

BILL ANALYSIS

Senate Research Center

S.B. 313
By: Seliger
Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many areas of the state are producing significant amounts of groundwater without proper oversight and regulation by an existing groundwater conservation district (GCD). Consequently, the Texas Commission on Environmental Quality (TCEQ) projects future groundwater production using a 25-year horizon to determine areas where oversight and regulation may be needed. Areas identified by TCEQ for potential oversight and regulation are designated as priority groundwater management areas (PGMA). Extending the horizon to 50 years would allow for more comprehensive projections and correspond to current statewide planning processes, such as the State Water Plan.

The passage of S.B. 1, 75th Legislature, Regular Session, 1997, changed the term "critical areas" to "priority groundwater management areas" and authorized TCEQ to implement the PGMA process. S.B. 313 increases the current period for possible PGMA designation from 25 years to 50 years.

S.B. 313 amends current law relating to priority groundwater management areas.

[**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

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality [TNRCC] in SECTION 2 (Section 35.008, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 35.007(a), Water Code, to require the executive director of the Texas Natural Resource Conservation Commission (TNRCC) and the executive administrator of the Texas Water Development Board (TWDB) to meet periodically to identify, based on information gathered by TNRCC and TWDB, those areas of the state that are experiencing or that are expected to experience, within the immediately following 50-year period, rather than 25-year period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.

SECTION 2. Amends Section 35.008, Water Code, by adding Subsection (j) to authorize TNRCC to adopt rules regarding the creation of a district over all or part of a priority groundwater management area that was designated as a critical area under Chapter 35, Water Code, as that chapter existed before September 1, 1997, or under other prior law; and the addition of all or part of the land in a priority groundwater management area described by Subdivision (1) to an existing district.

SECTION 3. Amends Section 35.012, Water Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires TNRCC, except as provided by Section 35.013, within two years, but no sooner than 120 days, from the date on which TNRCC 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, rather than to create one or more new districts under Section 36.0151, to 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 Subdivisions (1) and (2).

(b-1) Authorizes TNRCC, for purposes of this section, to consider territory in two separately designated priority groundwater management areas to be in the same designated priority groundwater management area if the two areas share a common boundary and one or more common aquifers, and TNRCC determines that a district composed of territory in the two areas will result in more effective or efficient groundwater management than other options available to TNRCC.

SECTION 4. Amends Section 35.013, Water Code, by amending Subsections (b), (c), (e), (f), (g), and (h) and adding Subsections (b-1) and (g-1), as follows:

(b) Requires TNRCC to submit a copy of the order to the board of the district to which it is recommending the priority groundwater management area be added. Requires the board of the district, not later than the 120th day after the date of receiving the copy, to vote on the addition of the priority groundwater management area to the district and to advise TNRCC of the outcome.

(b-1) Requires the board of the district, if the district described by Subsection (b) has not approved an ad valorem tax on the date of TNRCC's order issued under Section 35.008 and the board of the district votes to accept the addition of the priority groundwater management area to the district, to enter an order adding the territory in the district.

(c) Provides that if the district described by Subsection (b) has approved an ad valorem tax on the date of TNRCC's order issued under Section 35.008 and the board of the district votes to accept the addition of the priority groundwater management area to the district, the board of the district:

(1) is required to enter an order adding the territory in the district;

(2) is authorized to request the Texas AgriLife Extension Service, TNRCC, and TWDB, with the cooperation and assistance of the Department of Agriculture and other state agencies, to administer an educational program to inform the residents of the status of the area's water resources, the addition of territory to the district, and options for financing management of the groundwater resources of the district, rather than the requesting Texas Agricultural Extension Service, TNRCC, and TWDB, with the cooperation and assistance of the Department of Agriculture and other state agencies to administer an educational program to inform the residents of the status of the area's water resources and management options including possible annexation into a district;

(3) is required to call an election to be held not later than the 270th day after the date of the board of the district'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 if the added area will assume a proportional share of the debts or taxes of the district, rather than if the priority groundwater management area will be added to the district; and

(4) is required to designate election precincts and polling places for the elections in the order calling an election under this subsection.

(e) Sets forth the required language to be printed on the ballots for the election.

