

1-1 By: Seliger S.B. No. 727  
1-2 (In the Senate - Filed February 15, 2011; February 23, 2011,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 March 24, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 24, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 727 By: Seliger

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to groundwater conservation district management plans.  
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-12 SECTION 1. Subsections (a) and (b), Section 36.1071, Water  
1-13 Code, are amended to read as follows:  
1-14 (a) Following notice and hearing, the district shall, in  
1-15 coordination with surface water management entities on a regional  
1-16 basis, develop a [~~comprehensive~~] management plan that [~~which~~]  
1-17 addresses the following management goals, as applicable:  
1-18 (1) providing the most efficient use of groundwater;  
1-19 (2) controlling and preventing waste of groundwater;  
1-20 (3) controlling and preventing subsidence;  
1-21 (4) addressing conjunctive surface water management  
1-22 issues;  
1-23 (5) addressing natural resource issues;  
1-24 (6) addressing drought conditions;  
1-25 (7) addressing conservation, recharge enhancement,  
1-26 rainwater harvesting, precipitation enhancement, or brush control,  
1-27 where appropriate and cost-effective; and  
1-28 (8) addressing in a quantitative manner the desired  
1-29 future conditions of the groundwater resources.  
1-30 (b) The [A district] management plan, or any amendments to  
1-31 the [a district management] plan, shall be developed [by the  
1-32 district] using the district's best available data and forwarded to  
1-33 the regional water planning group for use in their planning  
1-34 process.  
1-35 SECTION 2. Section 36.1072, Water Code, is amended by  
1-36 amending Subsections (a) through (d), (f), and (g) and adding  
1-37 Subsection (a-1) to read as follows:  
1-38 (a) In this section, "development board" means the Texas  
1-39 Water Development Board.  
1-40 (a-1) A district shall, not later than three years after the  
1-41 creation of the district or, if the district required confirmation,  
1-42 not later than three years after the election confirming the  
1-43 district's creation, submit the management plan required under  
1-44 Section 36.1071 to the executive administrator for review and  
1-45 approval.  
1-46 (b) Within 60 days of receipt of a district's management  
1-47 plan adopted under Section 36.1071, readopted under Subsection (e)  
1-48 or (g) of this section, or amended under Section 36.1073, the  
1-49 executive administrator shall approve the district's [a  
1-50 management] plan if the plan is administratively complete. A  
1-51 management plan is administratively complete when it contains the  
1-52 information required to be submitted under Section 36.1071(a) and  
1-53 (e). The executive administrator may determine whether conditions  
1-54 justify waiver of the requirements under Section 36.1071(e)(4).  
1-55 (c) Once the executive administrator has approved a  
1-56 district's management plan:  
1-57 (1) the executive administrator may not revoke but may  
1-58 require revisions to the approved [~~groundwater conservation~~  
1-59 ~~district]~~ management plan as provided by Subsection (g); and  
1-60 (2) the executive administrator may request  
1-61 additional information from the district if the information is  
1-62 necessary to clarify, modify, or supplement previously submitted  
1-63 material, but a request for additional information does not render

2-1 the management plan unapproved.

2-2 (d) A management plan takes effect on approval by the  
2-3 executive administrator or, if appealed, on approval by the  
2-4 development board [~~Texas Water Development Board~~].

2-5 (f) If the executive administrator does not approve the  
2-6 district's management plan, the executive administrator shall  
2-7 provide to the district, in writing, the reasons for the  
2-8 action. Not later than the 180th day after the date a district  
2-9 receives notice that its management plan has not been approved, the  
2-10 district may submit a revised management plan for review and  
2-11 approval. The executive administrator's decision may be appealed  
2-12 to the development board [~~Texas Water Development Board~~]. If the  
2-13 development board [~~Texas Water Development Board~~] decides not to  
2-14 approve the district's management plan on appeal, the district may  
2-15 request that the conflict be mediated. The district and the board  
2-16 may seek the assistance of the Center for Public Policy Dispute  
2-17 Resolution at The University of Texas School of Law or an  
2-18 alternative dispute resolution system established under Chapter  
2-19 152, Civil Practice and Remedies Code, in obtaining a qualified  
2-20 impartial third party to mediate the conflict. The cost of the  
2-21 mediation services must be specified in the agreement between the  
2-22 parties and the Center for Public Policy Dispute Resolution or the  
2-23 alternative dispute resolution system. If the parties do not  
2-24 resolve the conflict through mediation, the decision of the  
2-25 development board [~~Texas Water Development Board~~] not to approve  
2-26 the district's management plan may be appealed to a district court  
2-27 in Travis County. Costs for the appeal shall be set by the court  
2-28 hearing the appeal. An appeal under this subsection is by trial de  
2-29 novo. The commission shall not take enforcement action against a  
2-30 district under Subchapter I until the latest [~~later~~] of the  
2-31 expiration of the 180-day period, the date the development board  
2-32 [~~Texas Water Development Board~~] has taken final action withholding  
2-33 approval of a revised management plan, the date the mediation is  
2-34 completed, or the date a final judgment upholding the board's  
2-35 decision is entered by a district court. An enforcement action may  
2-36 not be taken against a district by the commission or the state  
2-37 auditor under Subchapter I because the district's management plan  
2-38 and the approved regional water plan are in conflict while the  
2-39 parties are attempting to resolve the conflict before the  
2-40 development board, in mediation, or in court. Rules of the  
2-41 district continue in full force and effect until all appeals under  
2-42 this subsection have been exhausted and the final judgment is  
2-43 adverse to the district.

