

By: Armbrister

S.B. No. 3

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the development and management of the water resources
3 of the state, including the creation of a groundwater conservation
4 district; imposing fees and providing penalties.

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

6 ARTICLE 1. ENVIRONMENTAL FLOWS

7 SECTION 1.01. The heading to Section 5.506, Water Code, is
8 amended to read as follows:

9 Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION
10 RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET
11 ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND
12 INSTREAM USES.

13 SECTION 1.02. Section 5.506, Water Code, is amended by
14 adding Subsection (a-1) and amending Subsections (b) and (c) to
15 read as follows:

16 (a-1) State water that is set aside by the commission to
17 meet the needs for freshwater inflows to affected bays and
18 estuaries and instream uses under Section 11.1471(a)(2) may be made
19 available temporarily for other essential beneficial uses if the
20 commission finds that an emergency exists that cannot practically
21 be resolved in another way.

22 (b) The commission must give written notice of the proposed
23 action [~~suspension~~] to the Parks and Wildlife Department before the
24 commission suspends a permit condition under Subsection (a) or

1 makes water available temporarily under Subsection (a-1) [~~this~~
2 ~~section~~]. The commission shall give the Parks and Wildlife
3 Department an opportunity to submit comments on the proposed action
4 [~~suspension~~] for a period of 72 hours from receipt of the notice and
5 must consider those comments before issuing an order implementing
6 the proposed action [~~imposing the suspension~~].

7 (c) The commission may suspend a permit condition under
8 Subsection (a) or make water available temporarily under Subsection
9 (a-1) [~~this section~~] without notice except as required by
10 Subsection (b).

11 SECTION 1.03. Section 5.701(j), Water Code, is amended to
12 read as follows:

13 (j) The fee for other uses of water not specifically named
14 in this section is \$1 per acre-foot, except that no political
15 subdivision may be required to pay fees to use water for recharge of
16 underground freshwater-bearing sands and aquifers or for abatement
17 of natural pollution. A fee is not required for a water right that
18 is [~~This fee is waived for applications for instream-use water~~
19 ~~rights~~] deposited into the Texas Water Trust.

20 SECTION 1.04. Section 11.002, Water Code, is amended by
21 adding Subdivisions (15), (16), (17), and (18) to read as follows:

22 (15) "Environmental flow regime" means a schedule of
23 flow quantities, reflecting seasonal and yearly fluctuations that
24 typically would vary geographically, by specific location in a
25 watershed, and that are shown to be adequate to support a sound
26 ecological environment.

27 (16) "Environmental flow standards" means those

1 requirements to protect instream flows and freshwater inflows that
2 are adopted by the commission under Section 11.1471.

3 (17) "Flows commission" means the Environmental Flows
4 Commission.

5 (18) "Science advisory committee" means the Texas
6 Environmental Flows Science Advisory Committee.

7 SECTION 1.05. Section 11.023(a), Water Code, is amended to
8 read as follows:

9 (a) To the extent that state water has not been set aside by
10 the commission under Section 11.1471(a)(2) to meet instream flow
11 needs or freshwater inflow needs, state [~~State~~] water may be
12 appropriated, stored, or diverted for:

13 (1) domestic and municipal uses, including water for
14 sustaining human life and the life of domestic animals;

15 (2) agricultural uses and industrial uses, meaning
16 processes designed to convert materials of a lower order of value
17 into forms having greater usability and commercial value, including
18 the development of power by means other than hydroelectric;

19 (3) mining and recovery of minerals;

20 (4) hydroelectric power;

21 (5) navigation;

22 (6) recreation and pleasure;

23 (7) public parks; and

24 (8) game preserves.

25 SECTION 1.06. Section 11.0235, Water Code, is amended by
26 amending Subsections (c) and (e) and adding Subsections (d-1),
27 (d-2), (d-3), (d-4), (d-5), and (f) to read as follows:

1 (c) The legislature has expressly required the commission
2 while balancing all other public interests to consider and, to the
3 extent practicable, provide for the freshwater inflows and instream
4 flows necessary to maintain the viability of the state's streams,
5 rivers, and bay and estuary systems in the commission's regular
6 granting of permits for the use of state waters. As an essential
7 part of the state's environmental flows policy, all permit
8 conditions relating to freshwater inflows to affected bays and
9 estuaries and instream flow needs must be subject to temporary
10 suspension if necessary to meet essential human needs during
11 emergencies.

12 (d-1) The legislature finds that to provide certainty in
13 water management and development and to provide adequate protection
14 of the state's streams, rivers, and bays and estuaries, the state
15 must have a process with specific timelines for prompt action to
16 address environmental flow issues in the state's major basin and
17 bay systems, especially those systems in which unappropriated water
18 is still available.

19 (d-2) The legislature finds that:

20 (1) in those basins in which water is available for
21 appropriation, the commission should establish an environmental
22 set-aside below which water should not be available for
23 appropriation; and

24 (2) in those basins in which the unappropriated water
25 that will be set aside for instream flow and freshwater inflow
26 protection is not sufficient to fully satisfy the environmental
27 flow standards established by the commission, a variety of

1 approaches, both public and private, for filling the gap must be
2 explored and pursued.

3 (d-3) The legislature finds that while the state has
4 pioneered tools to address freshwater inflow needs for bays and
5 estuaries, there are limitations to those tools in light of both
6 scientific and public policy evolution. To fully address bay and
7 estuary environmental flow issues, the foundation of work
8 accomplished by the state should be improved. While the state's
9 instream flow studies program appears to encompass a comprehensive
10 and scientific approach for establishing a process to assess
11 instream flow needs for rivers and streams across the state, more
12 extensive review and examination of the details of the program,
13 which may not be fully developed until the program is under way, are
14 needed to ensure an effective tool for evaluating riverine
15 environmental flow conditions.

16 (d-4) The legislature finds that the management of water to
17 meet instream flow and freshwater inflow needs should be evaluated
18 on a regular basis and adapted to reflect both improvements in
19 science related to environmental flows and future changes in
20 projected human needs for water. In addition, the development of
21 management strategies for addressing environmental flow needs
22 should be an ongoing, adaptive process that considers and addresses
23 local issues.

24 (d-5) The legislature finds that recommendations for state
25 action to protect instream flows and freshwater inflows should be
26 developed through a consensus-based, regional approach involving
27 balanced representation of stakeholders and that such a process

1 should be encouraged throughout the state.

2 (e) The fact that greater pressures and demands are being
3 placed on the water resources of the state makes it of paramount
4 importance to ensure [~~reexamine the process for ensuring~~] that
5 these important priorities are effectively addressed by detailing
6 how environmental flow standards are to be developed using the
7 environmental studies that have been and are to be performed by the
8 state and others and specifying in clear delegations of authority
9 how those environmental flow standards will be integrated into the
10 regional water planning and water permitting process [~~to the~~
11 ~~commission~~].

12 (f) The legislature recognizes that effective
13 implementation of the approach provided by this chapter for
14 protecting instream flows and freshwater inflows will require more
15 effective water rights administration and enforcement systems than
16 are currently available in most areas of the state.

17 SECTION 1.07. The heading to Section 11.0236, Water Code,
18 is amended to read as follows:

19 Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL
20 FLOWS COMMISSION.

21 SECTION 1.08. Section 11.0236, Water Code, is amended by
22 amending Subsections (a)-(c), (e)-(j), (n), and (o) to read as
23 follows:

24 (a) In recognition of the importance that the ecological
25 soundness of our riverine, bay, and estuary systems and riparian
26 lands has on the economy, health, and well-being of the state there
27 is created the [~~Study Commission on Water for~~] Environmental Flows

1 Commission.

2 (b) The flows [~~study~~] commission is composed of nine [~~15~~]
3 members as follows:

4 (1) three [~~two~~] members appointed by the governor;

5 (2) three [~~five~~] members of the senate appointed by
6 the lieutenant governor; and

7 (3) three [~~five~~] members of the house of
8 representatives appointed by the speaker of the house of
9 representatives[~~+~~

10 [~~(4) the presiding officer of the commission or the~~
11 ~~presiding officer's designee;~~

12 [~~(5) the chairman of the board or the chairman's~~
13 ~~designee; and~~

14 [~~(6) the presiding officer of the Parks and Wildlife~~
15 ~~Commission or the presiding officer's designee].~~

16 (c) Of the members appointed under Subsection (b)(1):

17 (1) one member must be a member of the commission;

18 (2) one member must be a member of the board; and

19 (3) one member must be a member of the Parks and
20 Wildlife Commission [~~(b)(2)~~];

21 [~~(1) one member must represent a river authority or~~
22 ~~municipal water supply agency or authority;~~

23 [~~(2) one member must represent an entity that is~~
24 ~~distinguished by its efforts in resource protection; and~~

25 [~~(3) three members must be members of the senate].~~

26 (e) Members [~~Each appointed member~~] of the flows [~~study~~]
27 commission serve three-year terms, with terms expiring February 1

1 of every third year [~~serves at the will of the person who appointed~~
2 ~~the member~~]. A vacancy on the flows commission is filled for the
3 unexpired term in the manner provided for the original appointment.

4 (f) The appointed senator with the most seniority and the
5 appointed house member with the most seniority serve together as
6 co-presiding officers of the flows [~~study~~] commission.

7 (g) A member of the flows [~~study~~] commission is not entitled
8 to receive compensation for service on the flows [~~study~~] commission
9 but is entitled to reimbursement of the travel expenses incurred by
10 the member while conducting the business of the flows [~~study~~]
11 commission, as provided by the General Appropriations Act.

12 (h) The flows [~~study~~] commission may accept gifts and grants
13 from any source to be used to carry out a function of the flows
14 [~~study~~] commission.

15 (i) The commission shall provide staff support for the flows
16 [~~study~~] commission.

17 (j) The flows [~~study~~] commission shall conduct public
18 hearings and study public policy implications for balancing the
19 demands on the water resources of the state resulting from a growing
20 population with the requirements of the riverine, bay, and estuary
21 systems including granting permits for instream flows dedicated to
22 environmental needs or bay and estuary inflows, use of the Texas
23 Water Trust, and any other issues that the flows [~~study~~] commission
24 determines have importance and relevance to the protection of
25 environmental flows. In evaluating the options for providing
26 adequate environmental flows, the flows [~~study~~] commission shall
27 take notice of the strong public policy imperative that exists in

1 this state recognizing that environmental flows are important to
2 the biological health of our public and private lands, streams and
3 rivers [~~parks, game preserves~~], and bay and estuary systems and are
4 high priorities in the water management [~~permitting~~] process. The
5 flows [~~study~~] commission shall specifically address:

6 (1) ways that the ecological soundness of those
7 [~~these~~] systems will be ensured in the water allocation process;
8 and

9 (2) appropriate methods by which reasonable amounts of
10 existing water rights may be converted temporarily or permanently
11 to use for environmental flow protection.

12 (n) The flows [~~study~~] commission may [~~shall~~] adopt rules,
13 procedures, and policies as needed to administer this section, to
14 implement its responsibilities, and to exercise its authority under
15 Sections 11.02361 and 11.02362.

16 (o) Chapter 2110, Government Code, does not apply to the
17 size, composition, or duration of the flows commission. [~~The study~~
18 ~~commission is abolished and this section expires September 1,~~
19 ~~2005.~~]

20 SECTION 1.09. Subchapter B, Chapter 11, Water Code, is
21 amended by adding Sections 11.02361 and 11.02362 to read as
22 follows:

23 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
24 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
25 Committee consists of at least five but not more than nine members
26 appointed by the flows commission.

27 (b) The flows commission shall appoint to the science

1 advisory committee persons who will provide an independent
2 perspective and diverse technical expertise, including expertise
3 in hydrology, hydraulics, water resources, aquatic and terrestrial
4 biology, geomorphology, geology, water quality, computer modeling,
5 and other technical areas pertinent to the evaluation of
6 environmental flows.

7 (c) Members of the science advisory committee serve
8 staggered three-year terms, with one-third or as near as possible
9 to one-third of the members' terms expiring March 1 of each year. A
10 vacancy on the science advisory committee is filled by appointment
11 by the co-presiding officers of the flows commission for the
12 unexpired term.

13 (d) Chapter 2110, Government Code, does not apply to the
14 size, composition, or duration of the science advisory committee.

15 (e) The science advisory committee shall:

16 (1) serve as an independent scientific body to advise
17 and make recommendations to the flows commission on issues relating
18 to the science of environmental flow protection; and

19 (2) help provide overall direction, coordination, and
20 consistency relating to:

21 (A) environmental flow methodologies for bay and
22 estuary studies and instream flow studies;

23 (B) environmental flow programs at the
24 commission, the Parks and Wildlife Department, and the board; and

25 (C) the work of the basin and bay expert science
26 teams described in Section 11.02362.

27 (f) To assist the flows commission to assess the extent to

1 which the recommendations of the science advisory committee are
2 considered and implemented, the commission, the Parks and Wildlife
3 Department, and the board shall provide written reports to the
4 flows commission, at intervals determined by the flows commission,
5 that describe:

6 (1) the actions taken by each agency in response to
7 each recommendation; and

8 (2) for each recommendation not implemented, the
9 reason it was not implemented.

10 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
11 RECOMMENDATIONS. (a) For the purposes of this section, the flows
12 commission, not later than November 1, 2005, shall define the
13 geographical extent of each river basin and bay system in this state
14 for the purpose of developing environmental flow regime
15 recommendations under this section and adoption of environmental
16 flow standards under Section 11.1471.

17 (b) The flows commission shall give priority in descending
18 order to the following river basin and bay systems of the state for
19 the purpose of developing environmental flow regime
20 recommendations and adopting environmental flow standards:

21 (1) the river basin and bay system consisting of the
22 Trinity and San Jacinto Rivers and Galveston Bay and the river basin
23 and bay system consisting of the Sabine and Neches Rivers and Sabine
24 Lake Bay;

25 (2) the river basin and bay system consisting of the
26 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
27 river basin and bay system consisting of the Guadalupe, San

1 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
2 Bays; and

3 (3) the river basin and bay system consisting of the
4 Nueces River and Corpus Christi and Baffin Bays, the river basin and
5 bay system consisting of the Rio Grande, the Rio Grande estuary, and
6 the Lower Laguna Madre, and the Brazos River and its associated bay
7 and estuary system.

8 (c) For the river basin and bay systems listed in Subsection
9 (b)(1):

10 (1) the flows commission shall appoint the basin and
11 bay area stakeholders committee not later than November 1, 2005;

12 (2) the basin and bay area stakeholders committee
13 shall establish a basin and bay expert science team not later than
14 March 1, 2006;

15 (3) the basin and bay expert science team shall
16 finalize environmental flow regime recommendations and submit them
17 to the basin and bay area stakeholders committee, the flows
18 commission, and the commission not later than March 1, 2007;

19 (4) the basin and bay area stakeholders committee
20 shall submit to the commission its comments on and recommendations
21 regarding the basin and bay expert science team's recommended
22 environmental flow regime not later than September 1, 2007; and

23 (5) the commission shall adopt the environmental flow
24 standards as provided by Section 11.1471 not later than September
25 1, 2008.

26 (d) The flows commission shall appoint the basin and bay
27 area stakeholders committees for the river basin and bay systems

1 listed in Subsection (b)(2) not later than September 1, 2006, and
2 shall appoint the basin and bay area stakeholders committees for
3 the river basin and bay systems listed in Subsection (b)(3) not
4 later than September 1, 2007. The flows commission shall establish
5 a schedule for the performance of the tasks listed in Subsections
6 (c)(2)-(5) with regard to the river basin and bay systems listed in
7 Subsections (b)(2) and (3) that will result in the adoption of
8 environmental flow standards for that river basin and bay system by
9 the commission as soon as is reasonably possible. Each basin and
10 bay area stakeholders committee and basin and bay expert science
11 team for a river basin and bay system listed in Subsection (b)(2) or
12 (3) shall make recommendations to the flows commission with regard
13 to the schedule applicable to that river basin and bay system. The
14 flows commission shall consider the recommendations of the basin
15 and bay area stakeholders committee and basin and bay expert
16 science team as well as coordinate with, and give appropriate
17 consideration to the recommendations of, the commission, the Parks
18 and Wildlife Department, and the board in establishing the
19 schedule.

20 (e) For a river basin and bay system not listed in
21 Subsection (b), the flows commission shall establish a schedule for
22 the development of environmental flow regime recommendations and
23 the adoption of environmental flow standards. The flows commission
24 shall develop the schedule in consultation with the commission, the
25 Parks and Wildlife Department, the board, and the pertinent basin
26 and bay area stakeholders committee and basin and bay expert
27 science team. The flows commission may, on its own initiative or on

1 request, modify a schedule established under this subsection to be
2 more responsive to particular circumstances, local desires,
3 changing conditions, or time-sensitive conflicts. This subsection
4 does not prohibit, in a river basin and bay system for which the
5 flows commission has not yet established a schedule for the
6 development of environmental flow regime recommendations and the
7 adoption of environmental flow standards, an effort to develop
8 information on environmental flow needs and ways in which those
9 needs can be met by a voluntary consensus-building process.

10 (f) The flows commission shall appoint a basin and bay area
11 stakeholders committee for each river basin and bay system in this
12 state for which a schedule for the development of environmental
13 flow regime recommendations and the adoption of environmental flow
14 standards is specified by or established under Subsection (c), (d),
15 or (e). Chapter 2110, Government Code, does not apply to the size,
16 composition, or duration of a basin and bay area stakeholders
17 committee. Each committee must consist of at least 17 members. The
18 members must represent appropriate stakeholders, including
19 representatives of:

20 (1) agricultural water users;

21 (2) recreational water users, including coastal
22 recreational anglers and businesses supporting water recreation;

23 (3) municipalities;

24 (4) soil and water conservation districts;

25 (5) industrial water users;

26 (6) commercial fishermen;

27 (7) public interest groups;

1 (8) regional water planning groups;

2 (9) groundwater conservation districts;

3 (10) river authorities and other conservation and
4 reclamation districts with jurisdiction over surface water; and

5 (11) environmental interests.

6 (g) Members of a basin and bay area stakeholders committee
7 serve staggered five-year terms, with one-fifth or as near as
8 possible to one-fifth of the members' terms expiring March 1 of each
9 year. If a vacancy occurs on a committee, the remaining members of
10 the committee by majority vote shall appoint a member to serve the
11 remainder of the unexpired term.

12 (h) Meetings of a basin and bay area stakeholders committee
13 must be open to the public.

14 (i) Each basin and bay area stakeholders committee shall
15 establish a basin and bay expert science team for the river basin
16 and bay system for which the committee is established. The basin
17 and bay expert science team must be established not later than six
18 months after the date the basin and bay area stakeholders committee
19 is established. Chapter 2110, Government Code, does not apply to
20 the size, composition, or duration of a basin and bay expert science
21 team. Each basin and bay expert science team must be composed of
22 technical experts with special expertise regarding the river basin
23 and bay system or regarding the development of environmental flow
24 regimes.

25 (j) The members of a basin and bay expert science team serve
26 staggered five-year terms, with one-fifth or as near as possible to
27 one-fifth of the members' terms expiring April 1 of each year. A

1 vacancy on a basin and bay expert science team is filled by
2 appointment by the pertinent basin and bay area stakeholders
3 committee to serve the remainder of the unexpired term.

4 (k) The science advisory committee shall appoint one of its
5 members to serve as a liaison to each basin and bay expert science
6 team to facilitate coordination and consistency in environmental
7 flow activities throughout the state. The commission, the Parks
8 and Wildlife Department, and the board shall provide technical
9 assistance to each basin and bay expert science team, including
10 information about the studies conducted under Sections 16.058 and
11 16.059, and may serve as nonvoting members of the basin and bay
12 expert science team to facilitate the development of environmental
13 flow regime recommendations.

14 (l) Where reasonably practicable, meetings of a basin and
15 bay expert science team must be open to the public.

16 (m) Each basin and bay expert science team shall develop a
17 recommended environmental flow regime for the river basin and bay
18 system for which the team is established through a collaborative
19 process designed to achieve a consensus. In developing
20 recommendations, the science team must consider all available
21 science, without regard to the need for the water for other uses,
22 and the science team's recommendations must be based solely on the
23 best science available.