(f) Requires the board of the district, if a majority of the voters in the priority groundwater management area voting on the proposition vote in favor of the proposition, to declare that the priority groundwater management area assumes a proportional share of the debts or taxes of the district, rather than declare that the priority groundwater management area is added to the district. Requires the board of the district, if a majority of the voters in the priority groundwater management area voting on the proposition do not vote in favor of the proposition, to adopt rules to implement Subsection (g-1). Deletes existing text requiring the board, if a majority of the voters in the priority groundwater management area voting on the proposition vote against adding the priority groundwater management area to the district, to declare that the priority groundwater management area is not added to the district.

(g) Requires the board of the district to which the priority groundwater area is added, rather than requires the board of the district, if the voters approve adding the priority groundwater management area to the district, to provide reasonable representation on that board compatible with the district's existing scheme of representation.

(g-1) Requires the board of a district, if the voters do not approve the assumption of a proportional share of the debts or taxes of a district under Subsection (e), to assess production fees in the added territory based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. Authorizes a district to use revenue generated for any purpose authorized by Section 36.206 or 36.207. Provides that initial production fees are prohibited from exceeding production fees as set in Section 36.205(c), but are authorized to be increased by the board on a majority vote after the first anniversary of TNRCC order. Authorizes production fees to be raised incrementally by 40 percent and 10 percent every following year until the maximum production fees equal \$2 per acre-foot, payable annually, for water used for an agricultural purpose; or 30 cents per 1,000 gallons, payable annually, for water used for any non-agricultural purpose.

(h) Requires TNRCC, not later than the first anniversary of the date on which the proposition is defeated, or the board of the existing district votes not to accept the addition of the area to the district, except as provided under Subsection (i), to create under Section 36.0151 one or more districts covering the priority groundwater management area; or recommend the area be added to another existing district as provided by this section, 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.

SECTION 5. Amends Section 36.0151, Water Code, by amending Subsection (a) and adding Subsections (c), (d), and (e), as follows:

(a) Requires TNRCC, if TNRCC is required to create a district under Section 35.012(b), without an evidentiary hearing, to issue an order creating the district and to provide in its order that temporary directors be appointed under Section 36.0161, rather than under Section 36.016, and that an election be called by the temporary directors to authorize the district to assess taxes and to elect permanent directors.

(c) Authorizes TNRCC to amend the territory in an order issued under Section 35.008 or this section to adjust for areas that, in the time between when the order was issued under Section 35.008 and the order is issued under this section, have been added to an existing district or created as a separate district, or not been added to an existing district or created as a separate district.

(d) Authorizes TNRCC, in making a modification under Subsection (c), to recommend creation of a new district in the area, or that the area be added to a different district.

(e) Provides that except as provided by Section 35.013(h), a change in the order under Subsection (c) does not affect a deadline under Section 35.012 or 35.013.

SECTION 6. Amends Section 36.0171(h), Water Code, to require the district, if the majority of the votes cast at the election are against the levy of a maintenance tax, to set production fees in accordance with Section 35.013(g-1), rather than to set permit fees, to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 7. (a) Provides that the changes in law made by this Act apply to any territory in a priority groundwater management area that is not included in a groundwater conservation district on the effective date of this Act.

(b) Requires TCEQ, not later than September 1, 2012, to create a district or add territory to an existing district for any territory for which TCEQ has issued an order recommending creation of a district or addition of territory to an existing district under Section 35.008, Water Code, before the effective date of this Act, unless TCEQ determines that the territory is not suitable under Subsection (i), Section 35.013, Water Code.

SECTION 8. Provides that all governmental acts and proceedings, including the adoption of rules, of TCEQ relating to the creation of a groundwater conservation district over all or part of a priority groundwater management area that was designated as a critical area under Chapter 35, Water Code, as that chapter existed before September 1, 1997, or under other prior law, are validated in all respects as of the dates on which they occurred.

SECTION 9. Makes application of Section 35.007(a), Water Code, as amended by this Act, to a designation of a priority groundwater management area made by TCEQ on or after the effective date of this Act, prospective.

SECTION 10. Effective date: upon passage or September 1, 2011.