adding Sections 11.0841-11.0843, as follows:

Sec. 11.0841. CIVIL REMEDY. Provides that this chapter does not restrict the right of any private corporation, individual, or political subdivision that has a justiciable interest in

pursuing any available common-law remedy. Authorizes a district court to award the costs of litigation, including reasonable attorney fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of this chapter or a rule adopted pursuant to this chapter.

Sec. 11.0842. ADMINISTRATIVE PENALTY. Sets forth the guidelines and determination of sanctions TNRCC is authorized to impose for violations of this chapter, a rule or order adopted under this chapter or Section 16.236 of this code, or a permit, certified filing, or certificate of adjudication issued under this chapter. Provides that this section and Section 12.052 of this code are not applicable to any violation resulting from the failure to obtain a permit for the construction of a dam or reservoir for domestic and livestock purposes initiated prior to March 2, 1997, unless modifications other than repairs are made to the dam or reservoir after March 2, 1997. 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 a watermaster or the watermaster's deputy, as defined by TNRCC rule, to issue field citations for violations of this chapter or a water right issued under this chapter. Requires TNRCC, by rule, to establish penalty amounts corresponding to types of violations of this chapter or rules or orders adopted or water rights issued under this chapter. Requires a penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund.

SECTION 3.03. Amends Section 11.139, Water Code, as follows:

Sec. 11.139. New heading: EMERGENCY AUTHORIZATIONS. Sets forth procedures by which TNRCC is authorized to grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication. Authorizes TNRCC to grant emergency authorizations for the temporary transfer and use of all or part of a permit, certified filing, or certificate of adjudication for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety reasons. Provides that the person granted an authorization under Subsection (h) of this section is liable to the owner and the owner's agent or lessee from whom the use is transferred for the fair market value of the water transferred as well as for any damages 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 3.04. Amends Section 12.052(c), Water Code, to provide that an owner of a dam who wilfully fails or refuses to follow a final, nonappealable order of TNRCC relating to the construction, reconstruction, repair, or removal of the dam is liable for up to \$10,000, rather than \$1,000, a day for each day of the violation. Makes a conforming change.

SECTION 3.05. Amends Section 16.236, Water Code, as follows:

Sec. 16.236. New heading: CONSTRUCTION OF LEVEE WITHOUT APPROVAL OF PLANS; 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. 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 forth 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. Provides that a person commits a Class C misdemeanor and upon conviction is punishable by a fine of not more than \$4,000, rather than \$100, if the person violates any provision of Subsection (a) of



this section. Makes conforming and nonsubstantive changes.

SECTION 3.06. Amends Chapter 16G, Water Code, by adding Section 16.237, as follows:

Sec. 16.237. ADMINISTRATIVE PENALTY; CIVIL REMEDY. Authorizes TNRCC to assess an administrative penalty against a person as provided by Section 11.0842 of this code if the person violates a TNRCC rule or order adopted under Section 16.236 of this code. Provides that nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing a common-law remedy.

#### ARTICLE 4. SURFACE WATER AND GROUNDWATER SUPPLIES

SECTION 4.01. Amends Section 11.134(b), Water Code, to require TNRCC to grant an application only if the proposed appropriation is intended for a beneficial use, considers the effects of any hydrological connection between surface water and groundwater, and addresses a water supply need in a manner that is consistent with the state water plan or an approved regional water plan for any area in which the proposed appropriation is located, unless TNRCC determines that conditions warrant waiver of this requirement. Makes a conforming change.

SECTION 4.02. Amends Chapter 11D, Water Code, by adding Sections 11.1501 and 11.151, as follows:

Sec. 11.1501. CONSIDERATION AND REVISION OF PLANS. Requires TNRCC in considering certain applications to consider the state water plan and any approved regional water plan for the area or areas in which the water is proposed to be stored, diverted or used.

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

SECTION 4.03. Amends Section 11.153, Water Code, by amending the section heading and Subsections (a) and (d), as follows:

Sec. 11.153. New heading: PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. Deletes the references to specific aquifers in a provision requiring TNRCC to investigate the feasibility of storing appropriated water in various types of aquifers. Requires TNRCC to only 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 4.04. Amends Sections 11.154(a)-(c), and (e), to make conforming and nonsubstantive changes.

SECTION 4.05. Amends Section 11.155(b), Water Code, to make conforming changes.

SECTION 4.06. Amends Section 11.173(b), Water Code, to make conforming changes.

