

## **BILL ANALYSIS**

C.S.S.B. 907  
By: Seliger  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Groundwater conservation districts (GCDs) across the state are working together within groundwater management areas (GMAs) to establish desired future conditions (DFCs) for their aquifers and regions. Under current law, a person with an interest in groundwater in a specific area may file a petition with the Texas Water Development Board (TWDB) to appeal the desired future condition. The current process lacks standard components of administrative processes that are designed to ensure a clear, fair resolution.

This bill amends current law relating to the management, operation, rulemaking authority, and oversight of groundwater conservation districts. C.S.S.B. 907 would require a GCD to adopt or amend rules as necessary to limit production or allocate groundwater accordingly in order to meet and achieve the DFC. The intent is simple, that management plans outline the necessary components in order for the region to actually meet the DFC.

The management plan must be submitted to the executive administrator of TWDB for administrative approval. The TWDB then shall review the management plan to determine whether the goals of the management plan are consistent with achievement of the DFC. If TWDB determines that the management plan is not adequate to achieve the DFC, the TWDB may recommend that a GCD make changes to that plan. After changes are made, and the TWDB has confirmed that the management plan in place will achieve the DFC, the GCD must readopt the management plan.

C.S.S.B. 907 seeks to strengthen and clarify the process by which the desired future condition is adopted, allow an affected person to petition the groundwater conservation district before the State Office of Administrative Hearings appealing the desired future condition, and further appeal the desired future condition to district court.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality and State Office of Administrative Hearings in SECTION 6 of this bill.

### **ANALYSIS**

SECTION 1. Amends Section 36.001, Water Code, by adding Subdivision (30) as follows:  
Subdivision (30) Defines "desired future condition" to mean a quantitative description, adopted in accordance with the bill's provisions, of the desired condition of the groundwater resources in a management area at one or more specified future times.

SECTION 2. Amends Section 36.063, Water Code, by amending (a) and adding (b) and (c) as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Requires notice of meetings of the board, except as provided by Subsections (b) and (c), to be given as set forth in the Open Meetings Act, Chapter 551, Government Code.

(b) Provides that at least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:

- (1) the proposed desired future conditions and a list of any other agenda items;
- (2) the date, time, and location of the meeting or hearing;

- (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
  - (4) the names of the other districts in the district's management area; and
  - (5) information on how the public may submit comments.
- (c) Requires notice of a hearing described by Subsection (b), except as provided by Subsection (b), to be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

SECTION 3. Amends Sections 36.1071 (a), (c), (e), and (f) and adding subsection (f-1) as follows:

(a) Changes one of the management goals to be addressed in developing a comprehensive management plan by specifying such a goal as addressing the desired future conditions adopted by the district under provisions relating to joint planning in a management area, rather than as addressing in a quantitative manner the desired future conditions of the groundwater resources.

(c) Requires the Texas Commission on Environmental Quality (TCEQ) and the Texas Water Development Board (TWDB) to provide technical assistance to a district in the development of the management plan required under Subsection (a) that may include, rather than which may include, if requested by the district, a preliminary review and comment on the plan prior to final approval by TWDB, instead of the board.

(e) Provides that the management plan, in addition to other listed estimates, include an estimate of managed available groundwater in the district based on the desired future condition adopted, rather than established, under Section 36.108.

(f) Provides that the district, prior to the development of the district's first management plan and approval of that plan under Section 36.1072 (Texas Water Development Board Review and Approval of Management Plan):

(1) may accept applications for permits under Section 36.113 (Permits for Wells; Permit Amendments), provided the district does not act on any such application until the district's management plan is approved as provided in Section 36.1072;

(2) may adopt rules pertaining to the registration, interim permitting, metering, production reporting, spacing, and where applicable, fee payment for authorized or actual production of water from new and existing wells;

(3) may adopt rules governing procedure before the district's board; and

(4) may not adopt any rules limiting the production of wells, except rules requiring that groundwater produced from a well be put to a nonwasteful, beneficial use.

Deletes existing text authorizing the district to adopt rules necessary to implement the management plan and deletes existing text prohibiting the district from adopting rules other than rules pertaining to the registration and interim permitting of new and existing wells and rules governing spacing and procedure before the district's board. Deletes existing text prohibiting the district from adopting any rules limiting the production of wells, except rules requiring that groundwater from a well be put to a nonwasteful beneficial use. Makes nonsubstantive changes.