2-44 (g) [~~In this subsection, "development board" means the~~  
2-45 ~~Texas Water Development Board.~~] A person with a legally defined  
2-46 interest in groundwater in a district, or the regional water  
2-47 planning group, may file a petition with the development board  
2-48 stating that a conflict requiring resolution may exist between the  
2-49 district's approved management plan developed under Section  
2-50 36.1071 and the state water plan. If a conflict exists, the  
2-51 development board shall provide technical assistance to and  
2-52 facilitate coordination between the involved person or regional  
2-53 water planning group and the district to resolve the conflict. Not  
2-54 later than the 45th day after the date the person or the regional  
2-55 water planning group files a petition with the development board,  
2-56 if the conflict has not been resolved, the district and the involved  
2-57 person or regional planning group may mediate the conflict. The  
2-58 district and the involved person or regional planning group may  
2-59 seek the assistance of the Center for Public Policy Dispute  
2-60 Resolution at The University of Texas School of Law or an  
2-61 alternative dispute resolution system established under Chapter  
2-62 152, Civil Practice and Remedies Code, in obtaining a qualified  
2-63 impartial third party to mediate the conflict. The cost of the  
2-64 mediation services must be specified in the agreement between the  
2-65 parties and the Center for Public Policy Dispute Resolution or the  
2-66 alternative dispute resolution system. If the district and the  
2-67 involved person or regional planning group cannot resolve the  
2-68 conflict through mediation, the development board shall resolve the  
2-69 conflict not later than the 60th day after the date the mediation is

3-1 completed. The development board action under this provision may  
 3-2 be consolidated, at the option of the board, with related action  
 3-3 under Section 16.053(p). If the development board determines that  
 3-4 resolution of the conflict requires a revision of the approved  
 3-5 [~~groundwater conservation district~~] management plan, the  
 3-6 development board shall provide information to the district. The  
 3-7 district shall prepare any revisions to the plan based on the  
 3-8 information provided by the development board and shall hold, after  
 3-9 notice, at least one public hearing at some central location within  
 3-10 the district. The district shall consider all public and  
 3-11 development board comments, prepare, revise, and adopt its  
 3-12 management plan, and submit the revised management plan to the  
 3-13 development board for approval. On the request of the district or  
 3-14 the regional water planning group, the development board shall  
 3-15 include discussion of the conflict and its resolution in the state  
 3-16 water plan that the development board provides to the governor, the  
 3-17 lieutenant governor, and the speaker of the house of  
 3-18 representatives under Section 16.051(e). If the groundwater  
 3-19 conservation district disagrees with the decision of the  
 3-20 development board under this subsection, the district may appeal  
 3-21 the decision to a district court in Travis County. Costs for the  
 3-22 appeal shall be set by the court hearing the appeal. An appeal  
 3-23 under this subsection is by trial de novo.

3-24 SECTION 3. Subsections (b) and (c), Section 36.108, Water  
 3-25 Code, are amended to read as follows:

3-26 (b) If two or more districts are located within the  
 3-27 boundaries of the same management area, each district shall  
 3-28 [~~prepare a comprehensive management plan as required by Section~~  
 3-29 ~~36.1071 covering that district's respective territory. On~~  
 3-30 ~~completion and approval of the plan as required by Section 36.1072,~~  
 3-31 ~~each district shall~~] forward a copy of that district's [the] new or  
 3-32 revised management plan to the other districts in the management  
 3-33 area. The boards of the districts shall consider the plans  
 3-34 individually and shall compare them to other management plans then  
 3-35 in force in the management area.

3-36 (c) The presiding officer, or the presiding officer's  
 3-37 designee, of each district located in whole or in part in the  
 3-38 management area shall meet at least annually to conduct joint  
 3-39 planning with the other districts in the management area and to  
 3-40 review the management plans and accomplishments for the management  
 3-41 area. In reviewing the management plans, the districts shall  
 3-42 consider:

3-43 (1) the goals of each management plan and its impact on  
 3-44 planning throughout the management area;

3-45 (2) the effectiveness of the measures established by  
 3-46 each district's management plan for conserving and protecting  
 3-47 groundwater and preventing waste, and the effectiveness of these  
 3-48 measures in the management area generally;

3-49 (3) any other matters that the boards consider  
 3-50 relevant to the protection and conservation of groundwater and the  
 3-51 prevention of waste in the management area; and

3-52 (4) the degree to which each management plan achieves  
 3-53 the desired future conditions established during the joint planning  
 3-54 process.