24 (n) Each basin and bay expert science team shall submit its
25 environmental flow regime recommendations to the pertinent basin
26 and bay area stakeholders committee, the flows commission, and the
27 commission in accordance with the applicable schedule specified by

1 or established under Subsection (c), (d), or (e). The basin and bay
2 area stakeholders committee and the flows commission may not change
3 the environmental flow regime recommendations of the basin and bay
4 expert science team.

5 (o) Each basin and bay area stakeholders committee shall
6 review the environmental flow regime recommendations submitted by
7 the committee's basin and bay expert science team and shall
8 consider them in conjunction with other factors, including the
9 present and future needs for water for other uses related to water
10 supply planning in the pertinent river basin and bay system. The
11 basin and bay area stakeholders committee shall develop
12 recommendations regarding environmental flows and strategies to
13 meet the flow needs and submit those recommendations to the
14 commission and to the flows commission in accordance with the
15 applicable schedule specified by or established under Subsection
16 (c), (d), or (e). In developing its recommendations, the basin and
17 bay area stakeholders committee shall operate on a consensus basis
18 to the maximum extent possible.

19 (p) In recognition of the importance of adaptive
20 management, after submitting its recommendations regarding
21 environmental flows and strategies to meet the flow needs to the
22 commission, each basin and bay area stakeholders committee, with
23 the assistance of the pertinent basin and bay expert science team,
24 shall prepare and submit for approval by the flows commission a work
25 plan. The work plan must:

26 (1) establish a periodic review of the basin and bay
27 environmental flow regime recommendations, environmental flow

1 standards, and strategies, to occur at least once every 10 years;

2 (2) prescribe specific monitoring, studies, and
3 activities; and

4 (3) establish a schedule for continuing the validation
5 or refinement of the basin and bay environmental flow regime
6 recommendations, the environmental flow standards adopted by the
7 commission, and the strategies to achieve those standards.

8 (g) In accordance with the applicable schedule specified by
9 or established under Subsection (c), (d), or (e), the flows
10 commission, with input from the science advisory committee, shall
11 review the environmental flow regime recommendations submitted by
12 each basin and bay expert science team. If appropriate, the flows
13 commission shall submit comments on the recommendations to the
14 commission for use by the commission in adopting rules under
15 Section 11.1471. Comments must be submitted not later than six
16 months after the date of receipt of the recommendations.

17 SECTION 1.10. Sections 11.0237(a) and (b), Water Code, are
18 amended to read as follows:

19 (a) The commission may not issue a new permit for instream
20 flows dedicated to environmental needs or bay and estuary inflows.
21 The [This section does not prohibit the] commission may issue [from
22 issuing] an amendment to an existing permit or certificate of
23 adjudication to change the use to or add a use for instream flows
24 dedicated to environmental needs or bay and estuary inflows.

25 (b) This section does not alter the commission's
26 obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F),
27 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 16.058, or 16.059.

1 SECTION 1.11. Section 11.082(b), Water Code, is amended to
2 read as follows:

3 (b) The state may recover the penalties prescribed in
4 Subsection (a) [~~of this section~~] by suit brought for that purpose in
5 a court of competent jurisdiction. The state may seek those
6 penalties regardless of whether a watermaster has been appointed
7 for the water division, river basin, or segment of a river basin
8 where the unlawful use is alleged to have occurred.

9 SECTION 1.12. Section 11.0841, Water Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) For purposes of this section, the Parks and Wildlife
12 Department has:

13 (1) the rights of a holder of a water right that is
14 held in the Texas Water Trust, including the right to file suit in a
15 civil court to prevent the unlawful use of such a right; and

16 (2) the right to act in the same manner that a holder
17 of a water right may act to protect the holder's rights in seeking
18 to prevent any person from appropriating water in violation of a
19 set-aside established by the commission under Section 11.1471 to
20 meet instream flow needs or freshwater inflow needs, including the
21 right to file suit in a civil court to prevent the unlawful use of a
22 set-aside established under that section.

23 SECTION 1.13. Section 11.0842(a), Water Code, is amended to
24 read as follows:

25 (a) If a person violates this chapter, a rule or order
26 adopted under this chapter or Section 16.236 [~~of this code~~], or a
27 permit, certified filing, or certificate of adjudication issued

1 under this chapter, the commission may assess an administrative
2 penalty against that person as provided by this section. The
3 commission may assess an administrative penalty for a violation
4 relating to a water division or a river basin or segment of a river
5 basin regardless of whether a watermaster has been appointed for
6 the water division or river basin or segment of the river basin.

7 SECTION 1.14. Section 11.0843(a), Water Code, is amended to
8 read as follows:

9 (a) Upon witnessing a violation of this chapter or a rule or
10 order or a water right issued under this chapter, the executive
11 director or a person designated by the executive director,
12 including a watermaster or the watermaster's deputy, [~~as defined~~
13 by ~~commission rule,~~] may issue the alleged violator a field
14 citation alleging that a violation has occurred and providing the
15 alleged violator the option of either:

16 (1) without admitting to or denying the alleged
17 violation, paying an administrative penalty in accordance with the
18 predetermined penalty amount established under Subsection (b) [~~of~~
19 ~~this section~~] and taking remedial action as provided in the
20 citation; or

21 (2) requesting a hearing on the alleged violation in
22 accordance with Section 11.0842 [~~of this code~~].

23 SECTION 1.15. Section 11.134(b), Water Code, is amended to
24 read as follows:

25 (b) The commission shall grant the application only if:

26 (1) the application conforms to the requirements
27 prescribed by this chapter and is accompanied by the prescribed

1 fee;

2 (2) unappropriated water is available in the source of
3 supply;

4 (3) the proposed appropriation:

5 (A) is intended for a beneficial use;

6 (B) does not impair existing water rights or
7 vested riparian rights;

8 (C) is not detrimental to the public welfare;

9 (D) considers any applicable environmental flow
10 standards established under Section 11.1471 and, if applicable, the
11 assessments performed under Sections 11.147(d) and (e) and Sections
12 11.150, 11.151, and 11.152; and

13 (E) addresses a water supply need in a manner
14 that is consistent with the state water plan and the relevant
15 approved regional water plan for any area in which the proposed
16 appropriation is located, unless the commission determines that
17 conditions warrant waiver of this requirement; and

18 (4) the applicant has provided evidence that
19 reasonable diligence will be used to avoid waste and achieve water
20 conservation as defined by [~~Subdivision (8)(B),~~] Section
21 11.002(8)(B) [~~11.002~~].

22 SECTION 1.16. Section 11.147, Water Code, is amended by
23 amending Subsections (b), (d), and (e) and adding Subsections (e-1)
24 and (e-2) to read as follows:

25 (b) In its consideration of an application for a permit to
26 store, take, or divert water, the commission shall assess the
27 effects, if any, of the issuance of the permit on the bays and

1 estuaries of Texas. For permits issued within an area that is 200
2 river miles of the coast, to commence from the mouth of the river
3 thence inland, the commission shall include in the permit any
4 conditions considered necessary to maintain freshwater inflows to
5 any affected bay and estuary system, to the extent practicable when
6 considering all public interests, ~~and~~ the studies mandated by
7 Section 16.058 as evaluated under Section 11.1491, any input
8 received from the flows commission and the applicable basin and bay
9 area stakeholders committee, and any available environmental flow
10 regime recommendations of the applicable basin and bay expert
11 science team [~~those conditions considered necessary to maintain~~
12 ~~beneficial inflows to any affected bay and estuary system~~].

13 (d) In its consideration of an application to store, take,
14 or divert water, the commission shall include in the permit, to the
15 extent practicable when considering all public interests, those
16 conditions considered by the commission necessary to maintain
17 existing instream uses and water quality of the stream or river to
18 which the application applies. In determining what conditions to
19 include in the permit under this subsection, the commission shall
20 consider among other factors:

21 (1) the studies mandated by Section 16.059;

22 (2) any water quality assessment performed under
23 Section 11.150;

24 (3) any input received from the flows commission or
25 the applicable basin and bay area stakeholders committee; and

26 (4) if available, the environmental flow regime
27 recommendations of the applicable basin and bay expert science

1 team.

2 (e) The commission shall include in the permit, to the
3 extent practicable when considering all public interests, those
4 conditions considered by the commission necessary to maintain fish
5 and wildlife habitats. In determining what conditions to include
6 in the permit under this subsection, the commission shall consider
7 among other factors:

8 (1) any assessment performed under Section 11.152;

9 (2) any input received from the flows commission or
10 the applicable basin and bay area stakeholders committee that
11 relates to maintenance of aquatic habitat; and

12 (3) any available environmental flow regime
13 recommendations of the applicable basin and bay expert science team
14 as those recommendations relate to protection of aquatic habitat.

15 (e-1) Any permit for a new appropriation of water or an
16 amendment to an existing water right that increases the amount of
17 water authorized to be stored, taken, or diverted must include a
18 provision allowing the commission to adjust automatically the
19 conditions included in the permit or water right to provide for
20 protection of instream flows or freshwater inflows. The
21 adjustment:

22 (1) may not increase the amount of the pass-through or
23 release requirement for the protection of instream flows or
24 freshwater inflows by more than 12.5 percent of the annualized
25 total of that requirement contained in the permit as issued or the
26 water right as amended; and

27 (2) must be based on appropriate consideration of the

1 priority dates and diversion locations of any other water rights
2 granted in the same river basin that are subject to adjustment under
3 this subsection.

4 (e-2) Notwithstanding Subsections (b)-(e), for the purpose
5 of determining the environmental flow conditions necessary to
6 maintain freshwater inflows to an affected bay and estuary system,
7 existing instream uses and water quality of a stream or river, or
8 fish and aquatic wildlife habitats, the commission shall apply any
9 applicable environmental flow standard, including any
10 environmental flow set-aside, adopted under Section 11.1471
11 instead of considering the factors specified by those subsections.

12 SECTION 1.17. Subchapter D, Chapter 11, Water Code, is
13 amended by adding Section 11.1471 to read as follows:

14 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

15 (a) The commission by rule shall:

16 (1) adopt appropriate environmental flow standards
17 for each river basin and bay system in this state; and

18 (2) establish an amount of unappropriated water, if
19 available, to be set aside to satisfy the environmental flow
20 standards to the maximum extent reasonable when considering human
21 water needs.

22 (b) In adopting environmental flow standards for a river
23 basin and bay system under Subsection (a)(1), the commission shall
24 consider:

25 (1) the definition of the geographical extent of the
26 river basin and bay system adopted by the flows commission under
27 Section 11.02362(a);

1 (2) the schedule for the adoption of environmental
2 flow standards for the river basin and bay system established by the
3 flows commission under Section 11.02362(d) or (e), if applicable;

4 (3) the environmental flow regime recommendations and
5 strategies received from the applicable basin and bay expert
6 science team and basin and bay area stakeholders committee under
7 Sections 11.02362(n) and (o);

8 (4) the specific characteristics of the river basin
9 and bay system;

10 (5) economic factors;

11 (6) all available scientific information, including
12 any scientific information provided by the science advisory
13 committee; and

14 (7) any other appropriate information.

15 (c) Environmental flow standards adopted under Subsection
16 (a)(1) must consist of a schedule of flow quantities, reflecting
17 seasonal and yearly fluctuations that may vary geographically by
18 specific location in a watershed.

19 (d) As provided by Section 11.023, the commission may not
20 issue a permit for a new appropriation or an amendment to an
21 existing water right that increases the amount of water authorized
22 to be stored, taken, or diverted if the issuance of the permit or
23 amendment would impair an environmental flow set-aside established
24 under Subsection (a)(2). A permit for a new appropriation or an
25 amendment to an existing water right that increases the amount of
26 water authorized to be stored, taken, or diverted that is issued
27 after the adoption of an applicable environmental flow set-aside

1 must contain appropriate conditions to ensure protection of the
2 environmental flow set-aside.

3 (e) An environmental flow set-aside established under
4 Subsection (a)(2) must be assigned a priority date corresponding to
5 the date the commission receives environmental flow regime
6 recommendations from the applicable basin and bay expert science
7 team and be included in the appropriate water availability models
8 in the same manner as an existing water right for the purpose of
9 evaluating the availability of unappropriated water in connection
10 with an application for a permit for a new appropriation or for an
11 amendment to an existing water right that increases the amount of
12 water authorized to be stored, taken, or diverted.

13 (f) An environmental flow standard or environmental flow
14 set-aside adopted under Subsection (a) may be altered by the
15 commission in a rulemaking process undertaken in conjunction with a
16 periodic review under Section 11.02362(p) or in accordance with a
17 schedule established by the commission.

18 SECTION 1.18. The heading to Section 11.148, Water Code, is
19 amended to read as follows:

20 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND
21 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR
22 ENVIRONMENTAL FLOWS.

23 SECTION 1.19. Section 11.148, Water Code, is amended by
24 adding Subsection (a-1) and amending Subsections (b) and (c) to
25 read as follows:

26 (a-1) State water that is set aside by the commission to
27 meet the needs for freshwater inflows to affected bays and

1 estuaries and instream uses under Section 11.1471(a)(2) may be made
2 available temporarily for other essential beneficial uses if the
3 commission finds that an emergency exists that cannot practically
4 be resolved in another way.

5 (b) Before the commission suspends a permit condition under
6 Subsection (a) or makes water available temporarily under
7 Subsection (a-1) [~~of this section~~], it must give written notice to
8 the Parks and Wildlife Department of the proposed action
9 [~~suspension~~]. The commission shall give the Parks and Wildlife
10 Department an opportunity to submit comments on the proposed action
11 [~~suspension~~] within 72 hours from such time and the commission
12 shall consider those comments before issuing its order implementing
13 the proposed action [~~imposing the suspension~~].

14 (c) The commission may suspend the permit condition under
15 Subsection (a) or make water available temporarily under Subsection
16 (a-1) without notice to any other interested party other than the
17 Parks and Wildlife Department as provided by Subsection (b) [~~of~~
18 ~~this section~~]. However, all affected persons shall be notified
19 immediately by publication, and a hearing to determine whether the
20 suspension should be continued shall be held within 15 days of the
21 date on which the order to suspend is issued.

22 SECTION 1.20. Section 11.1491(a), Water Code, is amended to
23 read as follows:

24 (a) The Parks and Wildlife Department and the commission
25 shall have joint responsibility to review the studies prepared
26 under Section 16.058 [~~of this code~~], to determine inflow conditions
27 necessary for the bays and estuaries, and to provide information

1 necessary for water resources management. Each agency shall
2 designate an employee to share equally in the oversight of the
3 program. Other responsibilities shall be divided between the Parks
4 and Wildlife Department and the commission to maximize present
5 in-house capabilities of personnel and to minimize costs to the
6 state. Each agency shall have reasonable access to all information
7 produced by the other agency. Publication of reports completed
8 under this section shall be submitted for comment to ~~[both]~~ the
9 commission, ~~[and]~~ the Parks and Wildlife Department, the flows
10 commission, the science advisory committee, and any applicable
11 basin and bay area stakeholders committee and basin and bay expert
12 science team.

13 SECTION 1.21. Section 11.329(g), Water Code, is amended to
14 read as follows:

15 (g) The commission may not assess costs under this section
16 against a holder of a non-priority hydroelectric right that owns or
17 operates privately owned facilities that collectively have a
18 capacity of less than two megawatts or against a holder of a water
19 right placed in the Texas Water Trust for a term of at least 20
20 years. ~~[This subsection is not intended to affect in any way the~~
21 ~~fees assessed on a water right holder by the commission under~~
22 ~~Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular~~
23 ~~Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts~~
24 ~~of the 73rd Legislature, Regular Session, 1993, a holder of a~~
25 ~~non-priority hydroelectric right that owns or operates privately~~
26 ~~owned facilities that collectively have a capacity of less than two~~
27 ~~megawatts shall be assessed fees at the same rate per acre-foot~~

1 ~~charged to a holder of a non-priority hydroelectric right that owns~~
2 ~~or operates privately owned facilities that collectively have a~~
3 ~~capacity of more than two megawatts.]~~

4 SECTION 1.22. Section 11.404(e), Water Code, is amended to
5 read as follows:

6 (e) The court may not assess costs and expenses under this
7 section against:

8 (1) a holder of a non-priority hydroelectric right
9 that owns or operates privately owned facilities that collectively
10 have a capacity of less than two megawatts; or

11 (2) a holder of a water right placed in the Texas Water
12 Trust for a term of at least 20 years.

13 SECTION 1.23. Subchapter I, Chapter 11, Water Code, is
14 amended by adding Section 11.4531 to read as follows:

15 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
16 each river basin or segment of a river basin for which the executive
17 director appoints a watermaster under this subchapter, the
18 executive director shall appoint a watermaster advisory committee
19 consisting of at least nine but not more than 15 members. A member
20 of the advisory committee must be a holder of a water right or a
21 representative of a holder of a water right in the river basin or
22 segment of the river basin for which the watermaster is appointed.
23 In appointing members to the advisory committee, the executive
24 director shall consider:

25 (1) geographic representation;

26 (2) amount of water rights held;

27 (3) different types of holders of water rights and

1 users, including water districts, municipal suppliers, irrigators,
2 and industrial users; and

3 (4) experience and knowledge of water management
4 practices.

5 (b) An advisory committee member is not entitled to
6 reimbursement of expenses or to compensation.

7 (c) An advisory committee member serves a two-year term
8 expiring August 31 of each odd-numbered year and holds office until
9 a successor is appointed.

10 (d) The advisory committee shall meet within 30 days after
11 the date the initial appointments have been made and shall select a
12 presiding officer to serve a one-year term. The committee shall
13 meet regularly as necessary.

14 (e) The advisory committee shall:

15 (1) make recommendations to the executive director
16 regarding activities of benefit to the holders of water rights in
17 the administration and distribution of water to holders of water
18 rights in the river basin or segment of the river basin for which
19 the watermaster is appointed;

20 (2) review and comment to the executive director on
21 the annual budget of the watermaster operation; and

22 (3) perform other advisory duties as requested by the
23 executive director regarding the watermaster operation or as
24 requested by holders of water rights and considered by the
25 committee to benefit the administration of water rights in the
26 river basin or segment of the river basin for which the watermaster
27 is appointed.

1 SECTION 1.24. Section 11.454, Water Code, is amended to
2 read as follows:

3 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
4 Section 11.327 applies to the duties and authority of a watermaster
5 appointed for a river basin or segment of a river basin under this
6 subchapter in the same manner as that section applies to the duties
7 and authority of a watermaster appointed for a water division under
8 Subchapter G. [~~A watermaster as the agent of the commission and~~
9 ~~under the executive director's supervision shall:~~

10 [~~(1) divide the water of the streams or other sources~~
11 ~~of supply of his segment or basin in accordance with the authorized~~
12 ~~water rights,~~

13 [~~(2) regulate or cause to be regulated the controlling~~
14 ~~works of reservoirs and diversion works in time of water shortage,~~
15 ~~as is necessary because of the rights existing in the streams of his~~
16 ~~segment or basin, or as is necessary to prevent the waste of water~~
17 ~~or its diversion, taking, storage, or use in excess of the~~
18 ~~quantities to which the holders of water rights are lawfully~~
19 ~~entitled, and~~

20 [~~(3) perform any other duties and exercise any~~
21 ~~authority directed by the commission.]~~

22 SECTION 1.25. Section 11.455, Water Code, is amended to
23 read as follows:

24 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
25 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the
26 compensation and expenses of a watermaster appointed for a river
27 basin or segment of a river basin under this subchapter in the same

1 manner as that section applies to the payment of the compensation
2 and expenses of a watermaster appointed for a water division under
3 Subchapter G.

4 (b) The executive director shall deposit the assessments
5 collected under this section to the credit of the watermaster fund.

6 (c) Money deposited under this section to the credit of the
7 watermaster fund may be used only for the purposes specified by
8 Section 11.3291 with regard to the watermaster operation under this
9 subchapter with regard to which the assessments were collected.