(f-1) Requires the district, after a management plan is finally approved under Section 36.1072, to adopt rules or amend rules limiting the production of wells or allocating groundwater as necessary to implement the management plan and achieve the applicable desired future condition. Prohibits a district from adopting rules or amending rules limiting the production of wells or allocating groundwater if the district fails to:

(1) adopt a management plan as required by this section;

(2) submit a management plan to the executive administrator of TWDB as required by Section 36.1072; and

(3) receive approval of the management plan under Section 36.1072.

SECTION 4. Amends Section 36.1072, Water Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Provides that once the executive administrator has granted administrative approval to, rather than approved, a management plan:

(1) the executive administrator may not revoke but may require revisions to the approved management plan, rather than the approved groundwater conservation district management plan, as provided by Subsection (g); and

(2) the executive administrator may request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material, rather than the executive administrator may request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material, but a request for additional information does not render the management plan unapproved.

(c-1) Requires the executive administrator, not later than the 60th day after the date of the administrative approval of a district's management plan under Subsection (c), to review the management plan to determine whether goals of the management plan are consistent with the achievement of the desired future conditions established under Section 36.108 (relating to joint planning in management area), that are applicable to all or part of the district, considering any available information regarding groundwater levels, and request additional information from the district, recommend that the district make substantive changes to the management plan, or approve the management plan.

SECTION 5. Amends Section 36.1073, Water Code, as follows:

Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Requires that any amendment to a district's management plan, rather than the management plan, be submitted to the executive administrator within 60 days following adoption of the amendment by the district's board. Requires the executive administrator to review and approve any amendment that, rather than which, substantially affects the management plan in accordance with the procedures established under Section 36.1072.

SECTION 6. Amends Subchapter D, Chapter 36, Water Code, by amending Section 36.108 and adding Sections 36.1081 through 36.1087 as follows:

Sec. 36.108 JOINT PLANNING IN MANAGEMENT AREA. (a) Defines "Development board" to mean the Texas Water Development Board. Defines "District representative" to mean the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.

(c) Requires that the district representatives, newly defined as the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area, meet at least annually to conduct joint planning with the other districts in the management area and adds the review of proposals to adopt new or amend existing desired future conditions, to other existing duties. Makes nonsubstantive changes.

(d) Requires the districts to propose for adoption, rather than establish, desired future conditions for the relevant aquifers within the management area. Requires the districts to make several considerations before voting on the proposed, rather than doing so in establishing, desired future conditions of the aquifers. Establishes such considerations as the following:

1. aquifer uses or conditions, rather than uses or conditions of an aquifer, within the management area, including conditions that differ substantially from one geographic area to another;
2. the water supply needs and water management strategies included in the state water plan;
3. hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator of the TWDB, and the average annual recharge, inflows, and discharge;
4. other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
5. the impact on subsidence;
6. socioeconomic impacts reasonably expected to occur;
7. the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under provisions relating to the ownership of groundwater;
8. whether the desired future conditions are physically possible; and
9. any other information relevant to the specific desired future conditions.

(d-1) Redesignates this subsection, which provides circumstances for which a district may establish different desired future conditions.

(d-2) Requires the proposed, rather than established, desired future conditions to provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. Specifies that these provisions do not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals relating to a management plan. Requires the proposed desired future conditions to be approved, rather than adopted, by a two-thirds vote of all the district representatives for distribution to the districts in the management area.

Specifies that a period of not less than 30 or more than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. Requires each district, during the public comment period and after posting required notice, to hold a public hearing on the proposed desired future conditions relevant to that district. Requires the district, during the public comment period, to make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of considered factors and groundwater availability model run results. Requires the district, after the public hearing, to compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

Removes language regarding the voting meeting of district representatives as a meeting at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance, and for which all districts located in whole or in part in the management area provide public notice in accordance with state open meetings law.

Deletes a provision that each district in the management area must ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process to relocate it to Section 36.1086.

(d-3) Requires the district representatives, after the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period, to reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. Requires the desired future conditions to be adopted as a resolution by a two-thirds vote of all the district representatives. Requires the district representatives to produce a desired future conditions explanatory report for the management area and submit to the TWDB and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. Requires the report to identify each desired future

condition; provide the policy and technical justifications for each desired future condition; include documentation that specified factors were considered by the districts and a discussion of how the adopted desired future conditions impact each factor; list other desired future condition options considered, if any, and the reasons why those options were not adopted; and discuss reasons why recommendations made by advisory committees and public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) Requires a district, as soon as possible after the district receives the desired future conditions resolution and explanatory report, to adopt the desired future conditions in the resolution and report that apply to the district.