SECTION 4.07. Amends Section 15.001(6), Water Code, to redefine "project."

SECTION 4.08. 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 or an institution of higher education 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 4.09. Amends Section 17.895, Water Code, by amending Subsection (a) and adding Subsection (c), to authorize TWDB or lender districts to make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs for certain activities.

Authorizes 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 4.10. Amends Section 35.002(12), Water Code, to define "priority groundwater management area" rather than "critical area."

SECTION 4.11. 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 gathered by TNRCC and TWDB, those areas of the state that are experiencing or that are expecting to experience, within the immediately following 25-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. Requires the executive director to make the report available to the public by providing a copy of the report to at least one public library and the county clerk's office in each county in which the proposed priority groundwater management area is located and to all districts adjacent to the area of the proposed priority groundwater management area. Makes conforming changes.

SECTION 4.12. 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 4.13. 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 4.14. 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. Requires the Texas Agricultural Extension Service, if TNRCC proposes the creation of one or more districts, to begin an education program within such areas with the assistance of certain entities to inform the residents of the status of the area's water resources and management options before beginning the procedures for creation of a district. Makes conforming and nonsubstantive changes.

SECTION 4.15. Amends Section 35.013, Water Code, as follows:

Sec. 35.013. New heading: **ADDING PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT.** Requires a proposition to add a priority groundwater management area to a district, if the district has outstanding debts or taxes, rather than issued bonds, to include the following language in the ballot: "and assumption by the described area of a proportional share of the debts or taxes of the district." Makes conforming changes.

SECTION 4.16. Amends Sections 35.014(b) and (c), Water Code, to make conforming changes.

SECTION 4.17. 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 4.18. Amends Section 35.017, Water Code, to make a conforming change.

SECTION 4.19. 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, no later than January 31 of each odd-numbered year. Sets forth the required contents of the report.

SECTION 4.20. Amends Section 36.001, Water Code, by amending Subdivision (14) and adding Subdivisions (16)-(19), to define "priority groundwater management area," "loan fund," "applicant," and "livestock."

SECTION 4.21. Amends Section 36.012(c), Water Code, to make a conforming change.

SECTION 4.22. Amends Section 36.013(d), Water Code, to make a conforming change.

SECTION 4.23. 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 4.24. Amends Section 36.016, Water Code, to set forth requirements for the appointment of temporary directors. Makes conforming and nonsubstantive changes.

SECTION 4.25. 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 for which temporary directors are to be appointed is contained within two, three, or four counties.

SECTION 4.26. 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 a nonsubstantive change.

Sec. 36.1071. MANAGEMENT PLAN. Sets forth the procedures for development of a comprehensive management plan by a "district" defined as 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. 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. TEXAS WATER DEVELOPMENT BOARD REVIEW AND CERTIFICATION OF MANAGEMENT PLAN. Sets forth procedures for review and certification of the management plan by TWDB. 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 TWDB within 60 days following adoption of the amendment by the district's board. Requires TWDB to review and certify any amendment which substantially affects the management plan in accordance with the procedures established under Section 36.1072.

SECTION 4.27. Amends Section 36.108(a), Water Code, to make a conforming change.

SECTION 4.28. Amends Section 36.113, Water Code, to require a district to require an application for a permit be in writing and sworn to. Authorizes the district to set forth the required contents of the permit application. Requires the district to make certain considerations before granting or denying 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 4.29. Amends Chapter 36D, Water Code, by adding Section 36.1131, as follows:

Sec. 36.1131. 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 4.30. Amends Chapter 36E, Water Code, by adding Sections 36.159-36.161, as follows:

Sec. 36.159. GROUNDWATER DISTRICT 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 water plans.

Sec. 36.160. FUNDS. Sets forth certain activities to which TWDB, TNRCC, Texas Parks and Wildlife Department (TPWD), the Texas Agricultural Extension Service, and institutions of higher education 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. Authorizes TWDB to delegate to the State Office of Administrative Hearings the responsibility to conduct a hearing under this section.

SECTION 4.31. 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 4.32. 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 certification of its management plan under Section 36.1072 or fails to submit or receive certification 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 first anniversary of the initial certification of the plan by TWDB and following the end of every five-year period thereafter. 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 actions TNRCC deems appropriate to enforce compliance with rules or orders of TNRCC or any provisions of this chapter, including certain actions. Authorizes TNRCC to recommend to the legislature, based upon the report required by Section 35.018 of this code, actions TNRCC deems necessary to accomplish comprehensive management in the district, in addition to the actions identified under Subsection (a).