10 ~~[The commission may assess the costs of the watermaster against all~~
11 ~~persons who hold water rights in the river basin or segment of the~~
12 ~~river basin under the watermaster's jurisdiction in accordance with~~
13 ~~Section 11.329 of this code.]~~

14 SECTION 1.26. Section 15.7031, Water Code, is amended by
15 amending Subsection (c) and adding Subsection (e) to read as
16 follows:

17 (c) The dedication of any water rights placed in trust must
18 be reviewed and approved by the commission, in consultation with
19 the board, ~~[and]~~ the Parks and Wildlife Department, and the
20 Environmental Flows Commission. In addition, the Department of
21 Agriculture and the basin and bay area stakeholders committee and
22 basin and bay expert science team established under Section
23 11.02362 for the river basin and bay system to which the water right
24 pertains may provide input to the commission, as appropriate,
25 during the review and approval process for dedication of water
26 rights.

27 (e) While a water right is held in the trust, the water

1 authorized for beneficial use under the terms of the water right is
2 considered to be held for instream flows, water quality, fish and
3 wildlife habitat, bay and estuary inflows, or other environmental
4 uses without the need for a permit amendment. After the water right
5 is withdrawn in whole or in part from the trust, the use of the water
6 right or portion of the water right withdrawn must be in accordance
7 with the terms of the water right.

8 SECTION 1.27. Section 26.0135(h), Water Code, as amended by
9 Chapters 234 and 965, Acts of the 77th Legislature, Regular
10 Session, 2001, is reenacted and amended to read as follows:

11 (h) The commission shall apportion, assess, and recover the
12 reasonable costs of administering the water quality management
13 programs under this section from users of water and wastewater
14 permit holders in the watershed according to the records of the
15 commission generally in proportion to their right, through permit
16 or contract, to use water from and discharge wastewater in the
17 watershed. Irrigation water rights, ~~and~~ non-priority
18 hydroelectric rights of a water right holder that owns or operates
19 privately owned facilities that collectively have a capacity of
20 less than two megawatts, and water rights held in the Texas Water
21 Trust for terms of at least 20 years will not be subject to this
22 assessment. The cost to river authorities and others to conduct
23 water quality monitoring and assessment shall be subject to prior
24 review and approval by the commission as to methods of allocation
25 and total amount to be recovered. The commission shall adopt rules
26 to supervise and implement the water quality monitoring,
27 assessment, and associated costs. The rules shall ensure that

1 water users and wastewater dischargers do not pay excessive
2 amounts, that program funds are equitably apportioned among basins,
3 that a river authority may recover no more than the actual costs of
4 administering the water quality management programs called for in
5 this section, and that no municipality shall be assessed cost for
6 any efforts that duplicate water quality management activities
7 described in Section 26.177 [~~of this chapter~~]. The rules
8 concerning the apportionment and assessment of reasonable costs
9 shall provide for a recovery of not more than \$5,000,000 annually.
10 Costs recovered by the commission are to be deposited to the credit
11 of the water resource management account and may be used only to
12 accomplish the purposes of this section. The commission may apply
13 not more than 10 percent of the costs recovered annually toward the
14 commission's overhead costs for the administration of this section
15 and the implementation of regional water quality assessments. The
16 commission, with the assistance and input of each river authority,
17 shall file a written report accounting for the costs recovered
18 under this section with the governor, the lieutenant governor, and
19 the speaker of the house of representatives on or before December 1
20 of each even-numbered year.

21 SECTION 1.28. Sections 11.0236(d), (k), (l), and (m),
22 11.0237(c), and 11.1491(b), Water Code, are repealed.

23 SECTION 1.29. The Study Commission on Water for
24 Environmental Flows is abolished on the effective date of this Act.

25 SECTION 1.30. (a) The governor, lieutenant governor, and
26 speaker of the house of representatives shall appoint the initial
27 members of the Environmental Flows Commission as provided by

1 Section 11.0236, Water Code, as amended by this article, as soon as
2 practicable on or after the effective date of this Act. The initial
3 terms of members of the flows commission expire February 1, 2008.

4 (b) As soon as practicable after taking office, the initial
5 members of the Environmental Flows Commission shall appoint the
6 initial members of the Texas Environmental Flows Science Advisory
7 Committee as provided by Section 11.02361, Water Code, as added by
8 this article. In making the initial appointments, the flows
9 commission shall designate one-third or as near as possible to
10 one-third of the members to serve terms expiring March 1, 2006,
11 one-third or as near as possible to one-third of the members to
12 serve terms expiring March 1, 2007, and one-third or as near as
13 possible to one-third of the members to serve terms expiring March
14 1, 2008.

15 (c) The Environmental Flows Commission shall appoint the
16 members of each basin and bay area stakeholders committee as
17 provided by Section 11.02362, Water Code, as added by this article.
18 In making the initial appointments, the flows commission shall
19 designate one-fifth or as near as possible to one-fifth of the
20 members to serve terms expiring March 1 of each year for the first
21 five years following the year in which the appointments are made.

22 (d) Each basin and bay area stakeholders committee shall
23 appoint the members of the basin and bay expert science team for the
24 river basin and bay system for which the committee is established as
25 provided by Section 11.02362, Water Code, as added by this article.
26 In making the initial appointments, the committee shall designate
27 one-fifth or as near as possible to one-fifth of the members to

1 serve terms expiring April 1 of each year for the first five years
2 following the year in which the appointments are made.

3 (e) The executive director of the Texas Commission on
4 Environmental Quality shall appoint the members of the watermaster
5 advisory committee under Section 11.4531, Water Code, as added by
6 this article, for each river basin or segment of a river basin for
7 which the executive director appoints a watermaster under
8 Subchapter I, Chapter 11, Water Code. The terms of the initial
9 members of the committee expire August 31 of the first odd-numbered
10 year that begins after the year in which the appointments are made.

11 SECTION 1.31. The changes in law made by this article
12 relating to a permit for a new appropriation of water or to an
13 amendment to an existing water right that increases the amount of
14 water authorized to be stored, taken, or diverted apply to a permit
15 or amendment for which an application is pending with the Texas
16 Commission on Environmental Quality on the effective date of this
17 article or is filed with the commission on or after that date.

18 ARTICLE 2. CONJUNCTIVE MANAGEMENT WATER POLICY

19 SECTION 2.01. Section 1.003, Water Code, is amended to read
20 as follows:

21 Sec. 1.003. PUBLIC POLICY. It is the public policy of the
22 state to provide for the conservation and development of the
23 state's natural resources, including:

24 (1) the control, storage, preservation, and
25 distribution of the state's storm and floodwaters and the waters of
26 its rivers and streams for irrigation, power, and other useful
27 purposes;

1 (2) the reclamation and irrigation of the state's
2 arid, semiarid, and other land needing irrigation;

3 (3) the reclamation and drainage of the state's
4 overflowed land and other land needing drainage;

5 (4) the conservation and development of its forest,
6 water, and hydroelectric power;

7 (5) the navigation of the state's inland and coastal
8 waters; ~~and~~

9 (6) the maintenance of a proper ecological environment
10 of the bays and estuaries of Texas and the health of related living
11 marine resources; and

12 (7) the stewardship of public and private lands to
13 benefit waters of the state.

14 SECTION 2.02. Subchapter A, Chapter 1, Water Code, is
15 amended by adding Section 1.004 to read as follows:

16 Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP.

17 (a) The legislature finds that responsible land stewardship
18 enhances the efficiency and effectiveness of this state's
19 watersheds by helping to increase surface water and groundwater
20 supplies, resulting in a benefit to the natural resources of this
21 state and to the general public. It is therefore the policy of this
22 state to encourage responsible land stewardship as a significant
23 water management tool.

24 (b) "Land stewardship," as used in this code, is the
25 practice of managing land to conserve or enhance suitable
26 landscapes and the ecosystem values of the land. Land stewardship
27 includes land and habitat management, wildlife conservation, and

1 watershed protection. Land stewardship practices include runoff
2 reduction, prescribed burning, managed grazing, brush management,
3 erosion management, reseeding with native plant species, riparian
4 management and restoration, and spring and creek-bank protection,
5 all of which benefit the water resources of this state.

6 SECTION 2.03. Section 11.002, Water Code, is amended by
7 adding Subdivisions (19) and (20) to read as follows:

8 (19) "Best management practices" means those
9 voluntary efficiency measures that save a quantifiable amount of
10 water, either directly or indirectly, and that can be implemented
11 within a specified time frame.

12 (20) "Conjunctive use" means the use of different
13 water resources in a combination that encourages the most efficient
14 and effective uses of those resources and optimizes the beneficial
15 characteristics of each resource. Water resources for conjunctive
16 use include surface water, groundwater, desalinated groundwater
17 and seawater, and reuse water.

18 SECTION 2.04. Section 11.0235(b), Water Code, is amended to
19 read as follows:

20 (b) Maintaining the biological soundness of the state's
21 rivers, lakes, bays, and estuaries is of great importance to the
22 public's economic health and general well-being. The legislature
23 encourages responsible water and land stewardship to benefit waters
24 of the state.

25 SECTION 2.05. Section 11.024, Water Code, is amended to
26 read as follows:

27 Sec. 11.024. APPROPRIATION: PREFERENCES. (a) In order to

1 conserve and properly utilize state water, the public welfare
2 requires not only recognition of beneficial uses but also a
3 constructive public policy regarding the preferences between these
4 uses, and it is therefore declared to be the public policy of this
5 state that in appropriating state water preference shall be given
6 to the following uses in the order named:

7 (1) domestic and municipal uses, including water for
8 sustaining human life and the life of domestic animals, it being the
9 public policy of the state and for the benefit of the greatest
10 number of people that in the appropriation of water as herein
11 defined, the appropriation of water for domestic and municipal uses
12 shall be and remain superior to the rights of the state to
13 appropriate the same for all other purposes;

14 (2) agricultural uses and industrial uses, which means
15 processes designed to convert materials of a lower order of value
16 into forms having greater usability and commercial value, including
17 the development of power by means other than hydroelectric;

18 (3) mining and recovery of minerals;

19 (4) hydroelectric power;

20 (5) navigation;

21 (6) recreation and pleasure; and

22 (7) other beneficial uses.

23 (b) In considering requests for appropriation of state
24 water for the same beneficial use, the commission shall give
25 preference to those projects that involve conjunctive use.

26 SECTION 2.06. Section 11.046, Water Code, is amended by
27 adding Subsection (e) to read as follows:

1 (e) Water appropriated under a permit, certified filing, or
2 certificate of adjudication that is treated under a permit issued
3 under Chapter 26 and then injected into an aquifer for storage and
4 subsequent recovery for beneficial use is not considered surplus
5 for purposes of this chapter.

6 SECTION 2.07. Subchapter D, Chapter 11, Water Code, is
7 amended by adding Section 11.1502 to read as follows:

8 Sec. 11.1502. CONSIDERATION OF CONJUNCTIVE USE. In
9 considering an application for a permit to store, take, or divert
10 surface water, the commission shall consider whether the applicant
11 has made reasonable efforts to incorporate plans for conjunctive
12 use.

13 SECTION 2.08. Section 11.173(b), Water Code, is amended to
14 read as follows:

15 (b) A permit, certified filing, or certificate of
16 adjudication or a portion of a permit, certified filing, or
17 certificate of adjudication is exempt from cancellation under
18 Subsection (a):

19 (1) to the extent of the owner's participation in the
20 Conservation Reserve Program authorized by the Food Security Act,
21 Pub. L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514
22 (1985) or a similar governmental program;

23 (2) if a significant portion of the water authorized
24 to be used pursuant to a permit, certified filing, or certificate of
25 adjudication has been used in accordance with a specific
26 recommendation for meeting a water need included in the regional
27 water plan approved pursuant to Section 16.053;

1 (3) if the permit, certified filing, or certificate of
2 adjudication:

3 (A) was obtained to meet demonstrated long-term
4 public water supply or electric generation needs as evidenced by a
5 water management plan developed by the holder; and

6 (B) is consistent with projections of future
7 water needs contained in the state water plan; ~~or~~

8 (4) if the permit, certified filing, or certificate of
9 adjudication was obtained as the result of the construction of a
10 reservoir funded, in whole or in part, by the holder of the permit,
11 certified filing, or certificate of adjudication as part of the
12 holder's long-term water planning; or

13 (5) to the extent the nonuse resulted from the
14 implementation of water conservation measures under a water
15 conservation plan submitted by the holder of the permit, certified
16 filing, or certificate of adjudication as evidenced by
17 implementation reports submitted by the holder.

18 SECTION 2.09. Chapter 11, Water Code, is amended by adding
19 Subchapter K to read as follows:

20 SUBCHAPTER K. REMEDIES FOR INTERFERENCE WITH DOMESTIC
21 OR AGRICULTURAL WATER WELL

22 Sec. 11.551. APPLICABILITY. This subchapter applies only
23 to a high-capacity water well that:

24 (1) is used for a purpose other than domestic or
25 agricultural use; and

26 (2) is located outside a groundwater conservation
27 district.

1 Sec. 11.552. RESTRICTION ON OPERATION OF HIGH-CAPACITY
2 WATER WELL. A person may not operate a high-capacity water well in
3 a way that interferes with another person's use of a water well for
4 domestic or agricultural purposes.

5 Sec. 11.553. FILING OF COMPLAINT. (a) A person who owns or
6 operates a water well used for domestic or agricultural purposes
7 may file a complaint with the commission against a person who owns
8 or operates a high-capacity water well alleging that the person is
9 operating the well in violation of Section 11.552.

10 (b) On receipt of the complaint, the commission shall notify
11 the owner or operator of the high-capacity water well of the filing
12 of the complaint.

13 Sec. 11.554. INVESTIGATION OF COMPLAINT. (a) The
14 commission shall investigate the complaint.

15 (b) The board shall provide technical assistance to the
16 commission in determining whether the high-capacity water well is
17 operated in a way that interferes with the complainant's use of the
18 well owned or operated by the complainant.

19 Sec. 11.555. NOTICE AND OPPORTUNITY FOR HEARING. (a) The
20 commission shall provide the parties notice and an opportunity for
21 a hearing on the complaint.

22 (b) A hearing under this section is governed by the
23 procedures for a contested case hearing under Chapter 2001,
24 Government Code.

25 Sec. 11.556. COMMISSION ORDER. If after notice and an
26 opportunity for a hearing the commission determines that a
27 high-capacity water well was operated in a way that violated

1 Section 11.552, the commission shall order the owner or operator of
2 the high-capacity water well to:

3 (1) limit the amount of water withdrawn from the well
4 to an amount that will not interfere with the complainant's use of
5 the well owned or operated by the complainant or require the owner
6 or operator of the high-capacity water well to provide the
7 complainant with an alternative source of water that offsets the
8 interference with the complainant's well; and

9 (2) compensate the complainant for any damages
10 suffered as a result of the interference with the complainant's
11 well.

12 Sec. 11.557. ADMINISTRATIVE PENALTY. (a) An owner or
13 operator of a high-capacity water well who violates an order issued
14 under Section 11.556 is subject to an administrative penalty as
15 provided by Subchapter C, Chapter 7.

16 (b) Notwithstanding Section 7.069, a penalty collected
17 under this section shall be deposited to the credit of the water
18 infrastructure fund.

19 Sec. 11.558. RULES. The commission shall adopt rules to
20 implement this subchapter, including rules defining "high-capacity
21 water well" for purposes of this subchapter.

22 SECTION 2.10. Subchapter E, Chapter 13, Water Code, is
23 amended by adding Section 13.146 to read as follows:

24 Sec. 13.146. WATER CONSERVATION PLAN. The commission shall
25 require a retail public utility that provides potable water service
26 to a population of 3,300 or more to submit to the executive
27 administrator of the board a water conservation plan based on

1 specific targets and goals for water savings developed by the
2 retail public utility and using appropriate best management
3 practices, as defined by Section 11.002, or other water
4 conservation strategies as determined by the retail public utility.
5 For purposes of this section, the population served by a retail
6 public utility shall be determined on the basis of the population
7 estimates contained in the most recent regional water plan adopted
8 for the regional water planning area in which the retail public
9 utility's service area is located.

10 SECTION 2.11. Section 15.001, Water Code, is amended by
11 adding Subdivision (14) to read as follows:

12 (14) "Conjunctive use" has the meaning assigned by
13 Section 11.002.

14 SECTION 2.12. Subchapter A, Chapter 15, Water Code, is
15 amended by adding Section 15.009 to read as follows:

16 Sec. 15.009. PRIORITY FOR CONJUNCTIVE USE APPLICATIONS. In
17 its funding programs under this chapter, the board shall give
18 priority to applications for planning funds and water supply
19 projects that promote conjunctive use. The board shall consider
20 incentives for promoting conjunctive use, including low or zero
21 interest rate loans.

22 SECTION 2.13. Section 15.102(b), Water Code, is amended to
23 read as follows:

24 (b) The loan fund may also be used by the board to provide:

25 (1) grants or loans for projects that include
26 supplying water and wastewater services in economically distressed
27 areas or nonborder colonias as provided by legislative

1 appropriations, this chapter, and board rules, including projects
2 involving retail distribution of those services; and

3 (2) grants for:

4 (A) projects for which federal grant funds are
5 placed in the loan fund;

6 (B) projects, on specific legislative
7 appropriation for those projects; or

8 (C) water conservation, desalination, brush
9 control, weather modification, regionalization, conjunctive use
10 projects, and projects providing regional water quality
11 enhancement services as defined by board rule, including regional
12 conveyance systems.

13 SECTION 2.14. Subchapter F, Chapter 15, Water Code, is
14 amended by adding Section 15.4062 to read as follows:

15 Sec. 15.4062. FUNDING FOR GROUNDWATER MANAGEMENT
16 COORDINATION. (a) The board may enter into a contract with a
17 political subdivision designated as a representative of a
18 groundwater management area council established under Section
19 36.108 to pay from the research and planning fund all or part of the
20 cost of performing the groundwater management area planning
21 functions required of the groundwater management area council under
22 Section 36.108.

23 (b) A political subdivision may submit, either individually
24 or jointly with other political subdivisions, a written application
25 to the board to request assistance paying for the planning
26 functions required under Section 36.108.

27 (c) The application must be in the manner and form

1 prescribed by board rules and include:

2 (1) the name of each political subdivision
3 participating in the application;

4 (2) a citation to each law under which each political
5 subdivision was created and is operating, including specific
6 citation of any law providing authority to perform the functions
7 under Section 36.108;

8 (3) the amount of money being requested; and

9 (4) any other relevant information required by board
10 rules or specifically requested by the board.

11 (d) After providing notice of and conducting a hearing on
12 the application, the board may award the applicant the amount of
13 money the board considers necessary to perform the functions under
14 Section 36.108.

15 (e) If the board grants an application under this section
16 and awards money, the board shall enter into a contract with each
17 participating political subdivision that includes:

18 (1) a detailed statement of the purpose for which the
19 money is to be used;

20 (2) the total amount of the award to be paid by the
21 board from the research and planning fund; and

22 (3) any other terms and conditions required by board
23 rules or agreed to by the contracting parties.

24 (f) The board shall adopt rules establishing criteria for
25 making grants of money under this section that include:

26 (1) the relative need of the political subdivision for
27 the money;

1 (2) the legal authority of the political subdivision
2 to perform the duties required under the contract; and

3 (3) the degree to which groundwater management area
4 planning by each political subdivision for the groundwater
5 management area council will address the issues of groundwater
6 management in the groundwater management area.

7 (g) The board may not award money under this section if
8 existing information or data is sufficient for the performance of
9 functions under Section 36.108.

10 (h) The board shall require that information developed or
11 revised under a contract entered into under this section be made
12 available to the commission, the Department of Agriculture, and the
13 Parks and Wildlife Department.

