

BILL ANALYSIS

C.S.H.B. 3530

By: Ritter

Natural Resources

Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Water Development Board (the “Board”) was created in 1957 through a state constitutional amendment that authorized the Board to issue general obligation water development bonds to provide financial assistance to political subdivisions. To address the State’s water needs, the Board performs three major functions: provides loans and grants through state and federal programs to Texas communities for water and wastewater projects, supports the development of regional water plans and prepares the State Water Plan, and collects, analyzes, and disseminates water-related data. The bill does not address continuation of the agency because the Board is not subject to abolishment under the Sunset Act. As a result of its review of the Board, the Sunset Advisory Commission recommended several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 10 and SECTION 14 of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 5, SECTION 10, and SECTION 14 of this bill.

ANALYSIS

SECTION 1. Amends Section 6.013, Water Code, to update the Sunset review date for Texas Water Development Board (the “Board”) to the period in which agencies abolished in 2023 and every 12th year after are reviewed.

SECTION 2. Amends Subchapter D, Chapter 6, Water Code, by adding Sections 6.113, 6.114, and 6.115 as follows:

Sec. 6.113. Adds standard Sunset language requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

Sec. 6.114. Authorizes the Board to request the Attorney General take legal action to compel a financial assistance program recipient to cure a default in payment, a breach of terms of a financing agreement, or other failure to perform an obligation and to seek any other remedy the Board and Attorney General consider necessary and appropriate.

Sec. 6.115. Provides that Subchapter L, Chapter 2054, Government Code, related to statewide technology centers, does not apply to information resource technologies obtained, used, managed or controlled by the Board.

SECTION 3. Amends Section 6.154, Water Code, to update standard Sunset language requiring the Board to maintain a complaint system and information on all complaints as well as make information available describing its complaint procedures.

SECTION 4. Amends Section 6.155, Water Code, to update standard Sunset language requiring the Board to periodically notify parties about the status of complaints until final disposition.

SECTION 5. Amends Section 11.1271 (f), Water Code, and adds Subsection (g) as follows:

Sec. 11.1271 (f). Requires the Texas Commission on Environmental Quality (the “Commission”) to require uniform water use calculations be used in its existing water conservation plans.

Sec. 11.1271 (g). Requires the Commission to adopt rules requiring entities to report the most detailed level of municipal water use available. Prohibits the Commission from adopting rules that require an entity to report municipal water use data that is more detailed than the entity’s billing system is capable of producing.

SECTION 6. Amends Section 16.021 (c), (d), and (e), Water Code, and adds Subsections (d-1) and (g) as follows:

Sec. 16.021 (c). Requires the executive administrator of the Board to designate the director of the Texas Natural Resources Information System (TNRIS) as the State Geographic Information Officer. Specifies the duties of the officer regarding coordinating and advancing geographic information systems initiatives.

Sec. 16.021 (d). Requires the Board to report to the Governor and legislative leadership by December 1, 2016 and at least every five years thereafter regarding geographic data needs and initiatives. Abolishes the Texas Geographic Information Council and makes conforming changes.

Sec. 16.021 (d-1). Requires the Board to consult with stakeholders in preparation of the report required by Subsection (d).

Sec. 16.021 (e). Deletes a reference to “under the guidance of the TGIC” as a prerequisite for the executive administrator in fulfilling certain requirements relating to Texas Natural Resources Information System and other reporting requirements.

Sec. 16.021 (g). Authorizes the Board to establish advisory committees to assist and provide information on geographic data needs, and provides considerations for appointing such an advisory committee.

SECTION 7. Amends Section 16.023(b), Water Code, to make conforming changes abolishing the Texas Geographic Information Council.

SECTION 8. Amends Section 16.051, Water Code, to add subsections (a-1) and (a-2) as follows:

Sec. 16.051 (a-1). Requires the Board, as part of the State Water Plan, to evaluate the State’s progress in meeting its future water needs, including evaluating the extent to which water management strategies and projects implemented since the last State Water Plan have affected that progress. Requires the Board to include in the State Water Plan, an analysis of the number of projects in the preceding Plan that received its financial assistance.

Sec. 16.051 (a-2). Provides for the Board to obtain implementation data from regional water planning groups to assist in its evaluation.

SECTION 9. Amends Section 16.053 (c) and (e), Water Code, as follows:

Sec. 16.053 (c). Requires a representative of a groundwater conservation district in each groundwater management area that overlaps with a regional water planning group to serve on that regional water planning group. The management area representative must represent a district located in the regional water planning area.

Sec. 16.053 (e). In addition to requirements currently in statute, requires regional water planning groups to use the desired future conditions in place at the time of adoption of the Board’s State Water Plan in the subsequent regional water planning cycle.

SECTION 10. Amends Section 16.402 (e), Water Code, and adds Subsection (f) as follows:

Sec. 16.402 (e). Requires the uniform water use calculations be used in existing water conservation reports.

