

BILL ANALYSIS

S.B. 2319
By: Averitt
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 2319 revises the process set forth under Chapter 35 (Groundwater Studies), Water Code, by which the Texas Commission on Environmental Quality (TCEQ) recommends creation of a new groundwater conservation district, or addition of land to an existing groundwater conservation district, pursuant to the priority groundwater management area (PGMA) process. The legislation removes a redundant recommendation process by TCEQ of adding territory to an existing district when such an addition has not materialized within the timeline set by statute after TCEQ's initial recommendation; defines the conditions under which TCEQ may approve creation of a district in territory located within a single county pursuant to the PGMA process; and alters the timelines and procedures related to the establishment of a district for territory in a PGMA.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 35.012, Water Code, by amending Subsections (b) and (c), and adding Subsections (d) through (f), as follows:

(b) Requires the Texas Natural Resource Conservation Commission (TNRCC), except as provided under Section 35.013 (Adding Priority Groundwater Management Area to Existing District), within two years, but not sooner than 120 days, from the date on which TNRCC issues an order under Section 35.008 (Procedures for Designation of Priority Groundwater Management Area; Consideration of Creation of New District or Addition of Land in Priority Groundwater Management Area to Existing District; Commission Order) designating a priority groundwater management area, for those areas that are not within a district, to create one or more new districts under Section 36.0151 (Creation of District for Priority Groundwater Management Area). Deletes existing text requiring TNRCC, within two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, to create one or more new districts under Section 36.0151, recommend that the areas, or a portion of the areas, be added to an existing district under Section 35.013, or take any combination of the actions under this subsection.

(c) Requires that, except as provided by Subsection (d), a district created under Section 36.0151 be composed of territory within two or more contiguous counties, unless TNRCC determines that a district composed of territory within noncontiguous counties will result in more effective or efficient groundwater management than other legal options available to TNRCC.

(d) Authorizes a district created under Section 36.0151 be composed of territory that exists within the boundaries of a single county only if:

(1) the territory within the single county is the only area within the designated priority groundwater management area that is not within a district; or

(2) there are other areas within the designated priority groundwater management area, but the other areas are not continuous to the territory, and TNRCC determines that creating a single district composed of two or more of the noncontiguous areas, including the territory, would result in less effective or less efficient management of groundwater resources in the territory than creating a district composed of the territory within the singly county.

(e) Authorizes TNRCC, for purposes of this section, to consider territory in two separately designated priority groundwater management areas to be within the same designated priority groundwater management area if the priority groundwater management areas share a common boundary and one or more common aquifers, and TNRCC determines that a district composed of territory within the two areas will result in more effective or efficient groundwater management than other legal options available to TNRCC.

(f) Creates this subsection from existing text.

SECTION 2. Amends Sections 35.013(b), (c), (h), and (i), Water Code, as follows:

(b) Requires the board of directors of a district (board) to vote not later than the 120th day after receiving the copy of the order from the TNRCC on the addition of the priority groundwater management area to the district and to advise the TNRCC of the outcome.

(c) Requires the board, if the board votes to accept the addition of the priority groundwater management area to the district, to call an election to be held not later than the 270th day after the date of the board's vote under Subsection (b) within the priority groundwater management area, or portion of the priority groundwater management area, as delineated by TNRCC to determine whether, rather than if, the priority groundwater management area will be added to the district.

(h) Requires TNRCC, if the proposition is defeated, or if the board of the existing district votes not to accept the addition of the area to the district, to, except as provided under Subsection (i), create under Section 36.0151 one or more districts covering the priority groundwater management area not later than the later of the second anniversary of the date on which TNRCC issued its order under Section 35.008 designating a priority groundwater management area; or the 180th day after the date described under this section if the legislature is in session on the date described under this section and a bill has been filed and is pending before the legislature to create a district in all or part of the area or to add all or part of the area to an existing district, rather than not later than the first anniversary of the date on which the proposition is defeated or the board votes not to accept the area.

(i) Authorizes TNRCC, in creating a district under Section 36.0151, to modify the recommendation issued in its order for district creation under Section 35.008 (Procedures for Designation of Priority Groundwater Management Area; Consideration of Creation of New District or Addition of Land in Priority Groundwater Management Area to Existing District; Commission Order) to reflect the failure of an area to be added to an existing district or to account for the creation of any new districts or the addition of any other territory in the priority groundwater management area to an existing district during the intervening period, provided, however, that such modification does not affect the deadlines for district creation under Section 35.012 or this section.

SECTION 3. Prohibits the Texas Commission on Environmental Quality, notwithstanding Section 35.012, Water Code, as amended by this Act, and Section 36.0151, Water Code, from creating a groundwater conservation district under Section 36.0151, Water Code, before September 1, 2011, in territory that exists within the boundaries of a single county in which total

surface water use is more than 50 times the total groundwater production and that is located in a priority groundwater management area.

SECTION 4. Provides the effective date of this Act.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.