14 SECTION 2.15. Section 15.974(a), Water Code, is amended to
15 read as follows:

16 (a) The board may use the fund:

17 (1) to make loans to political subdivisions at or
18 below market interest rates for projects;

19 (2) to make grants, low-interest loans, or zero
20 interest loans to political subdivisions for projects to serve
21 areas outside metropolitan statistical areas in order to ensure
22 that the projects are implemented, for conjunctive use projects, or
23 for projects to serve economically distressed areas;

24 (3) to make loans at or below market interest rates for
25 planning and design costs, permitting costs, and other costs
26 associated with state or federal regulatory activities with respect
27 to a project;

1 (4) as a source of revenue or security for the payment
2 of principal and interest on bonds issued by the board if the
3 proceeds of the sale of the bonds will be deposited in the fund; and

4 (5) to pay the necessary and reasonable expenses of
5 the board in administering the fund.

6 SECTION 2.16. Section 16.001, Water Code, is amended by
7 adding Subdivision (13) to read as follows:

8 (13) "Conjunctive use" has the meaning assigned by
9 Section 11.002.

10 SECTION 2.17. Subchapter B, Chapter 16, Water Code, is
11 amended by adding Section 16.0122 to read as follows:

12 Sec. 16.0122. TECHNICAL ASSISTANCE FOR GROUNDWATER
13 MANAGEMENT AREAS. For each groundwater management area established
14 under Section 35.007, the executive administrator shall provide one
15 or more employees of the board to assist the groundwater management
16 area council and the districts in the council's groundwater
17 management area. The employees shall provide assistance:

18 (1) training district employees or the district board
19 on basic data collection protocols;

20 (2) collecting and interpreting data;

21 (3) providing technical services or expertise;

22 (4) conducting hydrogeologic investigations;

23 (5) providing groundwater availability modeling;

24 (6) developing a district's groundwater management
25 plan;

26 (7) preparing for or conducting a joint planning
27 effort for districts in a groundwater management area or for a

1 district and a regional water planning group established under
2 Section 16.053, including assistance in avoiding and resolving
3 conflicts; and

4 (8) providing education.

5 SECTION 2.18. Section 16.022, Water Code, is amended to
6 read as follows:

7 Sec. 16.022. WATER CONSERVATION MONITORING; REPORT
8 [STUDY]. (a) The board [~~and the State Soil and Water Conservation~~
9 Board] shall:

10 (1) monitor trends in water conservation
11 implementation;

12 (2) monitor new technologies for possible inclusion by
13 the board and commission in updating water conservation programs
14 that suggest best management practices under Section 11.1271(e);

15 (3) monitor the effectiveness of the statewide water
16 conservation public awareness program developed under Section
17 16.401 and associated local involvement in implementation of the
18 program;

19 (4) monitor the implementation of water conservation
20 strategies by water users included in regional water plans; and

21 (5) monitor target and goal guidelines for water
22 conservation to be considered by the board and the commission under
23 Section 11.1271(d).

24 (b) Not later than December 1 of each even-numbered year,
25 the board shall submit to the governor, lieutenant governor, and
26 speaker of the house of representatives a report on the progress
27 made in water conservation in this state [~~jointly conduct a study of~~

1 ~~the ways to improve or expand water conservation efforts and report~~
2 ~~to the legislature].~~

3 ~~[(b) The report must include:~~

4 ~~[(1) an assessment of both agricultural and municipal~~
5 ~~water conservation issues,~~

6 ~~[(2) information on existing conservation efforts by~~
7 ~~the board and the State Soil and Water Conservation Board,~~

8 ~~[(3) information on existing conservation efforts by~~
9 ~~municipalities receiving funding from the board, as specified in~~
10 ~~water conservation plans submitted by the municipalities as part of~~
11 ~~their applications for assistance,~~

12 ~~[(4) a discussion of future conservation needs,~~

13 ~~[(5) an analysis of programmatic approaches and~~
14 ~~funding for additional conservation efforts,~~

15 ~~[(6) an assessment of existing statutory authority and~~
16 ~~whether changes are needed to more effectively promote and fund~~
17 ~~conservation projects, and~~

18 ~~[(7) an assessment of the board's agricultural water~~
19 ~~conservation program.~~

20 ~~[(c) The report shall be issued as part of, or as a~~
21 ~~supplement to, the state water plan.]~~

22 SECTION 2.19. Section 16.053, Water Code, is amended by
23 adding Subsection (d-1) and amending Subsection (e) to read as
24 follows:

25 (d-1) The board shall provide to each regional water
26 planning group the board's estimate of the amount of groundwater
27 available in each applicable groundwater management area.

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

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

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

8 (3) identifies:

9 (A) each source of water supply in the regional
10 water planning area, including information supplied by the board
11 under Subsection (d-1) on the amount of groundwater available in
12 the applicable groundwater management areas, in accordance with the
13 guidelines provided by the board under Subsections (d) and (f);

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

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

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

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

22 (A) any existing water or drought planning
23 efforts addressing all or a portion of the region;

24 (B) approved [~~certified~~] groundwater
25 conservation district management plans and other plans submitted
26 under Section 16.054;

27 (C) all potentially feasible water management

1 strategies, including but not limited to improved conservation,
2 reuse, and management of existing water supplies, conjunctive use,
3 acquisition of available existing water supplies, and development
4 of new water supplies;

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

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

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

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

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

19 (I) emergency transfer of water under Section
20 11.139, including information on the part of each permit, certified
21 filing, or certificate of adjudication for nonmunicipal use in the
22 region that may be transferred without causing unreasonable damage
23 to the property of the nonmunicipal water rights holder;

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

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

5 (8) describes the impact of proposed water projects on
6 water quality.

7 SECTION 2.20. Section 16.053(h), Water Code, is amended by
8 adding Subdivisions (10), (11), and (12) to read as follows:

9 (10) The regional water planning group may amend the
10 regional water plan after the plan has been approved by the board.
11 Subdivisions (1)-(9) apply to an amendment to the plan in the same
12 manner as those subdivisions apply to the plan.

13 (11) This subdivision applies only to an amendment to
14 a regional water plan approved by the board. This subdivision does
15 not apply to the adoption of a subsequent regional water plan for
16 submission to the board as required by Subsection (i).
17 Notwithstanding Subdivision (10), the regional water planning
18 group may amend the plan in the manner provided by this subdivision
19 if the executive administrator determines that the amendment
20 qualifies for adoption in the manner provided by this subdivision
21 before the regional water planning group votes on adoption of the
22 amendment. An amendment qualifies for adoption in the manner
23 provided by this subdivision only if the amendment will not result
24 in the overallocation of any existing or planned source of water,
25 does not relate to a new reservoir, and will not have a significant
26 effect on instream flows or freshwater inflows to bays and
27 estuaries. If the executive administrator determines that an

1 amendment qualifies for adoption in the manner provided by this
2 subdivision, the regional water planning group may adopt the
3 amendment at a public meeting held in accordance with Chapter 551,
4 Government Code. The amendment must be placed on the agenda for the
5 meeting, and notice of the meeting must be given in the manner
6 provided by Chapter 551, Government Code, at least two weeks before
7 the date the meeting is held. The public must be provided an
8 opportunity to comment on the amendment at the meeting.

9 (12) Notwithstanding Subdivisions (10) and (11), a
10 regional water planning group may revise a regional water plan
11 approved by the board without complying with Subdivisions (1)-(9)
12 or obtaining a determination from the executive administrator that
13 the revision qualifies for adoption in the manner provided by
14 Subdivision (11) if the revision consists only of substituting an
15 alternative water management strategy for a water management
16 strategy recommended in the regional water plan. The regional
17 water planning group may adopt the revision to the regional water
18 plan at a public meeting held in accordance with Chapter 551,
19 Government Code.

20 SECTION 2.21. Section 16.131, Water Code, is amended to
21 read as follows:

22 Sec. 16.131. AUTHORIZED PROJECTS. (a) The board may use
23 the state participation account of the development fund to
24 encourage optimum regional development of projects including the
25 design, acquisition, lease, construction, reconstruction,
26 development, or enlargement in whole or part of:

27 (1) reservoirs and storm water retention basins for

1 water supply, flood protection, and groundwater recharge;

2 (2) facilities for the transmission and treatment of
3 water; and

4 (3) treatment works as defined by Section 17.001 [~~of~~
5 ~~this code~~].

6 (b) In its funding programs under this chapter, the board
7 shall give priority to applications for water supply projects that
8 promote conjunctive use. The board shall consider incentives for
9 promoting conjunctive use, including low or zero interest rate
10 loans.

11 SECTION 2.22. Chapter 16, Water Code, is amended by adding
12 Subchapters K and L to read as follows:

13 SUBCHAPTER K. WATER CONSERVATION

14 Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS
15 PROGRAM. The executive administrator shall develop and implement a
16 statewide water conservation public awareness program to educate
17 residents of this state about water conservation. The program
18 shall take into account the differences in water conservation needs
19 of various geographic regions of the state and shall be designed to
20 complement and support existing local and regional water
21 conservation programs.

22 Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Each
23 entity that is required to submit a water conservation plan to the
24 commission under this code shall submit a copy of the plan to the
25 executive administrator.

26 (b) Each entity that is required to submit a water
27 conservation plan to the executive administrator, board, or

1 commission under this code shall report annually to the executive
2 administrator on the entity's progress in implementing the plan.

3 (c) The executive administrator shall review each water
4 conservation plan and annual report to determine compliance with
5 the minimum requirements of all applicable laws and rules.

6 SUBCHAPTER L. REGULATION OF WATER MARKETING

7 Sec. 16.451. LICENSE REQUIRED. Unless the person holds a
8 license issued by the executive administrator under this
9 subchapter, a person may not:

10 (1) sell or lease a right of any kind to more than 100
11 acre-feet a year of surface water or groundwater to another person;
12 or

13 (2) agree to provide more than 100 acre-feet a year of
14 surface water or groundwater to another person.

15 Sec. 16.452. ELIGIBILITY FOR LICENSE. To be eligible for a
16 license under this subchapter, a person must submit to the
17 executive administrator:

18 (1) an application on a form prescribed by board rule;
19 and

20 (2) a fee in an amount determined by board rule that is
21 sufficient to cover the costs incurred by the board in
22 administering this subchapter.

23 Sec. 16.453. LICENSE RENEWAL. A license issued under this
24 subchapter must be renewed annually.

25 Sec. 16.454. REGISTRATION OF WATER TRANSFERS. A person who
26 sells or leases a right of any kind to more than 100 acre-feet a year
27 of surface water or groundwater to another person or agrees to

1 provide more than 100 acre-feet a year of surface water or
2 groundwater to another person shall register the sale, lease, or
3 agreement with the executive administrator by submitting to the
4 executive administrator:

5 (1) a report concerning the sale, lease, or agreement
6 that complies with rules adopted by the board; and

7 (2) a transfer registration fee in an amount
8 determined by board rule that is sufficient to cover the costs
9 incurred by the board in administering this subchapter.

10 Sec. 16.455. ADMINISTRATIVE PENALTY. (a) A person who
11 sells or leases a right of any kind to surface water or groundwater
12 or agrees to provide surface water or groundwater in violation of
13 Section 16.451 or 16.454 is subject to an administrative penalty.
14 The amount of the penalty may not exceed \$5,000 for each sale,
15 lease, or agreement in violation of Section 16.451 or 16.454. A
16 separate penalty may be imposed for a violation of each section if a
17 sale, lease, or agreement violates both sections.

18 (b) The executive administrator may refer a violation of
19 Section 16.451 or 16.454 to the commission. The commission may
20 impose an administrative penalty for the violation in the manner
21 provided by Subchapter C, Chapter 7.

22 Sec. 16.456. DEPOSIT OF FEES AND PENALTIES IN WATER
23 INFRASTRUCTURE FUND. A fee or administrative penalty collected
24 under this subchapter shall be deposited to the credit of the water
25 infrastructure fund.

26 SECTION 2.23. Section 17.001, Water Code, is amended by
27 adding Subdivision (26) to read as follows:

1 (26) "Conjunctive use" has the meaning assigned by
2 Section 11.002.

3 SECTION 2.24. Subchapter A, Chapter 17, Water Code, is
4 amended by adding Section 17.004 to read as follows:

5 Sec. 17.004. PRIORITY FOR CONJUNCTIVE USE APPLICATIONS. In
6 its funding programs under this chapter, the board shall give
7 priority to applications for water supply projects that promote
8 conjunctive use. The board shall consider incentives for promoting
9 conjunctive use, including low or zero interest rate loans.

10 SECTION 2.25. Section 17.125, Water Code, is amended by
11 adding Subsection (b-2) to read as follows:

12 (b-2) The board shall give priority to applications for
13 funds for implementation of water supply projects in the state
14 water plan by entities that:

15 (1) have already demonstrated significant water
16 conservation savings; or

17 (2) will achieve significant water conservation
18 savings by implementing the proposed project for which the
19 financial assistance is sought.

20 SECTION 2.26. Section 26.003, Water Code, is amended to
21 read as follows:

22 Sec. 26.003. POLICY OF THIS SUBCHAPTER. It is the policy of
23 this state and the purpose of this subchapter to maintain the
24 quality of water in the state consistent with the public health and
25 enjoyment, the propagation and protection of terrestrial and
26 aquatic life, and the operation of existing industries, taking into
27 consideration the economic development of the state; to encourage

1 and promote the development and use of regional and areawide waste
2 collection, treatment, and disposal systems to serve the waste
3 disposal needs of the citizens of the state; to encourage the
4 stewardship of public and private lands to benefit waters of the
5 state; and to require the use of all reasonable methods to implement
6 this policy.

7 SECTION 2.27. Section 26.027, Water Code (effective upon
8 delegation of NPDES permit authority), is amended by adding
9 Subsections (a-1) and (c-1) to read as follows:

10 (a-1) The commission may issue permits and amendments to
11 permits for the injection and subsequent recovery for beneficial
12 use of waste or pollutants into an aquifer in this state. A permit
13 may not be issued authorizing the injection of any radiological,
14 chemical, or biological warfare agent or high-level radioactive
15 waste. The commission may refuse to issue a permit if the
16 commission finds that issuance of the permit would:

17 (1) violate a state or federal law or a rule or
18 regulation adopted under such a law;

19 (2) alter the physical, chemical, or biological
20 quality of native groundwater to a degree that the introduction
21 would:

22 (A) render groundwater produced from the aquifer
23 harmful or detrimental to people, animals, vegetation, or property;
24 or

25 (B) require treatment of the groundwater to a
26 greater extent than the native groundwater requires before being
27 applied to that beneficial use; or

1 (3) interfere with the purpose of this chapter.

2 (c-1) A person may not commence injection until the
3 commission has issued a permit to authorize the injection of waste
4 from the treatment facility, except with the approval of the
5 commission.

6 SECTION 2.28. Section 27.012, Water Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) Applications for injection of wastewater treated under
9 a permit issued under Chapter 26 for purposes of injection into an
10 aquifer for storage and subsequent recovery for beneficial use
11 shall be processed in accordance with this chapter for the benefit
12 of the state and the preservation of its natural resources.

13 SECTION 2.29. Subchapter B, Chapter 27, Water Code, is
14 amended by adding Section 27.022 to read as follows:

15 Sec. 27.022. PERMIT FOR INJECTION FOR STORAGE AND RECOVERY
16 OF TREATED WASTEWATER IN CLASS V WELLS. (a) The commission may
17 issue a permit to inject for storage and subsequent recovery for
18 beneficial use wastewater treated under a permit issued under
19 Chapter 26 in a Class V injection well if the applicant for the
20 permit meets all the statutory and regulatory requirements for the
21 issuance of a permit for a Class V injection well.

22 (b) The commission by rule shall provide for public notice
23 and comment on an application for a permit authorized by this
24 section. Notwithstanding Section 27.018, an application for a
25 permit authorized by this section is not subject to the hearing
26 requirements of Chapter 2001, Government Code.

27 SECTION 2.30. Section 35.007(a), Water Code, is amended to

1 read as follows:

2 (a) The executive director and the executive administrator
3 shall meet periodically to identify, based on information gathered
4 by the commission and the Texas Water Development Board, those
5 areas of the state that are experiencing or that are expected to
6 experience, within the immediately following 50-year [~~25-year~~]
7 period, critical groundwater problems, including shortages of
8 surface water or groundwater, land subsidence resulting from
9 groundwater withdrawal, and contamination of groundwater supplies.
10 Not later than September 1, 2005, the commission, with assistance
11 and cooperation from the Texas Water Development Board, shall
12 complete the initial designation of priority groundwater
13 management areas across all major and minor aquifers of the state
14 for all areas that meet the criteria for that designation. The
15 studies may be prioritized considering information from the
16 regional planning process, information from the Texas Water
17 Development Board groundwater management areas and from
18 groundwater conservation districts, and any other information
19 available. After the initial designation of priority groundwater
20 management areas, the commission and the Texas Water Development
21 Board shall annually review the need for additional designations as
22 provided by this subsection.

23 SECTION 2.31. Section 36.001, Water Code, is amended by
24 adding Subdivision (4-a) to read as follows:

25 (4-a) "Federal conservation program" means the
26 Conservation Reserve Program of the United States Department of
27 Agriculture, or any successor program.

1 SECTION 2.32. Subchapter A, Chapter 36, Water Code, is
2 amended by adding Section 36.0012 to read as follows:

3 Sec. 36.0012. DEFINITIONS PROVIDED UNDER RULES. The Texas
4 Water Development Board by rule shall define common terms for use by
5 districts and groundwater management area councils related to
6 groundwater measurement or data collection. Each district and
7 groundwater management area council must use these defined terms
8 consistently in drafting the district's groundwater management
9 plan or other documents. The defined terms must include:

10 (1) the annual amount of withdrawals authorized by a
11 district;

12 (2) desired future condition of groundwater
13 resources;

14 (3) discharge;

15 (4) evidence of historic use;

16 (5) groundwater availability;

17 (6) groundwater management area;

18 (7) inflows;

19 (8) projected groundwater supply;

20 (9) outflows;

21 (10) recharge;

22 (11) total aquifer storage; and

23 (12) total usable amount of groundwater in an aquifer.

24 SECTION 2.33. Subchapter A, Chapter 36, Water Code, is
25 amended by adding Section 36.0016 to read as follows:

26 Sec. 36.0016. POLICY GOAL. It is the policy goal of this
27 chapter to ensure the consistent management of groundwater in a

1 shared management area by the groundwater conservation districts
2 located in that area.

3 SECTION 2.34. Section 36.002, Water Code, is amended to
4 read as follows:

5 Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and
6 rights of the owners of the land and their lessees and assigns in
7 groundwater are hereby recognized, and nothing in this code shall
8 be construed as depriving or divesting the owners or their lessees
9 and assigns of the ownership or rights, except as those rights may
10 be limited or altered by rules promulgated by a district. A rule
11 promulgated by a district may not discriminate between owners of
12 land that is irrigated for production and owners of land or their
13 lessees and assigns whose land is enrolled or participating in a
14 federal conservation program.

15 SECTION 2.35. Section 36.101(a), Water Code, is amended to
16 read as follows:

17 (a) A district may make and enforce rules, including rules
18 limiting groundwater production based on tract size or the spacing
19 of wells, to provide for conserving, preserving, protecting, and
20 recharging of the groundwater or of a groundwater reservoir or its
21 subdivisions in order to control subsidence, prevent degradation of
22 water quality, or prevent waste of groundwater and to carry out the
23 powers and duties provided by this chapter. During the rulemaking
24 process the board shall consider all groundwater uses and needs and
25 shall develop rules which are fair and impartial and that do not
26 discriminate between land that is irrigated for production and land
27 enrolled or participating in a federal conservation program. Any

1 rule of a district that discriminates between land that is
2 irrigated for production and land enrolled or participating in a
3 federal conservation program is void.

4 SECTION 2.36. Sections 36.1071(a), (b), (d), (e), and (g),
5 Water Code, are amended to read as follows:

6 (a) Following notice and hearing, the district shall, in
7 coordination with surface water management entities on a regional
8 basis, develop a comprehensive management plan which addresses the
9 following management goals, as applicable:

- 10 (1) providing the most efficient use of groundwater;
- 11 (2) controlling and preventing waste of groundwater;
- 12 (3) controlling and preventing subsidence;
- 13 (4) addressing conjunctive surface water management
14 issues;
- 15 (5) addressing natural resource issues;
- 16 (6) addressing drought conditions; ~~and~~
- 17 (7) addressing conservation, recharge enhancement,
18 rainwater harvesting, or brush control, where appropriate and
19 cost-effective;
- 20 (8) addressing a data collection program that meets
21 standards established by Texas Water Development Board rules; and
- 22 (9) addressing in a quantitative manner the desired
23 future conditions for the groundwater resources within the district
24 established by the groundwater management area council under
25 Section 36.108.