(e) Provides an exception from the requirement for holding a joint meeting in accordance with the Open Meetings Act. Authorizes the district representatives to elect one district to be responsible for providing the notice of a joint meeting that applicable provisions would otherwise require of each district in the management area. Removes a provision requiring notice of a joint meeting to be given in accordance with the requirements for notice of district board of directors meetings under the state's Public Information Act. Requires notice of a joint meeting to be provided at least 10 days before the date of the meeting by providing notice to the secretary of state, providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area, and posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(f) Requires the secretary of state and the county clerk of each such county to post notice of the meeting in the manner provided by provisions relating to notice of a governing body of a water district or other district or political subdivision that extends into four or more counties.

(g) Provides that notice of a joint meeting must include the date, time, and location of the meeting; a summary of any action proposed to be taken; the name of each district located wholly or partly in the management area; and the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(h) Establishes that the failure or refusal of one or more districts to post notice for a joint meeting at a place readily accessible to the public at the district office of each district located wholly or partly in the management area does not invalidate an action taken at the joint meeting.

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) Requires TCEQ and the Board, on request, to make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process.

(b) Authorizes the district representatives, during such process, to appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Sec. 36.1082. PETITION FOR INQUIRY. (a) Defines "affected person," with respect to a management area, to mean 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 the management area; a person who has a certain ownership interest in groundwater in the management area; or any other person defined as affected by TCEQ rule.

(b) Requires an affected person who seeks to appeal a desired future condition adopted under Section 36.108 must file a petition under Section 36.1083. Provides that an affected person, rather than a district or person with a legally defined interest in the groundwater within the management area, may file a petition with the commission

requesting an inquiry. Revises the reasons for which an affected person is authorized to file a petition with TCEQ requesting an inquiry to include any of the following:

1. a district fails to participate in the joint planning process, rather than refusing to join the process;
2. a district fails to adopt rules;
3. a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
4. a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
5. a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
6. the rules adopted by a district are not designed to achieve the desired future conditions adopted by the management area rather than the condition of groundwater resources the management area established during the joint planning process;
7. the groundwater in the management area is not adequately protected by the rules adopted by a district; or
8. the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.
- 9.

Makes conforming changes to the process currently in statute by which the TCEQ must review the petition.

#### Sec. 36.1083. ADMINISTRATIVE APPEAL OF DESIRED FUTURE CONDITIONS.

(a) Defines "Affected person" to have the meaning assigned by Section 36.1082; "Development board" to mean the Texas Water Development Board; and "Office" to mean the State Office of Administrative Hearings (SOAH).

(b) Authorizes an affected person, not later than the 180th day after the date on which a district adopted a desired future condition, to file a petition with the district requesting that the district contract with SOAH to conduct a hearing to appeal the desired future condition, including the reasonableness of the desired future condition. Provides that an affected person may not request a hearing under this section for a reason described by Section 36.1082(b) (TCEQ's Petition for Inquiry).

(c) Requires the district, not later than the 45th day after the deadline for filing a petition under Subsection (b), to contract with the office; request a contested case hearing; and submit a copy of any petitions received by the district to the office.

(d) Requires the hearing to be held at the district office or regular meeting location of the district's board of directors, unless the board provides for hearings to be held at a different location, and to be conducted in accordance with the Administrative Procedure Act and rules of SOAH.

(e) Authorizes the district to adopt rules for notice and hearings conducted under the bill's provisions relating to an administrative appeal of desired future conditions that are consistent with the procedural rules of SOAH. Provides that, in the manner prescribed by district and office rules, the district shall provide general notice of the hearing and individual notice of the hearing to the petitioner, any other party in the hearing in Subsection (f)(3), each nonparty district and regional water planning group in the management area, the development board, and the commission. Authorizes only an affected person to participate as a party in the hearing.

(f) Requires the office to hold a prehearing conference to determine preliminary matters including:

- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person is an affected person and eligible to participate as a party in the hearing; and

(3) naming parties to the hearing.