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 any of the counties in which the land is located. Deletes a requirement that trial appeal be de novo and that the substantial evidence rule does not apply. Redesignated from Section 36.306.

Sec. 36.310. ASSETS ESCHEAT TO STATE. Requires all assets of a district, upon dissolution of the district by TNRCC, to be sold at public auction and the proceeds given to the county if it is a single-county district. Requires the proceeds, if it is a multicounty district, to be divided with the counties in proportion to the surface land area in each county served by the district. Deletes existing text regarding Chapter 72, Property Code. Redesignated from

Section 36.307.

SECTION 4.33. 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 4.34. Amends Section 36.331, Water Code, to make a conforming change.

SECTION 4.35. 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 and legislatively created districts that do not require a confirmation election 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 implementing this section 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 4.36. 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 4.37. (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, Acts of the 69th Legislature, Regular Session, 1985 (Critical Areas Groundwater Districts).

SECTION 4.38. 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 certification to TWDB not later than September 1, 1998.

SECTION 4.39. 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 4.40. 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 September 1, 1998.

## ARTICLE 5. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

SECTION 5.01. 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 5.02. 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 applicable to the debt incurred by the state in leasing a state facility. Makes conforming changes.

SECTION 5.03. Amends Chapter 17, Water Code, by adding Subchapter L, as follows:

### SUBCHAPTER L. WATER FINANCIAL ASSISTANCE BOND PROGRAM

Sec. 17.951. DEFINITIONS. 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 one or more 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 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 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 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 the powers described in Subchapters D-G, and K, notwithstanding any provision inconsistent with the provisions of this subchapter.

SECTION 5.04. Amends Section 17.001(7), Water Code, to redefine "water supply project."

SECTION 5.05. Amends Section 17.001, Water Code, by amending Subdivision (17) and adding Subdivision (25), to redefine "financial assistance" and define "water financial assistance bonds."

SECTION 5.06. 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 5.07. 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 Subchapter K. Makes conforming changes.

SECTION 5.08. 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 5.09. 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.

SECTION 5.10. Amends Sections 44.007-44.010, Agriculture Code, to require TWDB to establish a linked deposit program to encourage commercial lending for the financing of water conservation projects. Authorizes at any one time, not more than \$15 million, of which \$10 million is authorized only to be used to finance water conservation projects, to be placed in link deposits under this chapter. Authorizes a loan granted pursuant to this chapter, when used to finance eligible water conservation projects or equipment, to be applied to existing debt resulting from the financing of water conservation projects or equipment for agricultural purposes as defined by TWDB rule. Makes conforming and nonsubstantive changes.

SECTION 5.11. Amends Chapter 11B, Tax Code, by adding Section 11.32, as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. Authorizes the governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions to exempt from taxation part or all of the assessed value of property upon which approved water conservation initiatives have been implemented. Requires approved water conservation initiatives to be designated pursuant to an ordinance or other law adopted by the governing unit for purposes of this section.

SECTION 5.12. Amends Chapter 2155.44, Government Code, by adding Subsection (d), to require the General Services Commission and all state agencies making purchase of vegetation for landscaping purposes, including plants, to give preference to vegetation native to Texas if the cost to the state and the quality are equal.

#### ARTICLE 6. SMALL COMMUNITIES ASSISTANCE

SECTION 6.01. 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 interlocutory orders related to interim rates under Chapter 13. Requires the administrative law judge to report to TNRCC on the hearing in the manner provided by law, except as provided in Subsection (a). Makes conforming changes.

SECTION 6.02. Amends Sections 13.002(11), (21), and (24), Water Code, to redefine "member," "service," and "water supply or sewer service corporation."

SECTION 6.03. 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 6.04. Amends Section 13.183, Water Code, by adding Subsection (c), to authorize the regulatory authority to develop methodologies for water or sewer 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 an alternate methodology developed under this section. Requires the regulatory authority, in determining to use alternate ratemaking methodologies, to assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.

SECTION 6.05. Amends Section 13.184(a), Water Code, to prohibit TNRCC from prescribing any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public unless TNRCC establishes alternate rate methodologies in accordance with Section 13.183(c). Sets forth regulations for the use of alternate ratemaking methodologies. Makes a conforming change.

SECTION 6.06. 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, unless alternate methodologies are adopted as provided in Sections 13.183(c) and 13.184(a). Makes a conforming change.