26 (b) A [~~After January 5, 2002, a~~] district management plan,
27 or any amendments to a district management plan, shall be developed

1 by the district using the district's best available data and
2 forwarded to the regional water planning group for consideration in
3 their planning process.

4 (d) The commission shall provide technical assistance to a
5 district during its initial operational phase. The Texas Water
6 Development Board shall train districts on basic data collection
7 methodology and provide technical assistance to districts as
8 provided by Section 16.0122.

9 (e) In the management plan described under Subsection (a),
10 the district shall:

11 (1) identify the performance standards and management
12 objectives under which the district will operate to achieve the
13 management goals identified under Subsection (a);

14 (2) specify, in as much detail as possible, the
15 actions, procedures, performance, and avoidance that are or may be
16 necessary to effect the plan, including specifications and proposed
17 rules;

18 (3) include estimates of the following:

19 (A) ~~[the existing total usable amount of]~~
20 groundwater availability in the district based on the desired
21 future condition of the aquifer established by the groundwater
22 management area council under Section 36.108;

23 (B) the amount of groundwater ~~[being]~~ used within
24 the district on an annual basis for each of the preceding 10 years;

25 (C) the annual amount of recharge, if any, to the
26 groundwater resources within the district and how natural or
27 artificial recharge may be increased; and

1 (D) the projected water supply and projected
2 demand for water within the district; and

3 (4) address water supply needs in a manner that is not
4 in conflict with the adopted state [~~appropriate approved regional~~]
5 water plan [~~if a regional water plan has been approved under Section~~
6 ~~16.053~~].

7 (g) The district [~~board~~] shall adopt amendments to the
8 management plan as necessary. Amendments to the management plan
9 shall be adopted after notice and hearing and shall otherwise
10 comply with the requirements of this section.

11 SECTION 2.37. Section 36.1072, Water Code, is amended to
12 read as follows:

13 Sec. 36.1072. COUNCIL [~~TEXAS WATER DEVELOPMENT BOARD~~]
14 REVIEW AND APPROVAL [~~CERTIFICATION~~] OF MANAGEMENT PLAN. (a) A
15 district shall, not later than two years after the creation of the
16 district or, if the district required confirmation, after the
17 election confirming the district's creation, submit the management
18 plan required under Section 36.1071 to the groundwater management
19 area council [~~executive administrator~~] for review and approval
20 [~~certification~~].

21 (b) Within 60 days of receipt of a management plan adopted
22 under Section 36.1071, readopted under Subsection (e) of this
23 section, or amended under Section 36.1073, the council [~~executive~~
24 ~~administrator~~] shall approve [~~certify~~] a management plan that meets
25 the requirements specified by Subsections (b-1), (b-2), (b-3), and
26 (b-4).

27 (b-1) The [~~if the plan is administratively complete. A~~]

1 management plan must contain [~~is administratively complete when it~~
2 ~~contains~~] the information required to be submitted under Section
3 36.1071. The groundwater management area council [~~executive~~
4 ~~administrator~~] may determine whether [~~that~~] conditions justify
5 waiver of the requirements under Section 36.1071(e)(4).

6 (b-2) The management plan must be consistent with the
7 desired future condition of the groundwater resources in the
8 groundwater management area adopted under Section 36.108.

9 (b-3) The management plan must be consistent with the
10 groundwater availability adopted for the district under Section
11 36.108.

12 (b-4) The performance standards and management objectives
13 included in the plan under Section 36.1071(e) must be consistent
14 with achieving the desired future condition of the groundwater
15 resources in the groundwater management area adopted under Section
16 36.108.

17 (c) Once the groundwater management area council has
18 approved a [~~determination that a~~] management plan [~~is~~
19 ~~administratively complete has been made~~]:

20 (1) the council [~~executive administrator~~] may not
21 revoke but may suspend the approval as provided by Subsection (g)
22 [~~determination that a management plan is administratively~~
23 ~~complete~~]; and

24 (2) the council [~~executive administrator~~] may request
25 additional information from the district if the information is
26 necessary to clarify, modify, or supplement previously submitted
27 material, but [~~and~~

1 ~~[(3)]~~ a request for additional information does not
2 render the management plan unapproved ~~[incomplete]~~.

3 (d) A management plan takes effect on approval
4 ~~[certification]~~ by the groundwater management area council
5 ~~[executive administrator]~~ or, if appealed, on approval
6 ~~[certification]~~ by the Texas Water Development Board.

7 (e) The board may review the plan annually and must review
8 and readopt the plan with or without revisions at least once every
9 five years. The district shall provide the readopted plan to the
10 groundwater management area council not later than the 60th day
11 after the date on which the plan was readopted. Approval of the
12 preceding management plan remains in effect until:

13 (1) the district fails to timely readopt a management
14 plan;

15 (2) the district fails to timely submit the district's
16 readopted management plan to the council; or

17 (3) the council determines that the readopted
18 management plan does not meet the requirements for approval, and
19 the district has exhausted all appeals to the Texas Water
20 Development Board.

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

1 The council's [~~executive administrator's~~] decision may be appealed
2 to the Texas Water Development Board. The decision of the Texas
3 Water Development Board on whether to approve [~~certify~~] the
4 management plan may not be appealed. The commission shall not take
5 enforcement action against a district under Subchapter I until the
6 later of the expiration of the 180-day period or the date the Texas
7 Water Development Board has taken final action withholding approval
8 [~~certification~~] of a revised management plan.

9 (g) In this subsection, "development board" means the Texas
10 Water Development Board, and "council" means the groundwater
11 management area council. A person with a legally defined interest
12 in groundwater in a district or the regional water planning group
13 may file a petition with the council [~~board~~] stating that a conflict
14 requiring resolution may exist between the district's approved
15 [~~certified groundwater conservation district~~] management plan
16 developed under Section 36.1071 and the state water plan. If a
17 conflict exists, the council [~~board~~] shall facilitate coordination
18 between the involved person or regional water planning group and
19 the district to resolve the conflict. If conflict remains, the
20 council shall petition the development board to [~~shall~~] resolve the
21 conflict. The development board action under this provision may be
22 consolidated, at the option of the development board, with related
23 action under Section 16.053(p). If the development board
24 determines that resolution of the conflict requires a revision of
25 the approved [~~certified groundwater conservation district~~]
26 management plan, the council [~~board~~] shall suspend the approval
27 [~~certification~~] of the plan and provide information to the

1 district. The district shall prepare any revisions to the plan
2 specified by the council [~~board~~] and shall hold, after notice, at
3 least one public hearing at some central location within the
4 district. The district shall consider all public and development
5 board comments, prepare, revise, and adopt its plan, and submit the
6 revised plan to the council [~~board~~] for approval [~~certification~~].
7 On the request of the district or the regional water planning group,
8 the development board shall include discussion of the conflict and
9 its resolution in the state water plan that the development 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 2.38. Section 36.1073, Water Code, is amended to
13 read as follows:

14 Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Any amendment
15 to the management plan shall be submitted to the groundwater
16 management area council [~~executive administrator~~] within 60 days
17 following adoption of the amendment by the district's board. The
18 council [~~executive administrator~~] shall review and approve
19 [~~certify~~] any amendment which substantially affects the management
20 plan in accordance with the procedures established under Section
21 36.1072.

22 SECTION 2.39. Subchapter D, Chapter 36, Water Code, is
23 amended by amending Section 36.108 and adding Sections 36.1081 and
24 36.1082 to read as follows:

25 Sec. 36.108. GROUNDWATER MANAGEMENT AREA COUNCIL; [JOINT]
26 PLANNING IN MANAGEMENT AREA. (a) In this section, "development
27 board" means the Texas Water Development Board.

1 (b) The development board shall establish a groundwater
2 management area council for each management area designated under
3 Section 35.007. The groundwater management area council shall
4 ensure the coordination of groundwater management in each
5 management area.

6 (c) Each groundwater management area council is composed of
7 the following representatives:

8 (1) the presiding officer of each groundwater
9 conservation district in the groundwater management area or the
10 presiding officer's designee; and

11 (2) residents of a district in the groundwater
12 management area appointed by the development board as follows:

13 (A) one representative of retail water utility or
14 municipal interests located wholly or partly in the groundwater
15 management area;

16 (B) one representative of a regional water
17 planning group as designated under Section 16.053, for each
18 regional water planning area located wholly or partly in the
19 groundwater management area;

20 (C) one representative of agricultural interests
21 who is an individual actively engaged in production agriculture;
22 and

23 (D) if applicable, one representative who holds a
24 permit from a district to use groundwater outside the boundaries of
25 the district.

26 (d) If the number of representatives on the groundwater
27 management area council that results from the application of

1 Subsection (c) is an even number, the representatives shall appoint
2 an additional representative by a two-thirds vote of those
3 representatives. The additional member must be a resident of a
4 district in the groundwater management area with a reasonable
5 knowledge of groundwater issues and hydrology in the area.

6 (e) The groundwater management area council shall elect one
7 of the representatives as presiding officer of the council.

8 (f) A person appointed under Subsection (c)(2) or (d) may
9 not be an employee or officer of a district or a state or federal
10 agency.

11 (g) A member of the council appointed under Subsection
12 (c)(2) or (d) serves a two-year term expiring August 31 of each
13 odd-numbered year. If a vacancy occurs, the appropriate entity
14 shall appoint a successor not later than the 60th day after the date
15 the entity received notice of the vacancy.

16 (h) Not later than the second anniversary of the appointment
17 of a groundwater management area council, and at least every fifth
18 year after that anniversary, each groundwater management area
19 council shall adopt:

20 (1) a statement that in a quantified manner describes
21 the desired future condition of the groundwater resources in the
22 groundwater management area; and

23 (2) an estimate of the groundwater availability for
24 each district in the groundwater management area based on the
25 groundwater availability adopted by the development board for the
26 groundwater management area.

27 (i) A groundwater management area council may:

1 (1) perform areawide hydrogeologic studies and
2 modeling;

3 (2) coordinate with a district, regional water
4 planning group, political subdivision, the commission, the
5 development board, or any other person or entity regarding
6 groundwater management;

7 (3) establish groundwater monitoring networks in the
8 groundwater management area; and

9 (4) designate a political subdivision to perform a
10 duty required by this section, including by executing a necessary
11 contract.

12 (j) In adopting the groundwater availability and future
13 groundwater conditions under Subsection (h), each groundwater
14 management area council shall:

15 (1) use the groundwater availability adopted by the
16 development board for the groundwater management area;

17 (2) use groundwater availability models developed by
18 the executive administrator or other data approved by the executive
19 administrator; and

20 (3) consider recommendations that districts in the
21 groundwater management area propose.

22 (k) The commission and the development board shall provide
23 technical assistance to a groundwater management area council in
24 the development of the groundwater conditions statement and
25 availability estimate under Subsection (h).

26 (l) Each groundwater management area council shall submit
27 the council's adopted groundwater conditions statement and

1 availability estimate to the development board for review and
2 comment. If the development board finds that the submitted
3 statement and estimate are in conflict with the state water plan or
4 the groundwater availability adopted by the development board for
5 the council's groundwater management area, the development board
6 shall provide comment and recommendations to the council to resolve
7 the conflict. The council shall amend the adopted statement and
8 estimate accordingly.

9 (m) Each groundwater management area council shall review
10 and approve the groundwater management plan, amendment, or
11 readoption prepared by each district in the groundwater management
12 area in accordance with Sections 36.1071, 36.1072, and 36.1073.
13 The groundwater management area council shall determine if the plan
14 or the amended or readopted plan is consistent with the statement of
15 groundwater conditions and the estimate of groundwater
16 availability adopted under Subsection (h).

17 (n) Each groundwater management area council shall:

18 (1) conduct all meetings in accordance with Chapter
19 551, Government Code;

20 (2) provide notice for each meeting in the manner
21 prescribed by Chapter 551, Government Code, for a district board of
22 directors meeting; and

23 (3) comply with the provisions of Chapter 552,
24 Government Code.

25 (o) A cause of action does not accrue against a groundwater
26 management area council, a representative serving on a groundwater
27 management area council, or an employee of a political subdivision

1 designated under Subsection (i)(4) for an act or omission if the
2 council, representative, or employee committed the act or omission
3 while acting in good faith and in the course and scope of the
4 council's, representative's, or employee's work related to the
5 groundwater management area council.

6 (p) A groundwater management area council, a representative
7 -serving on a groundwater management area council, or an employee of
8 a political subdivision designated under Subsection (i)(4) is not
9 liable for damages arising from an act or omission if the council,
10 representative, or employee committed the act or omission while
11 acting in good faith and in the course and scope of the council's,
12 representative's, or employee's work related to the groundwater
13 management area council.

14 (q) On request, the attorney general shall represent a
15 groundwater management area council, a representative serving on a
16 groundwater management area council, or an employee of a political
17 subdivision designated under Subsection (i)(4) in a suit arising
18 from an act or omission relating to the groundwater management area
19 council.

20 (r) A person with a legally defined interest in the
21 groundwater in the groundwater management area, a district in or
22 adjacent to the groundwater management area, or a regional water
23 planning group for a region in the groundwater management area may
24 file a petition with the development board appealing the approval
25 of the groundwater management area plan. The petition must provide
26 evidence that:

27 (1) the groundwater management area plan approved by

1 the council does not establish a reasonable desired future
2 condition of the groundwater resources in the groundwater
3 management area;

4 (2) the management area plan approved by the council
5 does not establish reasonable groundwater availability for the
6 district; or

7 (3) the groundwater in the groundwater management area
8 will not be adequately protected.

9 (s) The development board shall review the petition and any
10 evidence relevant to the petition. The development board shall
11 hold at least one hearing at a central location in the management
12 area to take testimony on the petition. If the development board
13 finds that the groundwater management area plan requires revision,
14 the development board shall submit a report to the groundwater
15 management area council that includes a list of findings and
16 recommended revisions to the groundwater management area plan.

17 (t) The groundwater management area council shall prepare a
18 revised plan in accordance with development board recommendations
19 and hold, after notice, at least one public hearing at a central
20 location in the groundwater management area. After consideration
21 of all public and development board comments, the council shall
22 revise the plan and submit the plan to the development board for
23 review [~~If two or more districts are located within the boundaries~~
24 ~~of the same management area, each district shall prepare a~~
25 ~~comprehensive management plan as required by Section 36.1071~~
26 ~~covering that district's respective territory. On completion and~~
27 ~~certification of the plan as required by Section 36.1072, each~~

1 ~~district shall forward a copy of the new or revised management plan~~
2 ~~to the other districts in the management area. The boards of the~~
3 ~~districts shall consider the plans individually and shall compare~~
4 ~~them to other management plans then in force in the management area.~~

5 ~~[(b) The board of directors of each district in the~~
6 ~~management area may, by resolution, call for joint planning with~~
7 ~~the other districts in the management area to review the management~~
8 ~~plans and accomplishments for the management area. In reviewing~~
9 ~~the management plans, the boards shall consider:~~

10 ~~[(1) the goals of each management plan and its impact~~
11 ~~on planning throughout the management area;~~

12 ~~[(2) the effectiveness of the measures established by~~
13 ~~each management plan for conserving and protecting groundwater and~~
14 ~~preventing waste, and the effectiveness of these measures in the~~
15 ~~management area generally; and~~

16 ~~[(3) any other matters that the boards consider~~
17 ~~relevant to the protection and conservation of groundwater and the~~
18 ~~prevention of waste in the management area.~~

19 ~~[(c) If a joint meeting of the boards of directors is~~
20 ~~called, the meeting must be held in accordance with Chapter 551,~~
21 ~~Government Code. Notice of the meeting shall be given in accordance~~
22 ~~with the requirements for notice of district board of directors~~
23 ~~meetings under that Act].~~

24 Sec. 36.1081. COUNCIL PETITION AGAINST DISTRICT.

25 (a) [(d)] A groundwater [district in the] management area council
26 for good cause may file [with good cause] a petition with the
27 commission requesting an inquiry if [the petitioner district

1 ~~adopted a resolution calling for joint planning and the other~~
2 ~~district or districts refused to join in the planning process or the~~
3 ~~process failed to result in adequate planning, and the petition~~
4 ~~provides evidence that]:~~

5 (1) a [another] district in the groundwater management
6 area has failed to submit its management plan to the groundwater
7 management area council [adopt rules];

8 (2) a district in the groundwater management area has
9 failed to adopt or make reasonable progress toward adopting rules;

10 (3) the rules adopted by a district are not designed to
11 achieve the desired future condition of the groundwater resources
12 in the groundwater management area established by the groundwater
13 management area plan [the groundwater in the management area is not
14 adequately protected by the rules adopted by another district]; or

15 (4) ~~(3)~~ the groundwater in the groundwater
16 management area is not adequately protected due to the failure of a
17 [another] district to enforce substantial compliance with its
18 rules.

19 (b) ~~(e)~~ Not later than the 90th day after the date the
20 petition is filed, the commission shall review the petition and
21 either:

22 (1) dismiss the petition if the commission [it if it]
23 finds that the evidence is not adequate to show that any of the
24 conditions alleged in the petition exist; or

25 (2) select a review panel as provided in Subsection
26 (c) ~~(f)~~.

27 (c) ~~(f)~~ If the petition is not dismissed under Subsection

1 (b) [~~(e)~~], the commission shall appoint a review panel consisting
2 of a chairman and four other members. A director or general manager
3 of a district located outside the groundwater management area that
4 is the subject of the petition may be appointed to the review panel.
5 The commission may not appoint more than two members of the review
6 panel from any one district. The commission also shall appoint a
7 disinterested person to serve as a nonvoting recording secretary
8 for the review panel. The recording secretary may be an employee of
9 the commission. The recording secretary shall record and document
10 the proceedings of the panel.

11 (d) [~~(g)~~] Not later than the 120th day after appointment,
12 the review panel shall review the petition and any evidence
13 relevant to the petition and, in a public meeting, consider and
14 adopt a report to be submitted to the commission. The commission
15 may direct the review panel to conduct public hearings at a location
16 in the groundwater management area to take evidence on the
17 petition. The review panel may attempt to negotiate a settlement or
18 resolve the dispute by any lawful means.

19 (e) [~~(h)~~] In its report, the review panel shall include:

20 (1) a summary of all evidence taken in any hearing on
21 the petition;

22 (2) a list of findings and recommended actions
23 appropriate for the commission to take and the reasons it finds
24 those actions appropriate; and

25 (3) any other information the panel considers
26 appropriate.

27 (f) [~~(i)~~] The review panel shall submit its report to the

1 commission. The commission may take action under Section 36.3011.

2 Sec. 36.1082. DISTRICT COOPERATION. [~~+~~]~~]~~ Districts
3 located within the same groundwater management areas or in adjacent
4 management areas may contract to jointly conduct studies or
5 research, or to construct projects, under terms and conditions that
6 the districts consider beneficial. These joint efforts may include
7 studies of groundwater availability and quality, aquifer modeling,
8 and the interaction of groundwater and surface water; educational
9 programs; the purchase and sharing of equipment; and the
10 implementation of projects to make groundwater available,
11 including aquifer recharge, brush control, weather modification,
12 desalination, regionalization, and treatment or conveyance
13 facilities. The districts may contract under their existing
14 authorizations including those of Chapter 791, Government Code, if
15 their contracting authority is not limited by Sections
16 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

17 SECTION 2.40. Section 36.113, Water Code, is amended by
18 amending Subsections (a), (c), and (e) and adding Subsections
19 (h)-(l) to read as follows:

20 (a) A district shall require permits for [~~the~~] drilling,
21 equipping, [~~or~~] completing, or operating [~~of~~] wells or for
22 substantially altering the size of wells or well pumps.

