

By: Cook of Colorado

H.B. No. 1670

Substitute the following for H.B. No. 1670:

By: Puente

C.S.H.B. No. 1670

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the resolution of conflicts between regional water  
3 plans and groundwater conservation district management plans.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 16.053, Water Code, is amended by  
6 amending Subsection (p) and adding Subsections (p-1), (p-2), (p-3),  
7 and (p-4) to read as follows:

8 (p) If a groundwater conservation district files a petition  
9 with the board stating that a conflict requiring resolution may  
10 exist between the district's certified [~~groundwater conservation~~  
11 ~~district~~] management plan developed under Section 36.1071 and an  
12 [the] approved regional water plan, the board shall provide  
13 technical assistance to and facilitate coordination between the  
14 district and the involved region to resolve the conflict. Not later  
15 than the 45th day after the date the groundwater conservation  
16 district files a petition with the board, if the conflict has not  
17 been resolved, the district and the involved region shall mediate  
18 the conflict. The district and the involved region may seek the  
19 assistance of the Center for Public Policy Dispute Resolution at  
20 The University of Texas School of Law or an alternative dispute  
21 resolution system established under Chapter 152, Civil Practice and  
22 Remedies Code, in obtaining a qualified impartial third party to  
23 mediate the conflict. The cost of the mediation services must be  
24 specified in the agreement between the parties and the Center for

1 Public Policy Dispute Resolution or the alternative dispute  
2 resolution system. If the district and the involved region cannot  
3 resolve the conflict through mediation [~~remains~~], the board shall  
4 resolve the conflict not later than the 60th day after the date the  
5 mediation is completed as provided by Subsections (p-1) and (p-2).

6 (p-1) If the board determines that resolution of the  
7 conflict requires a revision of an approved regional water plan,  
8 the board shall suspend the approval of that plan and provide  
9 information to the regional water planning group. The regional  
10 water planning group shall prepare any revisions to its plan  
11 specified by the board and shall hold, after notice, at least one  
12 public hearing at some central location within the regional water  
13 planning area. The regional water planning group shall consider  
14 all public and board comments, prepare, revise, and adopt its plan,  
15 and submit the revised plan to the board for approval and inclusion  
16 in the state water plan.

17 (p-2) If the board determines that resolution of the  
18 conflict requires a revision of the district's certified  
19 groundwater conservation district management plan, the board shall  
20 [~~suspend the certification of that plan and~~] provide information to  
21 the district. The groundwater district shall prepare any revisions  
22 to its plan based on the information provided [~~specified~~] by the  
23 board and shall hold, after notice, at least one public hearing at  
24 some central location within the district. The groundwater  
25 district shall consider all public and board comments, prepare,  
26 revise, and adopt its plan, and submit the revised plan to the board  
27 [~~for certification~~].

1        (p-3) If the groundwater conservation district disagrees  
2 with the decision of the board under Subsection (p), the district  
3 may appeal the decision to a district court in the county in which  
4 the main office of the district is located. Costs for the appeal  
5 shall be set by the court hearing the appeal. An appeal under this  
6 subsection is by trial de novo.

7        (p-4) On the request of the involved region or groundwater  
8 conservation district, the board shall include discussion of the  
9 conflict and its resolution in the state water plan that the board  
10 provides to the governor, the lieutenant governor, and the speaker  
11 of the house of representatives under Section 16.051(e).

12        SECTION 2. Section 36.1071, Water Code, is amended by  
13 amending Subsections (e) and (h) and adding Subsection (i) to read  
14 as follows:

15        (e) In the management plan described under Subsection (a),  
16 the district shall:

17            (1) identify the performance standards and management  
18 objectives under which the district will operate to achieve the  
19 management goals identified under Subsection (a);

20            (2) specify, in as much detail as possible, the  
21 actions, procedures, performance, and avoidance that are or may be  
22 necessary to effect the plan, including specifications and proposed  
23 rules; and

24            (3) include estimates of the following:

25                    (A) the existing total [~~usable~~] amount of  
26 groundwater in drainable storage within the district, which means  
27 the total volume of the aquifer in the district multiplied by the

1 specific yield;

2 (B) the amount of groundwater being used within  
3 the district on an annual basis;

4 (C) the annual amount of recharge from  
5 precipitation, if any, to the groundwater resources within the  
6 district [~~and how natural or artificial recharge may be increased~~];  
7 [~~and~~]

8 (D) for each aquifer, the annual volume of water  
9 that discharges from the aquifer to springs and any surface water  
10 bodies, including lakes, streams, and rivers;

11 (E) the annual volume of flow into and out of the  
12 district within each aquifer and between aquifers in the district,  
13 if a groundwater availability model is available;

14 (F) the annual volume of groundwater in each  
15 aquifer in the district that is available for use based on the  
16 management philosophy and the desired future condition of the  
17 aquifer as determined by the district;

18 (G) the projected surface water supply in the  
19 district according to the most recently adopted state water plan;  
20 and

21 (H) the projected total demand for water in the  
22 district according to the most recently adopted state water plan  
23 [~~projected water supply and demand for water within the district,~~  
24 ~~and~~

25 [~~(4) address water supply needs in a manner that is not~~  
26 ~~in conflict with the appropriate approved regional water plan if a~~  
27 ~~regional water plan has been approved under Section 16.053].~~

1 (h) In developing its management plan, the district shall  
2 use the groundwater availability modeling information provided by  
3 the executive administrator together [~~in conjunction~~] with any  
4 available site-specific information that has been provided by the  
5 district to the executive administrator for review and comment  
6 before being used in the plan [~~and acceptable to the executive~~  
7 ~~administrator~~].