SECTION 6.07. Amends Chapter 13G, Water Code, by adding Section 13.241, as follows:

Sec. 13.241. GRANTING OR AMENDING CERTIFICATES. Sets forth guidelines 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, required to be used by TNRCC when determining whether to grant or amend a certificate of public convenience and necessity (certificate).

SECTION 6.08. Amends Section 13.246, Water Code, as follows:

Sec. 13.246. New heading: NOTICE AND HEARING; ISSUANCE, AMENDMENT, OR

REFUSAL; FACTORS CONSIDERED. Authorizes TNRCC to impose special conditions necessary on an application for a certificate to ensure that continuous and adequate service is provided. Sets forth items TNRCC is authorized to require an applicant for a certificate to provide. Requires TNRCC, where applicable, in addition to other factors in this section, to consider the efforts of the applicant to extend service to any economically distressed areas. Defines "economically distressed area."

SECTION 6.09. Amends Section 13.253, Water Code, to authorize TNRCC to order any retail public utility that is required to possess a certificate and is located in an affected county to develop, implement, and follow certain practices to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas; or to order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider. Makes a conforming change.

SECTION 6.10. 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 without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of decertification. Sets forth procedures for the determination of the monetary amount of compensation.

SECTION 6.11. Amends Section 13.301(a), Water Code, to require a utility or a water supply or sewer service corporation on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation to file a written application with TNRCC and give public notice of the action unless public notice is waived by the executive director for good cause shown. Authorizes TNRCC to require demonstration of adequate capability to provide continuous and adequate service to the requested area and any areas currently certificated to the person. Authorizes TNRCC to require the person to provide a bond or other financial service if the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability. Makes conforming changes.

SECTION 6.12. Amends Section 13.302, Water Code, to set forth requirements for an application for a person acquiring controlling interest in a utility.

SECTION 6.13. Amends Section 13.412, Water Code, by amending Subsections (a) and (b) and adding Subsections (f) and (g), to require the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that informs TNRCC that the owner is abandoning the system. Requires the court to appoint a receiver if an appointment is necessary to guarantee continuous and adequate service to the customers of the utility. Authorizes abandonment to include certain actions for purposes of this section and Section 13.4132. Authorizes a receiver appointed under this section, notwithstanding Section 64.021, Civil Practice and Remedies Code, to seek TNRCC approval to acquire the water or sewer utility's facilities and transfer the utility's certificate. Requires the receiver to apply in accordance with Subchapter H.

SECTION 6.14. Amends Sections 13.4132(a) and (c), Water Code, to authorize TNRCC, after providing to the utility an opportunity to be heard by the commissioners at a TNRCC meeting, 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 6.15. 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 subdivision." Makes conforming changes.

SECTION 6.16. 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 6.17. Amends Sections 15.603(c) and (g), Water Code, to make conforming and nonsubstantive changes.

SECTION 6.18. Amends Section 341.031(a), Health and Safety Code, to delete a requirement that public drinking water comply with the standards established by the United States Public Health Service.

SECTION 6.19. Amends Chapter 341C, Health and Safety Code, by adding Section 341.0315, as follows:

Sec. 341.0315. PUBLIC DRINKING WATER SUPPLY SYSTEM. Requires TNRCC, to preserve the health, safety, and welfare, to ensure that public drinking water supply systems meet certain requirements. Requires TNRCC to encourage and promote the development and use of regional and areawide drinking water supply systems. Requires each public drinking water supply system to provide an adequate and safe drinking water supply. Requires the supply to meet the requirements of Section 341.031 and TNRCC rules. Requires TNRCC to consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

SECTION 6.20. Amends Chapter 341C, Health and Safety Code, by amending Section 341.035, and adding Sections 341.0351-341.0356, as follows:

Sec. 341.035. APPROVED PLANS REQUIRED FOR PUBLIC WATER SUPPLIES. Prohibits a person from beginning construction of a public drinking water supply system unless the executive director approves certain items. Requires the prospective owner or operator of the system to submit certain items to the executive director. Sets forth actions the executive director must take. Requires the prospective owner or operator of the proposed system to provide to TNRCC completed plans and specifications for review and approval in accordance with TNRCC rules. Provides that certain persons are not required to file a business plan under Subsection (a) or (b). Deletes existing text regarding approval of plans.

Sec. 341.0351. New heading: NOTIFICATION OF SYSTEM CHANGES. Redesignated from existing Section 341.035(b). Makes a nonsubstantive change.