23 (c) A district may require that the following be included in
24 the permit application:

25 (1) the name and mailing address of the applicant and
26 the owner of the land on which the well will be located;

27 (2) if the applicant is other than the owner of the

1 property, documentation establishing the applicable authority to
2 construct and operate a well for the proposed purpose of use;

3 (3) a statement of the nature and purpose of the
4 proposed use and the amount of water to be used for each purpose;

5 (4) a water conservation plan or a declaration that
6 the applicant will comply with the district's management plan;

7 (5) the location of each well and the estimated rate at
8 which water will be withdrawn;

9 (6) a water well closure plan or a declaration that the
10 applicant will comply with well plugging guidelines and report
11 closure to the commission; and

12 (7) a drought contingency plan.

13 (e) The district may impose more restrictive permit
14 conditions on new permit applications and increased use by historic
15 or existing users if the limitations:

16 (1) apply to all subsequent new permit applications
17 and increased use by historic or existing users, regardless of type
18 or location of use;

19 (2) bear a reasonable relationship to the existing
20 district management plan; and

21 (3) are reasonably necessary to protect existing use.

22 (h) A district shall provide that a change in the purpose of
23 use under a permit may not be made without prior approval of a
24 permit amendment if the permit was granted for historic or existing
25 use. In granting a permit amendment changing the purpose for which
26 the water is used, the district shall subject the amended permit to
27 the same rules that apply to any other permit issued by the district

1 not based on historic or existing use.

2 (i) A district that authorizes a permit for historic or
3 existing use shall issue the permit based on evidence of historic or
4 existing use for any one year before the district was created only
5 for the purpose, place, and amount used in that year.

6 (j) In issuing a permit for an existing or historic use, a
7 district may not discriminate between land that is irrigated for
8 production and land or wells on land enrolled or participating in a
9 federal conservation program.

10 (k) A permitting decision by a district is void if:

11 (1) the district makes its decision in violation of
12 Subsection (j); and

13 (2) the district would have reached a different
14 decision if the district had treated land or wells on land enrolled
15 or participating in a federal conservation program the same as land
16 irrigated for production.

17 (l) On the application of an affected owner of land or the
18 owner's lessee or assigns, the district shall reconsider a decision
19 that is void under Subsection (k) and base its decision on the equal
20 treatment of land or wells on land enrolled or participating in a
21 federal conservation program and land that is irrigated for
22 production. Not later than the 90th day after the date the district
23 receives an application under this subsection, the district shall
24 render its decision and notify the applicant of its decision.

25 SECTION 2.41. Section 36.116(b), Water Code, is amended to
26 read as follows:

27 (b) In promulgating any rules limiting groundwater

1 production, the district may preserve historic or existing use
2 before the effective date of the rules to the maximum extent
3 practicable consistent with the district's comprehensive
4 management plan under Section 36.1071. A rule promulgated under
5 this section to preserve a historic or existing use does not apply
6 if the purpose for which the groundwater is used is changed from the
7 purpose of use authorized by the existing use permit to a new
8 purpose.

9 SECTION 2.42. Subchapter D, Chapter 36, Water Code, is
10 amended by adding Section 36.125 to read as follows:

11 Sec. 36.125. APPEAL OF DISTRICT ACTION TO DISPUTE
12 RESOLUTION PANEL. (a) If a dispute arises between a district and a
13 person affected by an action taken by the district under this
14 subchapter, either the district or the affected person may file a
15 petition with the commission requesting the appointment of a
16 dispute resolution panel to mediate the dispute and assist the
17 parties in reaching resolution of the dispute.

18 (b) A petition filed under this section must include:

19 (1) the name of and contact information for each
20 party;

21 (2) a brief summary of the dispute along with a copy of
22 any relevant document, including a permit, an application, a
23 timeline, the district's enabling statute, a rule, a groundwater
24 management plan, or the groundwater management area plan; and

25 (3) other information required by the commission.

26 (c) Not later than the 60th day after the date the petition
27 is filed, the commission shall review the petition and:

1 (1) dismiss it if the commission finds that the
2 petition is baseless, frivolous, or fails to present an issue that
3 is appropriate for panel review; or

4 (2) select a panel as provided by Subsection (e).

5 (d) If the petition is dismissed, the commission shall
6 provide the reasons for the dismissal in writing to the district and
7 the affected person.

8 (e) If the petition is not dismissed, the commission shall
9 appoint three members of a dispute resolution panel, including the
10 chair of the panel, who must be officers or employees of a district
11 located outside the groundwater management area in which the
12 parties to the dispute are located. The three appointed members
13 shall select two other panel members who are not otherwise involved
14 in or affected by the matter in dispute and whose knowledge or
15 expertise may be useful in resolving the dispute. Not more than two
16 panel members may be from the same district.

17 (f) The commission shall appoint a neutral person to serve
18 as a nonvoting recording secretary for the panel. The recording
19 secretary appointed may be a commission employee. The recording
20 secretary shall record and document the panel's proceedings.

21 (g) Not later than the 60th day after the date the panel is
22 appointed, the panel shall review the petition and any information
23 relevant to the petition and begin holding meetings with the
24 parties to mediate the dispute. The panel may attempt to negotiate
25 a settlement or resolve the dispute by any other lawful means. The
26 panel may consolidate multiple parties, appoint a person to
27 represent multiple parties, invite additional parties, or dismiss

1 parties as the panel considers appropriate. The Texas Water
2 Development Board and the commission shall provide technical and
3 legal assistance as requested by the panel.

4 (h) A court of this state shall take judicial notice of an
5 act or decision of a dispute resolution panel appointed under this
6 section and may stay an affected judicial proceeding pending a
7 final resolution from the panel.

8 SECTION 2.43. Section 36.301, Water Code, is amended to
9 read as follows:

10 Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. If a
11 board fails to submit a management plan or readopted management
12 plan to receive approval [~~certification~~] of its management plan
13 under Section 36.1072 or fails to submit or receive approval
14 [~~certification~~] of an amendment to the management plan under
15 Section 36.1073, the commission shall take appropriate action under
16 Section 36.303.

17 SECTION 2.44. Section 36.3011, Water Code, is amended to
18 read as follows:

19 Sec. 36.3011. FAILURE OF [A] DISTRICT TO COMPLY WITH
20 GROUNDWATER MANAGEMENT AREA PLAN [~~CONDUCT JOINT PLANNING~~]. [~~(a)~~
21 ~~If the board of a district within a common management area fails to~~
22 ~~forward a copy of its new or revised certified management plan under~~
23 ~~Section 36.108, the commission shall take appropriate action under~~
24 ~~Section 36.303.~~

25 [~~(b)~~] Not later than the 45th day after receiving the review
26 panel's report under Section 36.1081 [~~36.108~~], the executive
27 director or the commission shall take action to implement any or all

1 of the panel's recommendations. The commission may take any action
2 against a district it considers necessary in accordance with
3 Section 36.303 if [~~If~~] the commission finds that:

4 (1) a district [~~in the joint planning area~~] has failed
5 to submit its plan to the groundwater management area council;

6 (2) a district has failed to adopt rules;

7 (3) the rules adopted by the district are not designed
8 to achieve the desired future condition of the groundwater
9 resources in the groundwater management area established under the
10 groundwater management area plan; or

11 (4) the district fails [~~, the groundwater in the~~
12 ~~management area is not adequately protected by the rules adopted by~~
13 ~~the district, or the groundwater in the management area is not~~
14 ~~adequately protected because of the district's failure]~~ to enforce
15 substantial compliance with its rules [~~, the commission may take any~~
16 ~~action it considers necessary in accordance with Section 36.303].~~

17 SECTION 2.45. Section 36.303(a), Water Code, is amended to
18 read as follows:

19 (a) If Section 36.1081 [~~36.108~~], 36.301, 36.3011, or
20 36.302(f) applies, the commission, after notice and hearing in
21 accordance with Chapter 2001, Government Code, shall take action
22 the commission considers appropriate, including:

23 (1) issuing an order requiring the district to take
24 certain actions or to refrain from taking certain actions;

25 (2) dissolving the board in accordance with Sections
26 36.305 and 36.307 and calling an election for the purpose of
27 electing a new board;

1 (3) requesting the attorney general to bring suit for
2 the appointment of a receiver to collect the assets and carry on the
3 business of the groundwater conservation district; or

4 (4) dissolving the district in accordance with
5 Sections 36.304, 36.305, and 36.308.

6 SECTION 2.46. Title 5, Water Code, is amended by adding
7 Chapter 153 to read as follows:

8 CHAPTER 153. STATEWIDE GROUNDWATER CONSERVATION DISTRICT

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 153.001. DEFINITION. In this chapter, "statewide
11 district" means the statewide groundwater conservation district
12 created under this chapter.

13 Sec. 153.002. NATURE OF DISTRICT. The statewide district
14 is a groundwater conservation district in this state created under
15 and essential to accomplish the purposes of Section 59, Article
16 XVI, Texas Constitution.

17 [Sections 153.003-153.050 reserved for expansion]

18 SUBCHAPTER B. DISTRICT TERRITORY

19 Sec. 153.051. INITIAL DISTRICT TERRITORY. The initial
20 territory of the statewide district is the combined territory of
21 all state-owned land not within the boundaries of a confirmed
22 groundwater conservation district on August 31, 2007.

23 [Sections 153.052-153.100 reserved for expansion]

24 SUBCHAPTER C. ADMINISTRATION

25 Sec. 153.101. ADMINISTRATION OF STATEWIDE DISTRICT. The
26 members of the Texas Commission on Environmental Quality shall
27 serve as the board of directors of the statewide district.

1 SECTION 2.47. Section 212.0101(b), Local Government Code,
2 is amended to read as follows:

3 (b) The Texas [~~Natural Resource Conservation~~] Commission on
4 Environmental Quality by rule shall establish the appropriate form
5 and content of a certification to be attached to a plat application
6 under this section.

7 SECTION 2.48. Section 232.0032(b), Local Government Code,
8 is amended to read as follows:

9 (b) The Texas [~~Natural Resource Conservation~~] Commission on
10 Environmental Quality by rule shall establish the appropriate form
11 and content of a certification to be attached to a plat application
12 under this section.

13 SECTION 2.49. (a) The executive administrator of the Texas
14 Water Development Board shall conduct a study to determine the
15 effects, if any, of take-or-pay contracts on efforts to conserve
16 water.

17 (b) Not later than January 1, 2007, the executive
18 administrator shall submit a report to the legislature that
19 includes:

20 (1) a summary of the findings made during the course of
21 the study; and

22 (2) recommendations for legislative action based on
23 those findings.

24 (c) This section expires September 1, 2007.

25 SECTION 2.50. Section 9.017, Water Code, is repealed.

26 SECTION 2.51. Section 11.173(b), Water Code, as amended by
27 this article, applies to a cancellation proceeding that is pending

1 on the effective date of this Act or is initiated on or after the
2 effective date of this Act.

3 SECTION 2.52. Not later than December 1, 2005, the Texas
4 Commission on Environmental Quality shall adopt rules as required
5 by Section 11.558, Water Code, as added by this article.

6 SECTION 2.53. Section 15.102(b), Water Code, as amended by
7 this article, and Section 17.125(b-2), Water Code, as added by this
8 article, apply only to an application for financial assistance
9 filed with the Texas Water Development Board on or after the
10 effective date of this Act. An application for financial
11 assistance filed before the effective date of this Act is governed
12 by the law in effect on the date the application was filed, and the
13 former law is continued in effect for that purpose.

14 SECTION 2.54. Not later than the 90th day after the
15 effective date of this Act, a groundwater conservation district
16 shall amend to bring into compliance with Sections 36.002 and
17 36.101(a), Water Code, as amended by this article, any rule enacted
18 before the effective date of this Act that is void under Section
19 36.101(a), Water Code, as amended by this article.

20 SECTION 2.55. (a) Not later than December 1, 2005:

21 (1) the Texas Water Development Board shall adopt
22 rules under Subchapter L, Chapter 16, Water Code, as added by this
23 article; and

24 (2) the executive administrator of the Texas Water
25 Development Board shall be prepared to accept applications
26 submitted under Section 16.452, Water Code, as added by this
27 article.

1 (b) A person is not required to obtain a license under
2 Section 16.451, Water Code, as added by this article, until March 1,
3 2006.

4 (c) Section 16.454, Water Code, as added by this article,
5 applies only to a sale, lease, or agreement entered into on or after
6 March 1, 2006.

7 SECTION 2.56. (a) The executive administrator of the Texas
8 Water Development Board shall appoint the initial appointed
9 representatives for each groundwater management area council as
10 provided by Section 36.108, Water Code, as amended by this article,
11 as soon as practicable on or after the effective date of this Act.
12 The terms of the initial representatives for each groundwater
13 management area council expire August 31, 2007.

14 (b) The Texas Water Development Board shall convene the
15 groundwater management area councils required under Section
16 36.108, Water Code, as amended by this article, not later than
17 September 1, 2006.

18 (c) The Texas Commission on Environmental Quality and the
19 Texas Water Development Board shall adopt any rules, models, and
20 forms necessary for the implementation of the groundwater
21 management area planning functions required by this article not
22 later than September 1, 2006.

23 SECTION 2.57. Chapter 153, Water Code, as added by this
24 article, takes effect September 1, 2007.

25 ARTICLE 3. FINANCING OF WATER PROJECTS

26 SECTION 3.01. Chapter 13, Water Code, is amended by adding
27 Subchapter O to read as follows:

1 SUBCHAPTER O. WATER CONSERVATION AND DEVELOPMENT FEE

2 Sec. 13.551. WATER CONSERVATION AND DEVELOPMENT FEE. Each
3 retail public utility shall collect from each ultimate consumer to
4 whom the utility provides retail water utility service a water
5 conservation and development fee as provided by this subchapter.

6 Sec. 13.552. RATE OF FEE. The rate of the fee imposed under
7 this subchapter is 13 cents for each 1,000 gallons of water sold to
8 the ultimate consumer for consumption each month.

9 Sec. 13.553. EXEMPTIONS. (a) The first 5,000 gallons of
10 water sold to the ultimate consumer for consumption each month is
11 exempt from the application of the fee if the consumer is a resident
12 of a single-family dwelling or a dwelling unit of a multifamily
13 dwelling.

14 (b) The exemption provided by Subsection (a) applies
15 without regard to:

16 (1) whether the retail water utility service is
17 bundled with another service; or

18 (2) the billing period used by the retail public
19 utility.

20 (c) An entity described by Section 151.309 or 151.310, Tax
21 Code, is exempt from the fee imposed by this subchapter.

22 Sec. 13.554. PAYMENT OF FEE. (a) On or before the 20th day
23 of the month following the end of each calendar month, each retail
24 water utility that sold water to an ultimate consumer for
25 consumption shall send to the comptroller the amount of the fee the
26 utility collected under this subchapter for the preceding calendar
27 month.

1 (b) A retail public utility that makes timely payment of the
2 fee imposed under this subchapter is entitled to retain an amount
3 equal to one-half of one percent of the amount of the fee collected
4 as reimbursement for the costs of collecting the fee for that month.

5 Sec. 13.555. REPORTS. On or before the 20th day of the
6 month following the end of each calendar month, each retail public
7 utility that sold water to an ultimate consumer for consumption
8 shall file with the comptroller a report stating:

9 (1) the number of gallons of water sold to ultimate
10 consumers during the preceding calendar month;

11 (2) the number of gallons of water sold to ultimate
12 consumers during the preceding calendar month on which the fee was
13 imposed; and

14 (3) any other information required by the comptroller.

15 Sec. 13.556. RECORDS. A retail public utility that sells
16 water to the ultimate consumer for consumption shall keep a
17 complete record of:

18 (1) the number of gallons of water sold to ultimate
19 consumers during the preceding calendar month;

20 (2) the number of gallons of water sold to ultimate
21 consumers during the preceding calendar month on which the fee was
22 imposed; and

23 (3) any other information required by the comptroller.

24 Sec. 13.557. ALLOCATION OF REVENUE. The revenue from the
25 fee imposed by this subchapter shall be deposited to the credit of
26 the water infrastructure fund and may be used only as provided by
27 Subchapter Q, Chapter 15.

1 SECTION 3.02. Section 15.407(a), Water Code, is amended to
2 read as follows:

3 (a) In this section, "economically distressed area" and
4 "political subdivision" have the meanings assigned by Section
5 17.941 [~~16.341 of this code~~].

6 SECTION 3.03. Section 15.973, Water Code, is amended to
7 read as follows:

8 Sec. 15.973. WATER INFRASTRUCTURE FUND. (a) The water
9 infrastructure fund is a special fund outside [~~in~~] the state
10 treasury to be administered by the board under this subchapter and
11 rules adopted by the board under this subchapter. Money in the fund
12 may be used to pay for the implementation of water projects
13 recommended through the state and regional water planning processes
14 under Sections 16.051 and 16.053.

15 (b) The fund consists of:

- 16 (1) appropriations from the legislature;
- 17 (2) any other fees or sources of revenue that the
18 legislature may dedicate for deposit to the fund;
- 19 (3) repayments of loans made from the fund;
- 20 (4) interest earned on money credited to the fund;
- 21 (5) depository interest allocable to the fund;
- 22 (6) money from gifts, grants, or donations to the
23 fund;
- 24 (7) money from revenue bonds or other sources
25 designated by the board; [~~and~~]
- 26 (8) proceeds from the sale of political subdivision
27 bonds or obligations held in the fund and not otherwise pledged to

1 the discharge, repayment, or redemption of revenue bonds or other
2 bonds, the proceeds of which were placed in the fund;

3 (9) the proceeds from the collection of the fee
4 imposed under Subchapter O, Chapter 13; and

5 (10) fees and penalties collected under Subchapter L,
6 Chapter 16.

7 SECTION 3.04. Section 15.974(a), Water Code, is amended to
8 read as follows:

9 (a) The board may use the fund:

10 (1) to make loans to political subdivisions at or
11 below market interest rates for projects;

12 (2) to make grants, low-interest loans, or zero
13 interest loans to political subdivisions for projects to serve
14 areas outside metropolitan statistical areas in order to ensure
15 that the projects are implemented, for conjunctive use projects, or
16 for projects to serve economically distressed areas;

17 (3) to make loans at or below market interest rates for
18 planning and design costs, permitting costs, and other costs
19 associated with state or federal regulatory activities with respect
20 to a project;

21 (4) as a source of revenue or security for the payment
22 of principal and interest on bonds issued by the board if the
23 proceeds of the sale of the bonds will be deposited in the fund;
24 [~~and~~]

25 (5) to pay the necessary and reasonable expenses of
26 the board in administering the fund; and

27 (6) to make transfers:

1 (A) to the state participation account and the
2 economically distressed areas program account of the Texas Water
3 Development Fund II authorized by Section 49-d-8, Article III,
4 Texas Constitution, and Subchapter L, Chapter 17, of this code, to
5 be used for the purposes authorized by those provisions;

6 (B) to the agricultural water conservation fund
7 authorized by Section 50-d, Article III, Texas Constitution, and
8 Subchapter J, Chapter 17, of this code, to be used for the purposes
9 authorized by those provisions;

10 (C) to the water assistance fund authorized by
11 Subchapter B; and

12 (D) from revenues collected under Subchapter O,
13 Chapter 13, during a fiscal biennium to the general revenue fund in
14 amounts not to exceed appropriations of general revenue for
15 operations of the board and for operations of the commission
16 related to the administration of programs relating to water
17 resources and water quality.

18 SECTION 3.05. Section 17.172, Water Code, is amended to
19 read as follows:

20 Sec. 17.172. APPLICABILITY. This subchapter applies to
21 financial assistance made available from the water supply account,
22 the water quality enhancement account, the flood control account,
23 [~~and~~] the economically distressed areas account, and the
24 economically distressed areas program account under Subchapters D,
25 F, G, [~~and~~] K, and K-1 of this chapter.