(g) Requires the petitioner to pay all costs associated with the contract for the hearing and to deposit with the district an amount sufficient to pay the contract amount before the hearing begins. Requires the district, at the conclusion of the hearing, to refund any excess money to the petitioner.

(h) Authorizes the administrative law judge to request a study from the development board if the judge finds that a technical analysis is needed related to the hydrogeology of the area or matters within the development board's expertise. Requires the development board, in conducting the technical analysis, to consider any relevant information provided in the petition, as well as any groundwater availability models, published studies, or other information the development board considers relevant. Requires the study to be completed and delivered to the office not later than the 120th day after the date of the request for admission into the evidentiary record for consideration at the hearing. Requires the development board to make available the relevant staff as expert witnesses during the hearing if requested by any party or the administrative law judge.

(i) Requires the district's board, on receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. Authorizes the board to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative law judge in the same manner as a state agency under certain Administrative Procedure Act provisions. Requires the districts in the management area, if the district in its final order finds that a desired future condition is unreasonable, to reconvene in a joint planning meeting not later than the 30th day after the date of the final order to revise the desired future condition.

(j) Establishes that a district's final order finding that a desired future condition is unreasonable does not invalidate the desired future condition for a district not subject to the petition.

(k) Authorizes the administrative law judge, if the judge considers it appropriate, to consolidate hearings requested under this section by two or more districts and requires the judge to specify the location for the consolidated hearing from the possible locations under Subsection (d). Requires the administrative law judge to prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

Sec. 36.1084. COURT APPEAL OF DESIRED FUTURE CONDITION. (a) Authorizes a final district order to be appealed under the substantial evidence standard of review as provided by certain provisions of the Administrative Procedure Act. Provides that the venue for an appeal is a district court with jurisdiction over any part of the territory in the management area that includes the district whose final order is being appealed. Requires the court, if the court finds that a desired future condition is unreasonable, to strike the desired future condition and order the districts in the management area to reconvene in a joint planning meeting not later than the 30th day after the date of the court's decision to revise the desired future condition.

(b) Provides that a court's finding under this section does not apply to a desired future condition that is not a matter before the court.

(c) Authorizes a petitioner to file a consolidated suit under this section to appeal the final orders of two or more districts.

Sec. 36.1085. MANAGED AVAILABLE GROUNDWATER. Removes a provision authorizing a person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area to file a

petition with the TWDB appealing the approval of the desired future conditions of the established groundwater resources. Removes provisions related to the Board's petition process, including requirements of the petition, Board review and hearings related to the petition, and processes associated with district revision of desired future conditions if the Board finds the conditions require revising. Requires the TWDB to require the districts in a management area to submit the following to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions as provided by the bill: the adopted desired future conditions, proof that notice was posted for the joint planning meeting, and the desired future conditions explanatory report. Provides that the executive administrator must provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon the desired future conditions adopted by the district, rather than the condition of the groundwater resources established under this section. Makes nonsubstantive changes.

Sec. 36.1086. **MANAGEMENT PLAN GOALS AND OBJECTIVES.** Provides that each district in the management area must ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process, relocated from the former section 36.108(d-2).

Sec. 36.1087. **JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA.** Redesignates the former section 36.108(p). Makes conforming changes. Strikes the term "groundwater" before management areas.

**SECTION 7.** Amends Section 36.207, Water Code, as follows:

Sec. 36.207. New heading: **USE OF PRODUCTION FEES AUTHORIZED BY SPECIAL LAW.** Authorizes a district to use funds obtained from production fees, rather than permit fees, collected pursuant to the special law governing the district for any purpose consistent with the district's approved management plan, rather than certified water management plan, including without limitation, making grants, loans, or contractual payments to achieve facilitate, or expedite, reductions in groundwater pumping or the development or distribution of alternative water supplies.

**SECTION 8.** Amends Section 36.301, Water Code, as follows:

Sec. 36.301. New heading: **VIOLATIONS RELATED TO MANAGEMENT PLAN.** Requires TCEQ to take appropriate action under Section 36.303 (Action by Commission) if:

- (1) a district adopts or amends a rule in violation of Section 36.1071(f-1);
- (2) a district fails to submit a management plan or to receive approval of the management plan under Section 36.1072, rather than if a board fails to submit a management plan or to receive certification of its management plan under Section 36.1072;
- (3) a district fails to timely readopt the management plan or to submit the readopted management plan to the executive administrator for approval in accordance with Section 36.1072(f);
- (4) the executive administrator determines that a readopted management plan does not meet the requirements for approval, and the district has exhausted all appeals; or
- (5) a district fails to submit or receive approval of an amendment to the management plan under Section 36.1073 (Additional Security Bonds and Notes), rather than if a district fails to submit or receive certification of an amendment to the management plan under Section 36.1073, TCEQ shall take appropriate action under Section 36.303.