8 (i) In developing its management plan, the district shall  
9 consider the water supply needs and water management strategies  
10 outlined in the approved regional water plan for the region in which  
11 the district is located.

12 SECTION 3. Sections 36.1072(b), (f), and (g), Water Code,  
13 are amended to read as follows:

14 (b) Within 60 days of receipt of a management plan adopted  
15 under Section 36.1071, the executive administrator shall certify a  
16 management plan if the plan is administratively complete. A  
17 management plan is administratively complete when it contains the  
18 information required to be submitted under Sections 36.1071(a) and  
19 (e) [~~Section 36.1071~~]. [~~The executive administrator may determine~~  
20 ~~that conditions justify waiver of the requirements under Section~~  
21 ~~36.1071(e)(4).~~]

22 (f) If the executive administrator does not certify the  
23 management plan, the executive administrator shall provide to the  
24 district, in writing, the reasons for the action. Not later than  
25 the 180th day after the date a district receives notice that its  
26 management plan has not been certified, the district may submit a  
27 revised management plan for review and certification. The

1 executive administrator's decision may be appealed to the Texas  
2 Water Development Board. If the Texas Water Development Board  
3 decides not to certify the management plan on appeal, the district  
4 may request that the conflict be mediated. The district and the  
5 board may seek the assistance of the Center for Public Policy  
6 Dispute Resolution at The University of Texas School of Law or an  
7 alternative dispute resolution system established under Chapter  
8 152, Civil Practice and Remedies Code, in obtaining a qualified  
9 impartial third party to mediate the conflict. The cost of the  
10 mediation services must be specified in the agreement between the  
11 parties and the Center for Public Policy Dispute Resolution or the  
12 alternative dispute resolution system. If the parties do not  
13 resolve the conflict through mediation, the [The] decision of the  
14 Texas Water Development Board not [on whether] to certify the  
15 management plan may [not] be appealed to a district court in the  
16 county in which the main office of the district is located. Costs  
17 for the appeal shall be set by the court hearing the appeal. An  
18 appeal under this subsection is by trial de novo. The commission  
19 shall not take enforcement action against a district under  
20 Subchapter I until the later of the expiration of the 180-day  
21 period, [or] the date the Texas Water Development Board has taken  
22 final action withholding certification of a revised management  
23 plan, the date the mediation is completed, or the date a final  
24 judgment upholding the board's decision is entered by a district  
25 court. An enforcement action may not be taken against a district by  
26 the commission or the state auditor under Subchapter I because the  
27 district's management plan and the approved regional water plan are

1 in conflict while the parties are attempting to resolve the  
2 conflict before the board or in court. Rules of the district  
3 continue in full force and effect until all appeals under this  
4 subsection have been exhausted and the final judgment is adverse to  
5 the district.

6 (g) In this subsection, "board" means the Texas Water  
7 Development Board. A person with a legally defined interest in  
8 groundwater in a district or the regional water planning group may  
9 file a petition with the board stating that a conflict requiring  
10 resolution may exist between the district's certified [~~groundwater~~  
11 ~~conservation district~~] management plan developed under Section  
12 36.1071 and the state water plan. If a conflict exists, the board  
13 shall provide technical assistance to and facilitate coordination  
14 between the involved person or regional water planning group and  
15 the district to resolve the conflict. Not later than the 45th day  
16 after the date the person or the regional water planning group files  
17 a petition with the board, if the conflict has not been resolved,  
18 the district and the involved person or regional planning group  
19 shall mediate the conflict. The district and the involved person or  
20 regional planning group may seek the assistance of the Center for  
21 Public Policy Dispute Resolution at The University of Texas School  
22 of Law or an alternative dispute resolution system established  
23 under Chapter 152, Civil Practice and Remedies Code, in obtaining a  
24 qualified impartial third party to mediate the conflict. The cost  
25 of the mediation services must be specified in the agreement  
26 between the parties and the Center for Public Policy Dispute  
27 Resolution or the alternative dispute resolution system. If the

1 district and the involved person or regional planning group cannot  
2 resolve the conflict through mediation [~~remains~~], the board shall  
3 resolve the conflict not later than the 60th day after the date the  
4 mediation is completed. The board action under this provision may  
5 be consolidated, at the option of the board, with related action  
6 under Section 16.053(p). If the board determines that resolution  
7 of the conflict requires a revision of the certified groundwater  
8 conservation district management plan, the board shall [~~suspend the~~  
9 ~~certification of the plan and~~] provide information to the district.  
10 The district shall prepare any revisions to the plan based on the  
11 information provided [~~specified~~] by the board and shall hold, after  
12 notice, at least one public hearing at some central location within  
13 the district. The district shall consider all public and board  
14 comments, prepare, revise, and adopt its plan, and submit the  
15 revised plan to the board for certification. On the request of the  
16 district or the regional water planning group, the board shall  
17 include discussion of the conflict and its resolution in the state  
18 water plan that the board provides to the governor, the lieutenant  
19 governor, and the speaker of the house of representatives under  
20 Section 16.051(e). If the groundwater conservation district  
21 disagrees with the decision of the board under this subsection, the  
22 district may appeal the decision to a district court in the county  
23 in which the main office of the district is located. Costs for the  
24 appeal shall be set by the court hearing the appeal. An appeal  
25 under this subsection is by trial de novo.

26 SECTION 4. The change in law made by this Act applies only  
27 to a management plan adopted on or after the effective date of this



1 Act. A management plan adopted before the effective date of this  
2 Act is covered by the law in effect on the date the management plan  
3 was adopted, and the former law is continued in effect for that  
4 purpose.

5 SECTION 5. This Act takes effect September 1, 2005.