26 SECTION 3.06. Chapter 17, Water Code, is amended by adding
27 Subchapter K-1 to read as follows:

1 SUBCHAPTER K-1. STATEWIDE ASSISTANCE TO ECONOMICALLY DISTRESSED
2 AREAS FOR WATER SUPPLY AND SEWER SERVICE PROJECTS

3 Sec. 17.941. DEFINITIONS. In this subchapter:

4 (1) "Economically distressed area" means an area in
5 this state in which:

6 (A) water supply or sewer services are inadequate
7 to meet minimal needs of residential users as defined by board rule;

8 (B) financial resources are inadequate to
9 provide water supply and sewer services that will satisfy those
10 needs; and

11 (C) an established residential subdivision was
12 located on June 1, 2005, as determined by the board.

13 (2) "Financial assistance" means the funds provided by
14 the board to political subdivisions for water supply or sewer
15 services under this subchapter.

16 (3) "Political subdivision" means a county, a
17 municipality, a nonprofit water supply corporation created and
18 operating under Chapter 67, or a district or authority created
19 under Section 52, Article III, or Section 59, Article XVI, Texas
20 Constitution.

21 (4) "Sewer services" and "sewer facilities" mean
22 treatment works or individual, on-site, or cluster treatment
23 systems such as septic tanks and include drainage facilities and
24 other improvements for proper functioning of the sewer services and
25 other facilities.

26 Sec. 17.942. FINANCIAL ASSISTANCE. The economically
27 distressed areas program account may be used by the board to provide

1 financial assistance to political subdivisions for the
2 construction, acquisition, or improvement of water supply and sewer
3 services, including providing money from the account for the
4 state's participation in federal programs that provide assistance
5 to political subdivisions. Money from the proceeds of bonds issued
6 under the authority of Sections 49-d-7(b) or 49-d-8, Article III,
7 Texas Constitution, may not be used to provide financial assistance
8 under this subchapter.

9 Sec. 17.943. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A
10 political subdivision may apply to the board for financial
11 assistance under this subchapter by submitting an application
12 together with a plan for providing water supply or sewer services to
13 an economically distressed area.

14 (b) The application and plan must include:

15 (1) the name of the political subdivision and its
16 principal officers;

17 (2) a citation of the law under which the political
18 subdivision operates and was created;

19 (3) a description of the existing water supply and
20 sewer facilities located in the area to be served by the proposed
21 project and include with the description a statement prepared and
22 certified by an engineer registered to practice in this state that
23 the facilities do not meet minimum state standards;

24 (4) information identifying the median household
25 income for the area to be served by the proposed project;

26 (5) a project plan prepared and certified by an
27 engineer registered to practice in this state that:

1 (A) describes the proposed planning, design, and
2 construction activities necessary for providing water supply and
3 sewer services that meet minimum state standards; and

4 (B) identifies the households to whom the
5 services will be provided;

6 (6) a budget that estimates the total cost of
7 providing water supply and sewer services to the economically
8 distressed area and a proposed schedule and method for repayment of
9 financial assistance consistent with board rules and guidelines;
10 and

11 (7) the total amount of assistance requested from the
12 economically distressed areas program account.

13 (c) A program of water conservation for the more effective
14 use of water is required for approval of an application for
15 financial assistance under this section in the same manner as such a
16 program is required for approval of an application for financial
17 assistance under Section 17.125.

18 (d) Before considering the application, the board may
19 require the applicant to:

20 (1) participate with the board in reviewing the
21 applicant's managerial, financial, or technical capabilities to
22 operate the system for which assistance is being requested;

23 (2) provide a written determination by the commission
24 of the applicant's managerial, financial, and technical
25 capabilities to operate the system for which assistance is being
26 requested;

27 (3) request that the comptroller perform a financial

1 management review of the applicant's current operations and, if the
2 comptroller is available to perform the review, provide the board
3 with the results of the review; or

4 (4) provide any other information required by the
5 board or the executive administrator.

6 Sec. 17.944. CONSIDERATIONS IN PASSING ON APPLICATION. (a)
7 In passing on an application for financial assistance, the board
8 shall consider:

9 (1) the need of the economically distressed area to be
10 served by the water supply or sewer services in relation to the need
11 of other political subdivisions requiring financial assistance
12 under this subchapter and the relative costs and benefits of all
13 applications;

14 (2) the availability of revenue or alternative
15 financial assistance for the area served by the project, from all
16 sources, for the payment of the cost of the proposed project;

17 (3) the financing of the proposed water supply or
18 sewer project, including consideration of:

19 (A) the budget and repayment schedule submitted
20 under Section 17.943(b)(6);

21 (B) other items included in the application
22 relating to financing; and

23 (C) other financial information and data
24 available to the board; and

25 (4) the feasibility of achieving cost savings by
26 providing a regional facility for water supply or wastewater
27 service and the feasibility of financing the project by using money

1 from the economically distressed areas program account or any other
2 available financial assistance.

3 (b) At the time an application for financial assistance is
4 considered, the board also must find that the area to be served by a
5 proposed project has a median household income of not more than 75
6 percent of the median state household income for the most recent
7 year for which statistics are available.

8 Sec. 17.945. APPROVAL OR DISAPPROVAL OF APPLICATION. After
9 considering the matters described by Section 17.944, the board by
10 resolution shall:

11 (1) approve the plan and application as submitted;

12 (2) approve the plan and application subject to the
13 requirements identified by the board or commission for the
14 applicant to obtain the managerial, financial, and technical
15 capabilities to operate the system and any other requirements,
16 including training under Subchapter M, the board considers
17 appropriate;

18 (3) deny the application and identify the requirements
19 or remedial steps the applicant must complete before the applicant
20 may be reconsidered for financial assistance;

21 (4) if the board finds that the applicant will be
22 unable to obtain the managerial, financial, or technical
23 capabilities to build and operate a system, deny the application
24 and issue a determination that a service provider other than the
25 applicant is necessary or appropriate to undertake the proposed
26 project; or

27 (5) deny the application.

1 Sec. 17.946. FINDINGS REGARDING PERMITS. (a) The board may
2 not release money for the construction of that portion of a project
3 that proposes surface water or groundwater development until the
4 executive administrator makes a written finding:

5 (1) that an applicant proposing surface water
6 development has the necessary water right authorizing it to
7 appropriate and use the water that the water supply project will
8 provide; or

9 (2) that an applicant proposing groundwater
10 development has the right to use water that the water supply project
11 will provide.

12 (b) The board may release money for the costs of planning,
13 engineering, architectural, legal, title, fiscal, or economic
14 investigation, studies, surveys, or designs before making the
15 finding required under Subsection (a) if the executive
16 administrator determines that a reasonable expectation exists that
17 the finding will be made before the release of funds for
18 construction.

19 (c) If an applicant includes a proposal for treatment works,
20 the board may not deliver money for the treatment works until the
21 applicant has received a permit for construction and operation of
22 the treatment works and approval of the plans and specifications
23 from the commission or unless such a permit is not required by the
24 commission.

25 Sec. 17.947. METHOD OF FINANCIAL ASSISTANCE. (a) The board
26 may provide financial assistance to political subdivisions under
27 this subchapter by using money in the economically distressed areas

1 program account to purchase political subdivision bonds.

2 (b) The board may make financial assistance available to
3 political subdivisions in any other manner that it considers
4 feasible, including:

5 (1) contracts or agreements with a political
6 subdivision for acceptance of financial assistance that establish
7 any repayment based on the political subdivision's ability to repay
8 the assistance and that establish requirements for acceptance of
9 the assistance; or

10 (2) contracts or agreements for providing financial
11 assistance in any federal or federally assisted project or program.

12 Sec. 17.948. TERMS OF FINANCIAL ASSISTANCE. (a) The board
13 may use money in the economically distressed areas program account
14 to provide financial assistance under this subchapter to a
15 political subdivision to be repaid in the form, manner, and time
16 provided by board rules and in the agreement between the board and
17 the political subdivision, taking into consideration the
18 information provided by Section 17.943.

19 (b) In providing financial assistance to an applicant under
20 this subchapter, the board may not provide to the applicant
21 financial assistance for which repayment is not required in an
22 amount that exceeds 50 percent of the total amount of the financial
23 assistance plus interest on any amount that must be repaid, unless
24 the Department of State Health Services issues a finding that a
25 nuisance dangerous to the public health and safety exists resulting
26 from water supply and sanitation problems in the area to be served
27 by the proposed project. The board and the applicant shall provide

1 to the Department of State Health Services information necessary to
2 make a determination, and the board and the Department of State
3 Health Services may enter into memoranda of understanding necessary
4 to carry out this subsection.

5 (c) The total amount of financial assistance provided by the
6 board to political subdivisions under this subchapter from
7 state-issued bonds for which repayment is not required may not
8 exceed at any time 90 percent of the total principal amount of
9 issued and unissued bonds authorized for purposes of this
10 subchapter.

11 (d) In determining the amount and form of financial
12 assistance and the amount and form of repayment, if any, the board
13 shall consider:

14 (1) rates, fees, and charges that the average customer
15 to be served by the project will be able to pay based on a comparison
16 of what other families of similar income who are similarly situated
17 pay for comparable services;

18 (2) sources of funding available to the political
19 subdivision from federal and private money and from other state
20 money;

21 (3) any local money of the political subdivision to be
22 served by the project if the economically distressed area to be
23 served by the board's financial assistance is within the boundary
24 of the political subdivision; and

25 (4) the just, fair, and reasonable charges for water
26 and wastewater service as provided by this code.

27 (e) In making its determination under Subsection (d)(1),

1 the board may consider any study, survey, data, criteria, or
2 standard developed or prepared by any federal, state, or local
3 agency, private foundation, banking or financial institution, or
4 other reliable source of statistical or financial data or
5 information.

6 (f) The board may provide financial assistance money under
7 this subchapter for treatment works only if the board determines
8 that it is not feasible in the area covered by the application to
9 use septic tanks as the method for providing sewer services under
10 the applicant's plan.

11 SECTION 3.07. Section 17.958(c), Water Code, is amended to
12 read as follows:

13 (c) Money on deposit in the economically distressed areas
14 program account may be used by the board for purposes provided by
15 Subchapter K or K-1 in the manner that the board determines
16 necessary for the administration of the fund.

17 SECTION 3.08. Sections 15.407(i) and 15.974(b), Water Code,
18 are repealed.

19 ARTICLE 4. SPECIAL DISTRICT CREATION

20 SECTION 4.01. Subtitle H, Title 6, Special District Local
21 Laws Code, is amended by adding Chapter 8805 to read as follows:

22 CHAPTER 8805. HOUSTON COUNTY GROUNDWATER

23 CONSERVATION DISTRICT

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 8805.001. DEFINITIONS. In this chapter:

26 (1) "Board" means the board of directors of the
27 district.

1 (2) "Director" means a member of the board.

2 (3) "District" means the Houston County Groundwater
3 Conservation District.

4 Sec. 8805.002. NATURE OF DISTRICT. The district is a
5 groundwater conservation district in Houston County created under
6 and essential to accomplish the purposes of Section 59, Article
7 XVI, Texas Constitution.

8 Sec. 8805.003. CONFIRMATION ELECTION REQUIRED. If the
9 creation of the district is not confirmed at a confirmation
10 election held before September 1, 2007:

11 (1) the district is dissolved on September 1, 2007,
12 except that:

13 (A) any debts incurred shall be paid;

14 (B) any assets that remain after the payment of
15 debts shall be transferred to Houston County; and

16 (C) the organization of the district shall be
17 maintained until all debts are paid and remaining assets are
18 transferred; and

19 (2) this chapter expires on September 1, 2010.

20 Sec. 8805.004. INITIAL DISTRICT TERRITORY. The initial
21 boundaries of the district are coextensive with the boundaries of
22 Houston County, Texas.

23 Sec. 8805.005. APPLICABILITY OF OTHER GROUNDWATER
24 CONSERVATION DISTRICT LAW. Except as otherwise provided by this
25 chapter, Chapter 36, Water Code, applies to the district.

26 [Sections 8805.006-8805.020 reserved for expansion]

1 SUBCHAPTER A-1. TEMPORARY PROVISIONS

2 Sec. 8805.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a)

3 Not later than the 45th day after the effective date of this
4 chapter, nine temporary directors shall be appointed as follows:

5 (1) the Houston County Commissioners Court shall
6 appoint eight temporary directors, with two of the temporary
7 directors appointed from each of the four commissioners precincts
8 in the county to represent the precincts in which the temporary
9 directors reside; and

10 (2) the county judge of Houston County shall appoint
11 one temporary director who resides in the district to represent the
12 district at large.

13 (b) Of the temporary directors, at least one director must
14 represent rural water suppliers in the district and one must
15 represent agricultural interests in the district.

16 (c) If there is a vacancy on the temporary board of
17 directors of the district, the authority who appointed the
18 temporary director whose position is vacant shall appoint a person
19 to fill the vacancy in a manner that meets the representational
20 requirements of this section.

21 (d) Temporary directors serve until the earlier of:

22 (1) the time the temporary directors become initial
23 directors as provided by Section 8805.024; or

24 (2) the date this chapter expires under Section
25 8805.003.

26 Sec. 8805.022. ORGANIZATIONAL MEETING OF TEMPORARY
27 DIRECTORS. As soon as practicable after all the temporary

1 directors have qualified under Section 36.055, Water Code, a
2 majority of the temporary directors shall convene the
3 organizational meeting of the district at a location within the
4 district agreeable to a majority of the directors. If an agreement
5 on location cannot be reached, the organizational meeting shall be
6 at the Houston County Courthouse.

7 Sec. 8805.023. CONFIRMATION ELECTION. (a) The temporary
8 directors shall hold an election to confirm the creation of the
9 district.

10 (b) Section 41.001(a), Election Code, does not apply to a
11 confirmation election held as provided by this section.

12 (c) Except as provided by this section, a confirmation
13 election must be conducted as provided by Sections 36.017(b)-(i),
14 Water Code, and the Election Code. The provision of Section
15 36.017(d), Water Code, relating to the election of permanent
16 directors does not apply to a confirmation election under this
17 section.

18 Sec. 8805.024. INITIAL DIRECTORS. (a) If creation of the
19 district is confirmed at an election held under Section 8805.023,
20 the temporary directors of the district become the initial
21 directors of the district and serve on the board of directors until
22 permanent directors are elected under Section 8805.025.

23 (b) The two initial directors representing each of the four
24 commissioners precincts shall draw lots to determine which of the
25 two directors shall serve a term expiring June 1 following the first
26 regularly scheduled election of directors under Section 8805.025,
27 and which of the two directors shall serve a term expiring June 1

1 following the second regularly scheduled election of directors.
2 The at-large director shall serve a term expiring June 1 following
3 the second regularly scheduled election of directors.

4 Sec. 8805.025. INITIAL ELECTION OF PERMANENT DIRECTORS. On
5 the uniform election date prescribed by Section 41.001, Election
6 Code, in May of the first even-numbered year after the year in which
7 the district is authorized to be created at a confirmation
8 election, an election shall be held in the district for the election
9 of four directors to replace the initial directors who, under
10 Section 8805.024(b), serve a term expiring June 1 following that
11 election.

12 Sec. 8805.026. EXPIRATION OF SUBCHAPTER. This subchapter
13 expires September 1, 2010.

14 [Sections 8805.027-8805.050 reserved for expansion]

15 SUBCHAPTER B. BOARD OF DIRECTORS

16 Sec. 8805.051. DIRECTORS; TERMS. (a) The district is
17 governed by a board of nine directors.

18 (b) Directors serve staggered four-year terms, with four or
19 five directors' terms expiring June 1 of each even-numbered year.

20 (c) A director may serve consecutive terms.

21 Sec. 8805.052. METHOD OF ELECTING DIRECTORS: COMMISSIONERS
22 PRECINCTS. (a) The directors of the district shall be elected
23 according to the commissioners precinct method as provided by this
24 section.

25 (b) One director shall be elected by the voters of the
26 entire district, and two directors shall be elected from each
27 county commissioners precinct by the voters of that precinct.

1 (c) Except as provided by Subsection (e), to be eligible to
2 be a candidate for or to serve as director at large, a person must be
3 a registered voter in the district. To be a candidate for or to
4 serve as director from a county commissioners precinct, a person
5 must be a registered voter of that precinct.

6 (d) A person shall indicate on the application for a place
7 on the ballot:

8 (1) the precinct that the person seeks to represent;
9 or

10 (2) that the person seeks to represent the district at
11 large.

12 (e) When the boundaries of the county commissioners
13 precincts are redrawn after each federal decennial census to
14 reflect population changes, a director in office on the effective
15 date of the change, or a director elected or appointed before the
16 effective date of the change whose term of office begins on or after
17 the effective date of the change, shall serve in the precinct to
18 which elected or appointed even though the change in boundaries
19 places the person's residence outside the precinct for which the
20 person was elected or appointed.

21 Sec. 8805.053. ELECTION DATE. The district shall hold an
22 election to elect the appropriate number of directors on the
23 uniform election date prescribed by Section 41.001, Election Code,
24 in May of each even-numbered year.

25 Sec. 8805.054. COMPENSATION. (a) Sections 36.060(a), (b),
26 and (d), Water Code, do not apply to the district.

27 (b) A director is entitled to receive compensation of not

1 more than \$50 a day for each day the director actually spends
2 performing the duties of a director. The compensation may not
3 exceed \$3,000 a year.

4 (c) The board may authorize a director to receive
5 reimbursement for the director's reasonable expenses incurred
6 while engaging in activities on behalf of the board.

7 Sec. 8805.055. BOARD ACTION. A majority vote of a quorum is
8 required for board action. If there is a tie vote, the proposed
9 action fails.

10 [Sections 8805.056–8805.100 reserved for expansion]

11 SUBCHAPTER C. POWERS AND DUTIES

12 Sec. 8805.101. GROUNDWATER WELLS UNDER RAILROAD COMMISSION
13 JURISDICTION. (a) Except as provided by this section, a
14 groundwater well drilled or operated within the district under a
15 permit issued by the Railroad Commission of Texas is under the
16 exclusive jurisdiction of the railroad commission and is exempt
17 from regulation by the district.

18 (b) Groundwater produced in an amount authorized by a
19 railroad commission permit may be used within or exported from the
20 district without a permit from the district.

21 (c) To the extent groundwater is produced in excess of
22 railroad commission authorization, the holder of the railroad
23 commission permit:

24 (1) shall apply to the district for the appropriate
25 permit for the excess production; and

26 (2) is subject to the applicable regulatory fees.

27 (d) The district may impose a production fee or an export

1 fee on groundwater produced from a well that was drilled to support
2 mining activities and that is otherwise exempt from regulation by
3 the district under Subsection (a) if that groundwater is used for
4 municipal purposes or by a public utility. Any fee imposed under
5 this subsection may not exceed the fee imposed on other groundwater
6 producers in the district.

7 Sec. 8805.102. PROHIBITION ON DISTRICT PURCHASE, SALE,
8 TRANSPORT, OR DISTRIBUTION OF WATER. The district may not
9 purchase, sell, transport, or distribute surface water or
10 groundwater for any purpose.

11 Sec. 8805.103. PROHIBITION ON DISTRICT USE OF EMINENT
12 DOMAIN POWERS. The district may not exercise the power of eminent
13 domain.

14 Sec. 8805.104. REGIONAL COOPERATION. (a) In this section,
15 "designated groundwater management area" means an area designated
16 as a groundwater management area under Section 35.004, Water Code.

17 (b) To provide for regional continuity, the district shall:

18 (1) participate as needed in coordination meetings
19 with other groundwater conservation districts in its designated
20 groundwater management area;

21 (2) coordinate the collection of data with other
22 groundwater conservation districts in its designated groundwater
23 management area in such a way as to achieve relative uniformity of
24 data type and quality;

25 (3) coordinate efforts to monitor water quality with
26 other groundwater conservation districts in its designated
27 groundwater management area, local governments, and state

1 agencies;

2 (4) provide groundwater level data to other
3 groundwater conservation districts in its designated groundwater
4 management area;

5 (5) investigate any groundwater or aquifer pollution
6 with the intention of locating its source;

7 (6) notify other groundwater conservation districts
8 in its designated groundwater management area and all appropriate
9 agencies of any groundwater pollution detected;

10 (7) annually provide to other groundwater
11 conservation districts in its designated groundwater management
12 area an inventory of water wells and an estimate of groundwater
13 production in the district; and

14 (8) include other groundwater conservation districts
15 in its designated groundwater management area on the mailing lists
16 for district newsletters, seminars, public education events, news
17 articles, and field days.