3-55 SECTION 4. Subsection (d), Section 36.113, Water Code, is  
 3-56 amended to read as follows:

3-57 (d) Before granting or denying a permit or permit amendment,  
 3-58 the district shall consider whether:

3-59 (1) the application conforms to the requirements  
 3-60 prescribed by this chapter and is accompanied by the prescribed  
 3-61 fees;

3-62 (2) the proposed use of water unreasonably affects  
 3-63 existing groundwater and surface water resources or existing permit  
 3-64 holders;

3-65 (3) the proposed use of water is dedicated to any  
 3-66 beneficial use;

3-67 (4) the proposed use of water is consistent with the  
 3-68 district's approved [~~certified water~~] management plan;

3-69 (5) if the well will be located in the Hill Country

4-1 Priority Groundwater Management Area, the proposed use of water  
4-2 from the well is wholly or partly to provide water to a pond, lake,  
4-3 or reservoir to enhance the appearance of the landscape;

4-4 (6) the applicant has agreed to avoid waste and  
4-5 achieve water conservation; and

4-6 (7) the applicant has agreed that reasonable diligence  
4-7 will be used to protect groundwater quality and that the applicant  
4-8 will follow well plugging guidelines at the time of well closure.

4-9 SECTION 5. Subsection (b), Section 36.116, Water Code, is  
4-10 amended to read as follows:

4-11 (b) In promulgating any rules limiting groundwater  
4-12 production, the district may preserve historic or existing use  
4-13 before the effective date of the rules to the maximum extent  
4-14 practicable consistent with the district's [~~comprehensive~~]  
4-15 management plan under Section 36.1071 and as provided by Section  
4-16 36.113.

4-17 SECTION 6. Subsection (f), Section 36.122, Water Code, is  
4-18 amended to read as follows:

4-19 (f) In reviewing a proposed transfer of groundwater out of  
4-20 the district, the district shall consider:

4-21 (1) the availability of water in the district and in  
4-22 the proposed receiving area during the period for which the water  
4-23 supply is requested;

4-24 (2) the projected effect of the proposed transfer on  
4-25 aquifer conditions, depletion, subsidence, or effects on existing  
4-26 permit holders or other groundwater users within the district; and

4-27 (3) the approved regional water plan and approved  
4-28 [~~certified~~] district management plan.

4-29 SECTION 7. Section 36.207, Water Code, is amended to read as  
4-30 follows:

4-31 Sec. 36.207. USE OF PERMIT FEES AUTHORIZED BY SPECIAL LAW.  
4-32 A district may use funds obtained from permit fees collected  
4-33 pursuant to the special law governing the district for any purpose  
4-34 consistent with the district's approved [~~certified water~~]  
4-35 management plan including, without limitation, making grants,  
4-36 loans, or contractual payments to achieve, facilitate, or expedite  
4-37 reductions in groundwater pumping or the development or  
4-38 distribution of alternative water supplies.

4-39 SECTION 8. Section 36.301, Water Code, is amended to read as  
4-40 follows:

4-41 Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. If a  
4-42 district [~~board~~] fails to submit a management plan or to receive  
4-43 approval [~~certification~~] of its management plan under Section  
4-44 36.1072, or fails to submit or receive approval [~~certification~~]  
4-45 of an amendment to the management plan under Section 36.1073, the  
4-46 commission shall take appropriate action under Section 36.303.

4-47 SECTION 9. Section 36.3011, Water Code, is amended to read  
4-48 as follows:

4-49 Sec. 36.3011. FAILURE OF DISTRICT TO CONDUCT JOINT  
4-50 PLANNING. Not later than the 45th day after receiving the review  
4-51 panel's report under Section 36.108, the executive director or the  
4-52 commission shall take action to implement any or all of the panel's  
4-53 recommendations. The commission may take any action against a  
4-54 district it considers necessary in accordance with Section 36.303  
4-55 if the commission finds that:

4-56 (1) a district has failed to submit its management  
4-57 plan to the executive administrator;

4-58 (2) a district has failed to adopt rules;

4-59 (3) the rules adopted by the district are not designed  
4-60 to achieve the desired future condition of the groundwater  
4-61 resources in the groundwater management area; or

4-62 (4) the groundwater in the management area is not  
4-63 adequately protected by the rules adopted by the district, or the  
4-64 groundwater in the management area is not adequately protected  
4-65 because of the district's failure to enforce substantial compliance  
4-66 with its rules.

4-67 SECTION 10. This Act takes effect immediately if it  
4-68 receives a vote of two-thirds of all the members elected to each  
4-69 house, as provided by Section 39, Article III, Texas Constitution.

5-1 If this Act does not receive the vote necessary for immediate  
5-2 effect, this Act takes effect September 1, 2011.

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