SECTION 9. New heading: COMMISSION ACTION REGARDING DISTRICT DUTIES RELATED TO JOINT PLANNING. Amends Section 36.3011, Water Code, as follows:

Sec. 36.3011. Adds to or modifies the list of findings upon which TCEQ to take any action against a district to include any of the following:

1. a district has failed to participate in the joint planning process;
2. a district has failed to adopt rules;
3. a district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
4. a district has failed to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
5. a district has failed to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
6. the rules adopted by a district are not designed to achieve the desired future conditions adopted by the management area rather than the condition of groundwater resources the management area established during the joint planning process;
7. the groundwater in the management area is not adequately protected by the rules adopted by a district; or
8. the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

Deletes a provision allowing TCEQ to take action if a district has failed to submit its plan to the executive administrator of TWDB. Makes nonsubstantive changes.

SECTION 10. Provides that the notice provisions of Sections 36.063(b) and (c), Water Code, as added by this Act, apply only to a meeting or hearing of a groundwater conservation district or a joint planning meeting of groundwater conservation districts held on or after the effective date of this Act. Provides that a meeting or hearing held before the effective date of this Act is subject to the notice provisions in effect at the time of the meeting or hearing, and those provisions are continued in effect for that purpose.

SECTION 11. Provides that the requirement that a groundwater conservation district's management plan under Section 36.1071(e), Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive administrator before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator on or after the effective date of this Act. Provides that a management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

SECTION 12. (a) Provides that Section 36.1071, Water Code, as amended by this Act applies only to the rulemaking authority of a groundwater conservation district related to a management plan or an amendment to a management plan that is submitted by the district to the executive administrator for review and approval on or after the effective date of this Act. Provides that a district's rulemaking authority related to a management plan or an amendment to a management plan that is submitted to the executive administrator before the effective date of this Act is governed by the law in effect when the management plan or amendment was submitted, and the former law is continued in effect for that purpose.

SECTION 13. Provides that the procedures for the adoption and reporting of desired future conditions of groundwater resources in a management area under Section 36.108, Water Code, as amended by this Act, and 36.1085, Water Code, as added by this Act, apply only to the adoption of desired future conditions that occurs on or after the effective date of this Act. Provides that desired future conditions adopted before the effective date of this Act are governed by the law in effect on the date the desired future conditions were adopted, and that law is continued in effect for that purpose.

SECTION 14. Requires that a petition filed and pending on the effective date of this Act before the Board to appeal the adoption of desired future conditions by a groundwater management area

under former Section 36.108(l), Water Code, be handled by the Board in compliance with Sections 36.108(l), (m), and (n), Water Code, as those sections existed before the effective date of this Act.

SECTION 15. Provides that a change in law made by this Act to Section 36.301, Water Code, applies only to a violation by a groundwater conservation district that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 16. Provides for the effective date of this Act.

### **EFFECTIVE DATE**

This Act takes effect September 1, 2011.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.S.B. 907 contains a provision not included in the original defining "desired future condition."

C.S.S.B. 907 contains provisions not included in the original setting out notice requirements for a hearing on proposed desired future conditions relevant to the district or a meeting at which a district will adopt a desired future condition.

C.S.S.B. 907 contains provisions not included in the original, in a provision requiring a district to develop a comprehensive management plan which addresses certain applicable management goals, specifying such a goal as addressing the desired future conditions adopted by the district under provisions relating to joint planning in a management area, rather than as addressing in a quantitative manner the desired future conditions of the groundwater resources, and requiring the district, in the management plan, to include estimates of managed available groundwater in the district based on the desired future condition adopted, rather than established, under those provisions.

C.S.S.B. 907 contains provisions not included in the original defining "district representative" and "development board" for purposes of provisions relating to joint planning in a management area and requiring the district representatives to meet at least annually to conduct joint planning with the other districts in the management area and to review proposals to adopt new or amend existing desired future conditions.