Sec. 341.0352. New heading: ADVERTISED QUALITY OF WATER SUPPLY. Redesignated from existing Section 341.035(c).

Sec. 341.0353. New heading: DRINKING WATER SUPPLY COMPARATIVE RATING INFORMATION. Redesignated from existing Section 341.035(d). Makes nonsubstantive changes.

Sec. 341.0354. New heading: HIGHWAY SIGNS FOR APPROVED SYSTEM RATING. Redesignated from existing Section 341.035(e).

Sec. 341.0355. FINANCIAL ASSURANCE FOR CERTAIN SYSTEMS. Authorizes TNRCC to require the owner or operator of certain public drinking water supply systems to take certain actions. Requires, if TNRCC relies on rate increases or customer surcharges as the form of financial assurance, such funds to be deposited in an escrow account and released only with the approval of TNRCC.

Sec. 341.0356. ORDER TO STOP OPERATIONS. Requires a public water supply system to stop operations on receipt of a written notification of the executive director of TNRCC or an order of TNRCC issued under this section. Authorizes the executive director or TNRCC to order a public water supply system to stop operations if certain criteria are met. Authorizes a notification or order to be delivered by facsimile, by personal service, or by mail. Provides that a water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a TNRCC meeting. Prohibits the public water supply system from resuming operations until TNRCC, the executive director, or a court authorizes resumption.

SECTION 6.21. Amends Sections 341.047(a) and (b), Health and Safety Code, to provide that a person commits an offense if the person begins construction of, rather than establishes, a drinking water supply system without TNRCC's approval, violates a provision of 341.0351 or 341.0352; or fails to remove a sign as required by Section 341.0354. Deletes a provision that an offense under Subsection (a) is punishable by a fine of not less than \$100. Makes conforming changes.

SECTION 6.22. Amends Sections 341.048(b)-(i), 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 and nonsubstantive changes.

SECTION 6.23. Amends Section 341.049(a), Health and Safety Code, to make a conforming change.

## ARTICLE 7. WATER DATA COLLECTION AND DISSEMINATION

SECTION 7.01. 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 board 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 determine suitable, cost-effective water supply alternatives on a regional basis; monitor the effects of fresh water inflows upon the bays and estuaries of Texas; monitor instream flows; lead a statewide effort, in coordination with federal, state, and local governments and other interested parties, to develop a network for collecting and disseminating water resource-related information; make recommendations for optimizing its efficiency and effectiveness; make basic data and summary information accessible to state agencies and other interested persons; and cooperate with the Texas Agricultural Extension Service to facilitate development and delivery of educational programs as appropriate for rural and urban water users. Requires the executive administrator to consider advice from TPWD in performing certain duties. Requires all entities of the state that collect or use water data to cooperate with TWDB in the development of the network. Sets forth regulations for the development and use of a water availability model. Makes conforming changes.

SECTION 7.02. 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 guidance 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 7.03. 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 8. REPEALER; EFFECTIVE DATE; SAVING; EMERGENCY

SECTION 8.01. Repealer: Section 11.028, Water Code (Exception).

SECTION 8.02. (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, 2.13, and 3.03 of this Act take effect immediately.

(c) Provides that Section 4.36 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 4.36 of this Act to Section 151.318, Tax Code, does not affect taxes imposed before the effective date of Section 4.36 of this Act.

(e) Provides that Sections 5.03 and 5.05-5.08 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 8.03. (a) Provides that the requirement of Section 341.035, Health and Safety Code, as amended by Section 6.20 of this Act, that certain persons must provide the executive director of TNRCC with a business plan, applies only to the prospective owner or operator of a public drinking water supply system for which construction begins on or after September 1, 1997.

(b) Makes application of Section 341.0355, Health and Safety Code, as added by Section 6.20 of this Act, retroactive.

SECTION 8.04. Makes application of this Act prospective.

SECTION 8.05. Emergency clause.

#### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.01.

Amends Section 16.051, Water Code, to set forth regulations regarding the adoption of guidance principles. Provides for the inclusion of legislative recommendations in the state water plan.

SECTION 1.02.

Amends Section 16.053-16.057, Water Code, to provide additional regulations for the development of regional water plans and water planning. Deletes existing Section 16.056.

SECTION 1.03.

Amends Sections 11.1271 and 11.1272, Water Code, to prohibit the requirement for a water conservation plan from resulting in the need for an amendment to an existing permit, certified filing, or certificate of adjudication. Requires the Texas Natural Resource Conservation Commission (TNRCC) to adopt rules establishing criteria and deadlines for submission of water conservation plans. Makes nonsubstantive changes.