18 [Sections 8805.105-8805.150 reserved for expansion]

19 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

20 Sec. 8805.151. LIMITATION ON TAXES. The district may not
21 levy ad valorem taxes at a rate that exceeds three cents on each
22 \$100 of assessed valuation of taxable property in the district.

23 Sec. 8805.152. FEES. (a) The board by rule may impose
24 reasonable fees on each well:

25 (1) for which a permit is issued by the district; and

26 (2) that is not exempt from district regulation.

27 (b) A production fee may be based on:

1 (1) the size of column pipe used by the well; or

2 (2) the amount of water actually withdrawn from the
3 well, or the amount authorized or anticipated to be withdrawn.

4 (c) The board shall base the initial production fee on the
5 criteria listed in Subsection (b)(2). The initial production fee:

6 (1) may not exceed:

7 (A) \$0.25 per acre-foot for water used for
8 agricultural irrigation; or

9 (B) \$0.0425 per thousand gallons for water used
10 for any other purpose; and

11 (2) may be increased at a cumulative rate not to exceed
12 three percent per year.

13 (d) In addition to the production fee authorized under this
14 section, the district may assess an export fee on groundwater from a
15 well that is produced for transport outside the district.

16 (e) Fees authorized by this section may be:

17 (1) assessed annually; and

18 (2) used to pay the cost of district operations.

19 Sec. 8805.153. EXEMPTION FROM FEES. (a) Except as provided
20 by Subsection (b), the district may not assess a fee on a well
21 drilled by a nonprofit rural water supply corporation, water
22 district, or other political subdivision if the well's production
23 is for use within the district.

24 (b) The district by emergency order of the board may impose
25 a reasonable and temporary production fee on a well described by
26 Subsection (a) if:

27 (1) severe drought or other district emergency makes

1 the fee necessary; and

2 (2) the term of the order does not exceed 180 days.

3 Sec. 8805.154. LIMITATION ON INDEBTEDNESS. The district
4 may issue bonds and notes under Subchapter F, Chapter 36, Water
5 Code, except that the total indebtedness created by that issuance
6 may not exceed \$500,000 at any time.

7 SECTION 4.02. (a) The legal notice of the intention to
8 introduce this article, setting forth the general substance of this
9 article, has been published as provided by law, and the notice and a
10 copy of the substance of this article have been furnished to all
11 persons, agencies, officials, or entities to which they are
12 required to be furnished under Section 59, Article XVI, Texas
13 Constitution, and Chapter 313, Government Code.

14 (b) The governor has submitted the notice and substance of
15 this article to the Texas Commission on Environmental Quality.

16 (c) The Texas Commission on Environmental Quality has filed
17 its recommendations relating to the substance of this article with
18 the governor, lieutenant governor, and speaker of the house of
19 representatives within the required time.

20 (d) All requirements of the constitution and laws of this
21 state and the rules and procedures of the legislature with respect
22 to the notice, introduction, and passage of this article are
23 fulfilled and accomplished.

24 SECTION 4.03. This article takes effect immediately if this
25 Act receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

1 effect, this article takes effect September 1, 2005.

2 ARTICLE 5. EDWARDS AQUIFER AUTHORITY

3 SECTION 5.01. Section 1.11(f), Chapter 626, Acts of the 73rd
4 Legislature, Regular Session, 1993, is amended to read as follows:

5 (f) The authority may own, finance, design, ~~[contract with a~~
6 ~~person who uses water from the aquifer for the authority or that~~
7 ~~person to]~~ construct, operate, or ~~[own, finance, and]~~ maintain
8 recharge ~~[water supply]~~ facilities. ~~[Management fees or special~~
9 ~~fees may not be used for purchasing or operating these facilities.]~~

10 For the purpose of this subsection, "recharge ~~[water supply]~~
11 facility" means ~~[includes]~~ a dam, reservoir, ~~[treatment facility,~~
12 ~~transmission facility,]~~ or recharge project that uses another
13 method of recharge and associated facilities, structures, or works.

14 SECTION 5.02. Section 1.14, Chapter 626, Acts of the 73rd
15 Legislature, Regular Session, 1993, is amended by amending
16 Subsections (a), (c), (f), and (h) to read as follows:

17 (a) Authorizations to withdraw water from the aquifer and
18 all authorizations and rights to make a withdrawal under this Act
19 shall be limited in accordance with this section to:

- 20 (1) protect the water quality of the aquifer;
- 21 (2) protect the water quality of the surface streams
22 to which the aquifer provides springflow;
- 23 (3) achieve water conservation;
- 24 (4) maximize the beneficial use of water available for
25 withdrawal from the aquifer;
- 26 (5) protect surface water rights issued by the state;
- 27 (6) protect aquatic and wildlife habitat;

1 (7) [~~(6)~~] protect species that are designated as
2 threatened or endangered under applicable federal or state law; and

3 (8) [~~(7)~~] provide for instream uses, bays, and
4 estuaries.

5 (c) Except as provided by Subsections [~~(d)~~, ~~7~~] (f) [~~7~~] and (h)
6 of this section [~~and Section 1.26 of this article, for the period~~
7 ~~beginning January 1, 2008~~], the amount of permitted withdrawals
8 from the aquifer may not exceed 480,000 [~~400,000~~] acre-feet of
9 water for each calendar year.

10 (f) If the springflows from [~~level of~~] the aquifer are [~~is~~]
11 equal to or greater than 300 cubic feet per second, [~~650 feet above~~
12 ~~mean sea level~~] as measured from the Comal Springs, and greater than
13 150 cubic feet per second, as measured from the San Marcos Springs
14 [~~at well J-17~~], the authority may authorize withdrawal from the San
15 Antonio pool, on an uninterruptible basis, of permitted amounts. If
16 the springflows from [~~level of~~] the aquifer are [~~is~~] equal to or
17 greater than 250 cubic feet per second, as measured from the Comal
18 Springs, and 140 cubic feet per second, as measured from the San
19 Marcos Springs [~~845 feet at well J-27~~], the authority may authorize
20 withdrawal from the Uvalde pool, on an uninterruptible basis, of
21 permitted amounts. In accordance with Section 1.26 of this article,
22 the [~~The~~] authority shall limit the additional withdrawals to
23 ensure that springflows are not affected during critical drought
24 conditions.

25 (h) To accomplish the purposes of this article, [~~by June 1,~~
26 ~~1994~~], the authority, through a program, shall implement and
27 enforce water management practices, procedures, and methods to

1 ensure that, not later than December 31, 2012, the continuous
2 minimum springflows of the Comal Springs and the San Marcos Springs
3 are maintained to protect endangered and threatened species to the
4 extent required by federal law and other obligations of the
5 authority provided by Subsection (a) of this section and Section
6 1.26 of this article. The authority from time to time as
7 appropriate may revise the practices, procedures, and methods. To
8 meet this requirement, the authority shall require:

9 (1) phased reductions in the amount of water that may
10 be used or withdrawn by existing users or categories of other users;
11 or

12 (2) implementation of alternative management
13 practices, procedures, and methods, including the authority's
14 critical period management plan established under Section 1.26 of
15 this article.

16 SECTION 5.03. Section 1.15(c), Chapter 626, Acts of the
17 73rd Legislature, Regular Session, 1993, is amended to read as
18 follows:

19 (c) The authority may issue regular permits, term permits,
20 and emergency permits. Regular permits may not be issued on an
21 interruptible basis, and the total authorized withdrawals
22 authorized by all regular permits issued by the authority may not
23 exceed the limitation provided by Section 1.14 of this article.

24 SECTION 5.04. Section 1.19(b), Chapter 626, Acts of the
25 73rd Legislature, Regular Session, 1993, is amended to read as
26 follows:

27 (b) Withdrawal of water under a term permit must be

1 consistent with the authority's critical period management plan
2 established under Section 1.26 of this article [~~A holder of a term~~
3 ~~permit may not withdraw water from the San Antonio pool of the~~
4 ~~aquifer unless the level of the aquifer is higher than 665 feet~~
5 ~~above sea level, as measured at Well J-17].~~

6 SECTION 5.05. Section 1.21, Chapter 626, Acts of the 73rd
7 Legislature, Regular Session, 1993, is amended to read as follows:

8 Sec. 1.21. PERMIT REDUCTION [~~RETIREMENT~~]. [~~(a) The~~
9 ~~authority shall prepare and implement a plan for reducing, by~~
10 ~~January 1, 2008, the maximum annual volume of water authorized to be~~
11 ~~withdrawn from the aquifer under regular permits to 400,000~~
12 ~~acre-feet a year or the adjusted amount determined under Subsection~~
13 ~~(d) of Section 1.14 of this article.~~

14 [~~(b) The plan must be enforceable and must include water~~
15 ~~conservation and reuse measures, measures to retire water rights,~~
16 ~~and other water management measures designed to achieve the~~
17 ~~reduction levels or appropriate management of the resource.~~

18 [~~(c)~~] If, on or after January 1, 2008, the overall volume of
19 water authorized to be withdrawn from the aquifer under regular
20 permits is greater than 480,000 [~~400,000~~] acre-feet a year [~~or~~
21 ~~greater than the adjusted amount determined under Subsection (d) of~~
22 ~~Section 1.14 of this article], the maximum authorized withdrawal of
23 each regular permit shall be immediately reduced by an equal
24 percentage as is necessary to reduce overall maximum demand to
25 480,000 [~~400,000~~] acre-feet a year [~~or the adjusted amount, as~~
26 ~~appropriate]. The amount reduced may be restored, in whole or in~~
27 part, as other appropriate measures are implemented that maintain~~

1 overall demand at or below the appropriate amount.

2 SECTION 5.06. Article 1, Chapter 626, Acts of the 73rd
3 Legislature, Regular Session, 1993, is amended by amending Section
4 1.26 and adding Sections 1.26A and 1.26B to read as follows:

5 Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) The
6 authority shall prepare and coordinate implementation of a [~~plan~~
7 ~~for~~] critical period management plan in a way that protects listed
8 species and other obligations of the authority, including support
9 of the state economy, surface water rights issued by this state,
10 instream flow requirements, and the continued operation of
11 industries. The authority may alter the plan to provide additional
12 protection for species and downstream flows but may not reduce the
13 protections below the minimum requirement specified by this
14 section, except as provided by Section 1.26A of this article.

15 (b) The critical period management plan must specify that
16 conservation measures prescribed by the authority's groundwater
17 conservation plan are required practices when the spring discharge
18 rate is less than 350 cubic feet per second from Comal Springs or
19 less than 200 cubic feet per second from San Marcos Springs.

20 (c) The critical period management plan must require
21 compliance with reduced levels of maximum allowable pumping
22 prescribed by Section 1.26A of this article.

23 (d) The critical period management plan must specify that a
24 water withdrawal rate for a specific pumping reduction stage of the
25 plan may be increased if the controlling spring discharge rate
26 increases to the minimum spring discharge rate for the next less
27 severe reduction stage and is equal to or greater than that minimum

1 spring discharge rate for five consecutive days.

2 (e) The critical period management plan must specify that
3 the authority shall initiate more severe pumping reductions to
4 protect listed species if required to comply with the issuance of a
5 Section 10(a) permit by the United States Fish and Wildlife Service
6 under the Endangered Species Act (16 U.S.C. Section 1539(a)) not
7 later than the 90th day after the date on which the permit was
8 issued.

9 (f) The authority shall base pumping reductions for an
10 Edwards Aquifer permit holder on the 90-day withdrawal budget most
11 recently filed by the permit holder with the authority. The rate of
12 withdrawal under a 90-day withdrawal budget is that rate that if
13 constant would result in the withdrawal of the total budgeted
14 amount at the end of the budget period.

15 Sec. 1.26A. PUMPING REDUCTION LEVELS AND STAGES FOR
16 CRITICAL PERIOD MANAGEMENT. (a) The authority's critical period
17 management plan must provide for pumping reductions as provided by
18 this section. For purposes of this section:

19 (1) the authority shall continuously track the average
20 daily discharge rate measured over each period of five consecutive
21 days at Comal Springs and San Marcos Springs to determine whether a
22 reduction in pumping to the level I, II, or III maximum amount is
23 required; and

24 (2) the authority shall track the average daily
25 discharge rate measured for any five days in a period of 10
26 consecutive days to determine whether a reduction in pumping to the
27 level IV or V maximum amount is required.

1 (b) If the spring discharge rate from the San Marcos Springs
2 indicates a need to initiate a more severe pumping reduction level,
3 the authority must use the more severe pumping reduction level
4 based on the spring discharge rates from the San Marcos Springs.

5 (c) The authority shall implement the Caution Stage with
6 level I pumping reductions when the daily average spring discharge
7 rate from the Comal Springs is less than 300 cubic feet per second
8 and at least 250 cubic feet per second or when the spring discharge
9 rate from the San Marcos Springs is less than 150 cubic feet per
10 second and at least 140 cubic feet per second. For the level I
11 pumping reductions, the maximum allowable pumping level is:

12 (1) 95 percent of the budgeted amount of water for each
13 permit holder in the San Antonio pool; and

14 (2) 100 percent of the budgeted amount of water for
15 each permit holder in the Uvalde pool.

16 (d) The authority shall implement the Alert Stage with level
17 II pumping reductions when the spring discharge rate from the Comal
18 Springs is less than 250 cubic feet per second and at least 200
19 cubic feet per second or when the spring discharge rate from the San
20 Marcos Springs is less than 140 cubic feet per second and at least
21 120 cubic feet per second. For the level II pumping reductions, the
22 maximum allowable pumping level is:

23 (1) 90 percent of the budgeted amount of water for each
24 permit holder in the San Antonio pool; and

25 (2) 95 percent of the budgeted amount of water for each
26 permit holder in the Uvalde pool.

27 (e) The authority shall implement the Critical Period Stage

1 with level III pumping reductions when the spring discharge rate
2 from the Comal Springs is less than 200 cubic feet per second and at
3 least 150 cubic feet per second or when the spring discharge rate
4 from the San Marcos Springs is less than 120 cubic feet per second
5 and at least 100 cubic feet per second. For the level III pumping
6 reductions, the maximum allowable pumping level is:

7 (1) 80 percent of the budgeted amount of water for each
8 permit holder in the San Antonio pool; and

9 (2) 90 percent of the budgeted amount of water for each
10 permit holder in the Uvalde pool.

11 (f) The authority shall implement the Jeopardy Stage with
12 level IV pumping reductions when the spring discharge rate from the
13 Comal Springs is less than 150 cubic feet per second and at least
14 100 cubic feet per second or when the spring discharge rate from the
15 San Marcos Springs is less than 100 cubic feet per second and at
16 least 50 cubic feet per second. For level IV pumping reductions,
17 the maximum allowable pumping level is:

18 (1) 70 percent of the budgeted amount of water for each
19 permit holder in the San Antonio pool; and

20 (2) 80 percent of the budgeted amount of water for each
21 permit holder in the Uvalde pool.

22 (g) The authority shall implement the Emergency Stage with
23 level V pumping reductions when the spring discharge rate from the
24 Comal Springs is less than 100 cubic feet per second or when the
25 spring discharge rate from the San Marcos Springs is less than 50
26 cubic feet per second. For level V pumping reductions, the maximum
27 allowable pumping level is:

1 (1) 60 percent of the budgeted amount of water for each
2 permit holder in the San Antonio pool; and

3 (2) 70 percent of the budgeted amount of water for each
4 permit holder in the Uvalde pool.

5 Sec. 1.26B. EMERGENCY TASK FORCE. (a) The authority's
6 presiding officer or chief executive officer shall convene an
7 emergency task force when the authority implements the Jeopardy
8 Stage or Emergency Stage of the critical period management plan.

9 (b) The emergency task force is composed of the presiding
10 officer or chief executive officer of each of the following
11 organizations:

12 (1) the Edwards Aquifer Authority;

13 (2) the Guadalupe-Blanco River Authority;

14 (3) the Parks and Wildlife Department;

15 (4) the San Antonio Water System; and

16 (5) the Texas Water Development Board.

17 (c) Each member of the task force has one vote. A majority
18 vote is required for the task force to take action. If a person
19 designated to represent an organization does not participate in the
20 task force, no other person may serve as a substitute. In case of a
21 tie vote, the authority's representative may break the tie.

22 (d) The emergency task force may decrease the maximum
23 allowable pumping levels under Section 1.26A of this article and
24 may increase those levels by not more than five percent for not more
25 than 30 days. The emergency task force must specifically justify
26 the decrease or increase in a public notice published according to
27 rules of the authority.

1 (e) The authority shall publish special requirements for a
2 drought event not later than the 10th day after the date the
3 emergency task force is convened.

4 (f) The emergency task force shall conclude task force
5 operations if, for five or more days in any consecutive 10 days:

6 (1) the discharge from Comal Springs is greater than
7 200 cubic feet per second; and

8 (2) the discharge from San Marcos Springs is greater
9 than 120 cubic feet per second [~~on or before September 1, 1995. The~~
10 ~~mechanisms must:~~

11 ~~[(1) distinguish between discretionary use and~~
12 ~~nondiscretionary use;~~

13 ~~[(2) require reductions of all discretionary use to~~
14 ~~the maximum extent feasible;~~

15 ~~[(3) require utility pricing, to the maximum extent~~
16 ~~feasible, to limit discretionary use by the customers of water~~
17 ~~utilities; and~~

18 ~~[(4) require reduction of nondiscretionary use by~~
19 ~~permitted or contractual users, to the extent further reductions~~
20 ~~are necessary, in the reverse order of the following water use~~
21 ~~preferences:~~

22 ~~[(A) municipal, domestic, and livestock;~~

23 ~~[(B) industrial and crop irrigation;~~

24 ~~[(C) residential landscape irrigation;~~

25 ~~[(D) recreational and pleasure; and~~

26 ~~[(E) other uses that are authorized by law].~~

27 SECTION 5.07. Sections 1.29(b) and (i), Section 626, Acts

1 of the 73rd Legislature, Regular Session, 1993, are amended to read
2 as follows:

3 (b) The authority shall assess equitable aquifer management
4 fees based on aquifer use under the water management plan to finance
5 its administrative expenses and programs authorized under this
6 article. Each water district governed by Chapter 36 [~~52~~], Water
7 Code, that is within the authority's boundaries may contract with
8 the authority to pay expenses of the authority through taxes in lieu
9 of user fees to be paid by water users in the district. The contract
10 must provide that the district will pay an amount equal to the
11 amount that the water users in the district would have paid through
12 user fees. The authority may not collect a total amount of fees and
13 taxes that is more than is reasonably necessary for the
14 administration of the authority.

15 (i) The authority shall provide money as necessary, but not
16 to exceed five percent of the money collected under Subsection (b)
17 [~~(d)~~] of this section, to finance the South Central Texas Water
18 Advisory Committee's administrative expenses and programs
19 authorized under this article.

20 SECTION 5.08. Section 1.45(a), Chapter 626, Acts of the
21 73rd Legislature, Regular Session, 1993, is amended to read as
22 follows:

23 (a) The authority may own, finance, design, construct,
24 [~~build or~~] operate, and maintain recharge dams and associated
25 facilities, structures, or works in the contributing or recharge
26 area of the aquifer if the recharge is made to increase the yield of
27 the aquifer and the recharge project does not impair senior water

1 rights or vested riparian rights.

2 SECTION 5.09. The following sections of Chapter 626, Acts
3 of the 73rd Legislature, Regular Session, 1993, are repealed:

4 (1) Sections 1.14(b) and (d);

5 (2) Section 1.19(c); and

6 (3) Sections 1.29(a), (c), (d), and (h).

7 ARTICLE 6. EFFECTIVE DATE

8 SECTION 6.01. Except as otherwise provided by this Act,
9 this Act takes effect September 1, 2005.