C.S.S.B. 907 contains a provision not included in the original requiring groundwater conservation districts, every five years, to propose for adoption, rather than establish, desired future conditions for the relevant aquifers within the management area. The substitute contains provisions not included in the original requiring the districts to make several considerations before voting on the proposed, rather than doing so in establishing, desired future conditions of the aquifers. The substitute contains provisions not included in the original requiring the districts to make several considerations before voting on the proposed desired future conditions of the aquifers and providing for such considerations.

C.S.S.B. 907 contains a provision not included in the original removing language requiring the established desired future conditions to be adopted by a certain vote of district representatives in attendance. The substitute contains provisions not included in the original requiring the proposed desired future conditions to provide a certain balance, specifying that certain provisions of the bill do not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals relating to a management plan, requiring the proposed desired future conditions to be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area, specifying a certain period for public comments, requiring each district to hold a public hearing on the proposed desired future conditions relevant to that district and to make available in its office a copy of the proposed desired future conditions and any supporting

materials, and requiring the district to compile for consideration at the next joint planning meeting a certain summary.

C.S.S.B. 907 contains provisions not included in the original requiring the district representatives, after a certain period, to reconvene to, among other things, adopt the desired future conditions for the management area; requiring the desired future conditions to be adopted as a resolution by a two-thirds vote of all the district representatives; requiring the district representatives to produce a desired future conditions explanatory report and to submit to the Texas Water Development Board (TWDB) and each district in the management area certain items; providing requirements regarding the report; and requiring a district to adopt the desired future conditions in the resolution and report that apply to the district.

C.S.S.B. 907 contains provisions not included in the original providing an exception to the Open Meetings Act, authorizing the district representatives to elect one district to be responsible for providing certain notice of a joint meeting; removing a provision requiring notice of a joint meeting to be given in accordance with the requirements for notice of district board of directors meetings under the state's open records law; and requiring notice of a joint meeting to be provided at least 10 days before the date of the meeting by certain methods.

C.S.S.B. 907 contains provisions not included in the original requiring the secretary of state and the county clerk of certain counties to post notice of the meeting in a certain manner; requiring notice of a joint meeting to include certain information; and establishing that the failure or refusal of one or more districts to post notice for a joint meeting at a certain place does not invalidate an action taken at the joint meeting.

C.S.S.B. 907 contains provisions not included in the original relating to technical staff and subcommittees for joint planning.

C.S.S.B. 907 contains provisions not included in the original defining "affected person"; removing language authorizing a district or person with a legally defined interest in the groundwater within the management area to file a petition with the Texas Commission on Environmental Quality (TCEQ) requesting an inquiry under certain conditions; and authorizing an affected person to file a petition with TCEQ requesting an inquiry for any one of a number of specified reasons, and making nonsubstantive changes.

C.S.S.B. 907 contains provisions not included in the original providing for an administrative appeal of desired future conditions and defining "Affected person" to have the meaning assigned by Section 36.1082; "Development board" to mean the Texas Water Development Board; and "Office" to mean the State Office of Administrative Hearings.

C.S.S.B. 907 contains provisions not included in the original authorizing an affected person, not later than the 180th day after the date on which a district adopted a desired future condition, to file a petition with the district requesting that the district contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing to appeal the desired future condition, including the reasonableness of the desired future condition. C.S.S.B. 907 contains provisions not included in the original providing that an affected person may not request a hearing under this section for a reason described by Section 36.1082(b).

C.S.S.B. 907 contains provisions not included in the original requiring districts, not later than the 45th day after the deadline for filing a petition under Subsection (b), to contract with the office; request a contested case hearing; and submit a copy of any petitions received by the district to the office.

C.S.S.B. 907 contains provisions not included in the original requiring the hearing to be held at the district office or regular meeting location of the district's board of directors, unless the board provides for hearings to be held at a different location, and to be conducted in accordance with the Administrative Procedure Act and rules of SOAH.

C.S.S.B. 907 contains provisions not included in the original authorizing the district to adopt rules for notice and hearings conducted under the bill's provisions relating to an administrative appeal of desired future conditions that are consistent with the procedural rules of SOAH. The substitute adds language not in the original bill providing that, in the manner prescribed by

district and office rules, the district shall provide general notice of the hearing and individual notice of the hearing to the petitioner, any other party in the hearing in Subsection (f)(3), each nonparty district and regional water planning group in the management area, the development board, and the commission. The substitute includes language not included in the original authorizing only an affected person to participate as a party in the hearing.