SECTION 1.04.

Amends Section 15.401, Water Code, to make nonsubstantive changes.

SECTION 1.07.

Amends Section 15.4061, Water Code, to make a nonsubstantive change.

SECTION 2.05.

Deletes proposed SECTION 2.05 and redesignates subsequent SECTIONS.

Amends Section 11.042, Water Code, to delete the requirement that TNRCC prescribe rules for delivering water down banks and beds. Requires nothing in this section be construed to affect certain existing projects.

SECTION 2.06.

Amends Section 11.046, Water Code, to provide additional regulations regarding recirculation of water within a reservoir.

SECTION 2.07.

Amends Section 11.085, Water Code, to provide new regulations regarding the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication. Provides new regulations regarding compensation and mitigation for interbasin transfers. Prohibits a basin from being redesignated in order to allow a transfer or diversion of water. Makes nonsubstantive changes.

SECTION 2.10.

Adds Section 11.142(a), Water Code, regarding the storage of water for domestic and livestock purposes.

SECTION 2.11.

Amends Section 11.177, Water Code, to provide additional regulations regarding what constitutes reasonable diligence or a justified nonuse.

SECTION 2.15.

Amends Section 15.7031, Water Code, to provide additional regulations regarding the Texas Water Trust.

SECTION 2.16.

Amends Section 15.704, Water Code, to make a nonsubstantive change.

SECTION 2.17.

Provides that this article, rather than section, does not apply to certain applications.

Requires nothing in this Act to affect the validity of any interbasin transfer permitted or authorized before the effective date of this Act.

SECTION 3.02.

Amends Section 11.0841, Water Code, to provide for the awarding of certain costs of litigation.

Amends Section 11.0842, Water Code, to provide additional regulations regarding administrative penalties.

Amends Section 11.0843, Water Code, to make nonsubstantive changes.

SECTION 3.03.

Amends Section 11.139, Water Code, to provide new regulations regarding emergency authorizations.

SECTION 3.06.

Amends Section 16.237, Water Code, to make nonsubstantive changes.

SECTION 4.01.

Amends Section 11.134(b), Water Code, to provide new regulations regarding the granting of applications.

SECTION 4.02.

Adds Section 11.1501, Water Code, regarding consideration and revision of plans.

Amends Section 11.151, Water Code, to make a nonsubstantive change.

SECTION 4.11.

Amends Section 35.007, Water Code, to change time period to be used in identifying areas expected to experience groundwater problems.

SECTION 4.13.

Amends Section 35.009, Water Code, to make a nonsubstantive change.

SECTION 4.20.

Amends Section 36.001, Water Code, to delete the definition of "standby fee."

SECTION 4.26.

Amends Section 36.1071, Water Code, to provide additional regulations regarding management plans.

Amends Section 36.1072, Water Code, require the Texas Water Development Board (TWDB) to certify a management plan if the plan is administratively complete within 60 days of receipt of the plan.

SECTION 4.28.

Amends Section 36.113, Water Code, to provide additional regulations regarding permits for



wells.

SECTION 4.29.

Amends Section 36.1131, Water Code, to provide additional elements the well permit may include.

SECTION 4.31.

Amends Section 36.206, Water Code, to provide new regulations regarding district fees.

SECTION 4.32.

Amends Section 36.310, Water Code, to require a public auction of the assets of a district upon dissolution by TNRCC, rather than the assets escheating to the estate.

SECTION 4.38.

Amends Subsection (b), to require the management plan to be submitted to the TWDB rather than TNRCC.

SECTION 5.03.

Amends Section 17.954, Water Code, to make nonsubstantive changes.

SECTION 5.10.

Adds SECTION 5.10, Sections 44.007-44.010, Agriculture Code, to provide that certain monies in linked deposits be used to finance water conservation projects. Provide additional regulations regarding the financing of water conservation projects. Makes conforming and nonsubstantive changes.

SECTION 5.11.

Adds SECTION 5.11, Section 11.32, Tax Code, regarding water conservation initiatives.

SECTION 5.12.

Adds SECTION 5.12, Section 2155.44(d), Government Code, regarding the purchase of vegetation for landscaping purposes.

SECTION 6.16.

Amends Section 15.6041, Water Code, to make a nonsubstantive change.

SECTION 7.01.

Amends Section 16.012, Water Code, to provide new regulations regarding water availability models.