Sec. 16.402 (f). Specifies that rules for the uniform water use calculation must require the entity to report the most detailed level of water use available. Prohibits the Board and the Commission from adopting rules that require an entity to report water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 11. Amends Subchapter K, Chapter 16, Water Code to add Section 16.403, to require the Board and Texas Commission on Environmental Quality, in consultation with the Water Conservation Advisory Council, to develop a uniform system for calculating municipal water use in gallons per capita per day to be used by entities required to submit water conservation plans and reports.

SECTION 12. Amends Section 17.003, Water Code, by adding Subsections (c), (d), (e), and (f) as follows:

Sec. 17.003 (c). Provides that water financial assistance bonds that have been authorized, but not issued, are not considered state debt payable from the General Revenue Fund for purposes of calculating the constitutional debt limit, unless the Legislature appropriates funds for debt service on the bonds.

Sec. 17.003 (d). Provides for the Executive Administrator of the Board to certify to the Bond Review Board the source of debt service payments for the Board's bonds.

Sec. 17.003 (e). Requires the Bond Review Board to determine the portion of debt service for the Board's bonds that is state debt payable from General Revenue in the bond resolution and the Executive Administrator's certification.

Sec. 17.003 (f). Provides that bonds designed to be paid from General Revenue cease to be considered bonds payable from General Revenue if the bonds are backed by insurance or other guarantee ensuring payment from another source, or if the Board demonstrates to the satisfaction of the Bond Review Board that the bonds no longer require payment from General Revenue and the Bond Review Board certifies this to the Legislative Budget Board.

SECTION 13. Provides that as soon as practicable after the bill's effective date, groundwater conservation districts must appoint initial representatives to regional water planning groups.

SECTION 14. Provides that not later than January 1, 2013, the Texas Commission on Environmental Quality, as well as the Board and the Texas Commission on Environmental Quality jointly, adopt rules to incorporate the uniform water use calculations into their existing water conservation plans and reports. Requires the Board and the Texas Commission on Environmental Quality, in consultation with the Water Conservation Advisory Council, to develop a uniform system for calculating municipal water use not later than January 1, 2013.

SECTION 15. Provides for the effective date of the Act.

EFFECTIVE DATE

This Act takes effect September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3530 adds language not included in the original bill providing that Subchapter L, Chapter 2054, Government Code, related to statewide technology centers, does not apply to information resource technologies obtained, used, managed or controlled by the Board.

The substitute deletes provisions of the original bill that removed the Board's process to petition the reasonableness of a desired future condition (DFC), as well as related provisions providing

that petitions filed and pending on September 1, 2011 will be handled by the Board in compliance with law as it existed before September 1, 2011.

The substitute removes provisions of the original bill to strengthen the process for groundwater conservation districts within each groundwater management area to convene at least annually to engage in joint planning to review districts' management plans and adopt new or amend existing DFCs of aquifers. The substitute removes provisions outlining factors districts must consider when adopting DFCs and requiring districts in a management area to document consideration of those factors. The substitute deletes provisions providing for the Board and Texas Commission on Environmental Quality to make technical staff available upon request and providing for districts to appoint and convene non-voting advisory committees. C.S.H.B. 3530 removes provisions providing for districts in a management area to submit proposed DFCs to the districts for comment, and requiring districts to prepare a report detailing comments received and any suggested revisions to the DFCs to the management area. The substitute deletes provisions requiring DFCs to be adopted as a resolution by a two-thirds vote of district representatives in the management area. C.S.H.B. 3530 removes provisions requiring districts to submit to the Board an explanatory report that identifies the DFC, provides policy and technical justifications for each DFC, includes documentation of factors considered by districts in the management area and how the DFC impacts those factors. The substitute removes provisions in the original bill requiring districts to list other DFCs considered and reasons why they were not adopted and to discuss why recommendations of advisory committees or public comments were or were not incorporated into the DFC. The substitute deletes provisions requiring each district within a groundwater management area to adopt the relevant DFCs in rule. The substitute removes provisions providing that appeals of the proper adoption of the rule are subject to challenge in district court, under the same procedures currently used to challenge district rules. C.S.H.B. 3530 deletes provisions providing that procedures for developing and reporting DFCs apply only to those adopted on or after September 1, 2011.

C.S.H.B. 3530 deletes language in the original bill to strengthen the public notice requirements for district meetings or hearings, including joint planning meetings, and to provide uniform notice in each district. The substitute removes provisions requiring proof of notice be included in submission of DFCs to the Board. Additionally, the substitute removes provisions requiring a 30-day public comment period before a groundwater management area adopts DFCs and provisions regarding information sharing and a public hearing on any proposed DFC relevant to the district. The substitute also deletes provisions requiring notice to only apply to meetings or hearings held on or after September 1, 2011.

C.S.H.B. 3530 deletes provisions in the original bill defining affected person as an owner of land in the management area; a district in or adjacent to the management area; a regional water planning group with a water management strategy in the management area; a person who holds or is applying for a permit from a district in a management area; a person who has groundwater rights in the management area; or any other person defined by the Commission. The substitute removes provisions expanding the reasons for filing a petition for inquiry related to a DFC and bases for which the Texas Commission on Environmental Quality may take action based on that inquiry. The substitute also removes provisions making conforming and other changes to ensure the reasons for filing a petition correspond with the bases for the Commission to take action to ensure consistency.