C.S.S.B. 907 contains provisions not included in the original requiring the office to hold a prehearing conference to determine preliminary matters including whether the petition should be dismissed for failure to state a claim on which relief can be granted; whether a person is an affected person and eligible to participate as a party in the hearing; and naming parties to the hearing.

C.S.S.B. 907 contains provisions not included in the original requiring the petitioner to pay all costs associated with the contract for the hearing and to deposit with the district an amount sufficient to pay the contract amount before the hearing begins. The substitute also includes language not included in the original requiring the district, at the conclusion of the hearing, to refund any excess money to the petitioner.

C.S.S.B. 907 contains provisions not included in the original authorizing the administrative law judge to request a study from the development board if the judge finds that a technical analysis is needed related to the hydrogeology of the area or matters within the development board's expertise; requiring the development board, in conducting the technical analysis, to consider any relevant information provided in the petition, as well as any groundwater availability models, published studies, or other information the development board considers relevant; requiring the study to be completed and delivered to the office not later than the 120th day after the date of the request for admission into the evidentiary record for consideration at the hearing; and requiring the development board to make available the relevant staff as expert witnesses during the hearing if requested by any party or the administrative law judge.

C.S.S.B. 907 contains provisions not included in the original requiring the district's board, on receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The substitute includes language not included in the original authorizing the board to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative law judge in the same manner as a state agency under certain Administrative Procedure Act provisions. The substitute includes language not included in the original requiring the districts in the management area, if the district in its final order finds that a desired future condition is unreasonable, to reconvene in a joint planning meeting not later than the 30th day after the date of the final order to revise the desired future condition.

C.S.S.B. 907 contains provisions not included in the original establishing that a district's final order finding that a desired future condition is unreasonable does not invalidate the desired future condition for a district not subject to the petition.

C.S.S.B. 907 contains provisions not included in the original authorizing the administrative law judge, if the judge considers it appropriate, to consolidate hearings requested under this section by two or more districts and requires the judge to specify the location for the consolidated hearing from the possible locations under Subsection (d). C.S.S.B. 907 contains provisions not included in the original requiring the administrative law judge to prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

C.S.S.B. 907 contains provisions not included in the original authorizing a final district order to be appealed under the substantial evidence standard of review as provided by certain provisions of the Administrative Procedure Act; providing that the venue for an appeal is a district court with jurisdiction over any part of the territory in the management area that includes the district whose final order is being appealed; requiring the court, if the court finds that a desired future condition is unreasonable, to strike the desired future condition and order the districts in the management area to reconvene in a joint planning meeting not later than the 30th day after the date of the court's decision to revise the desired future condition.

C.S.S.B. 907 contains provisions not included in the original providing that a court's finding under this section does not apply to a desired future condition that is not a matter before the court, and authorizing a petitioner to file a consolidated suit under this section to appeal the final orders of two or more districts.

C.S.S.B. 907 differs from the original by removing statutory provisions authorizing a person with a legally defined interest in certain groundwater to file a petition with the TWDB appealing the approval of the desired future conditions of the established groundwater resources, and requiring the petition to provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area. C.S.S.B. 907 differs from the original by removing, instead of amending, a requirement for districts to prepare a revised plan, in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. The substitute also differs from the original by deleting provisions not deleted in the original requiring the districts to prepare a revised plan in accordance with TWDB recommendations and to hold at least one public hearing at a central location in the groundwater management area, and requiring the districts to revise the conditions and submit the conditions to the TWDB for review.

C.S.S.B. 907 contains provisions not included in the original requiring the TWDB to require the districts in a management area to submit to the executive administrator by a certain date the adopted desired future conditions, certain proof regarding notice, and the desired future conditions explanatory report.

C.S.S.B. 907 contains provisions not included in the original, in a provision authorizing TCEQ to take action against a district it considers necessary in accordance with certain provisions if TCEQ makes certain findings, to include additional and amended findings.

C.S.S.B. 907 makes conforming changes not included in the original bill.

C.S.S.B. 907 contains saving provisions not included in the original. The substitute differs from the original by taking effect September 1, 2011, whereas the original takes effect on passage, or, if it does not receive the necessary vote, September 1, 2011.