

By: Hegar, Duncan

S.B. No. 1306

A BILL TO BE ENTITLED

AN ACT

relating to the procedures for and appeals of desired future conditions adopted by groundwater management areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (30) to read as follows:

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

SECTION 2. Section 36.063, Water Code, is amended to read as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided by Subsections (b) and (c), notice [~~Notice~~] of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

(b) At least 10 days before any meeting or hearing at which the board will consider or take public comments on the desired future condition for an aquifer, including a joint planning meeting under Section 36.108 attended by a district representative, the board must post notice that includes:

(1) the proposed desired future condition or

1 conditions and a list of any other agenda items;

2 (2) the date, time, and location of the meeting or
3 hearing;

4 (3) the name, telephone number, and address of the
5 person to whom questions or requests for additional information may
6 be submitted;

7 (4) the names of the other districts in the district's
8 management area; and

9 (5) information on how the public may submit comments.

10 (c) Notice of a meeting or hearing described by Subsection
11 (b) must be posted:

12 (1) in the district office;

13 (2) in the county courthouse of each county located
14 wholly or partly in the district;

15 (3) with the secretary of state; and

16 (4) on the district's Internet website, if the
17 district has an Internet website.

18 (d) The Texas Water Development Board by rule may adopt
19 additional notice provisions for a meeting described by Subsection
20 (b) to ensure reasonable notice to and comment from affected
21 stakeholders such as landowners, permit holders, local officials,
22 and other members of the public.

23 SECTION 3. Sections 36.1071(a) and (e), Water Code, are
24 amended to read as follows:

25 (a) Following notice and hearing, the district shall, in
26 coordination with surface water management entities on a regional
27 basis, develop a comprehensive management plan which addresses the

1 following management goals, as applicable:

- 2 (1) providing the most efficient use of groundwater;
- 3 (2) controlling and preventing waste of groundwater;
- 4 (3) controlling and preventing subsidence;
- 5 (4) addressing conjunctive surface water management
- 6 issues;
- 7 (5) addressing natural resource issues;
- 8 (6) addressing drought conditions;
- 9 (7) addressing conservation, recharge enhancement,
- 10 rainwater harvesting, precipitation enhancement, or brush control,
- 11 where appropriate and cost-effective; and
- 12 (8) addressing [~~in a quantitative manner~~] the desired
- 13 future conditions adopted by the district under Section 36.108 [~~of~~
- 14 ~~the groundwater resources~~].

15 (e) In the management plan described under Subsection (a),
16 the district shall:

17 (1) identify the performance standards and management
18 objectives under which the district will operate to achieve the
19 management goals identified under Subsection (a);

20 (2) specify, in as much detail as possible, the
21 actions, procedures, performance, and avoidance that are or may be
22 necessary to effect the plan, including specifications and proposed
23 rules;

24 (3) include estimates of the following:

25 (A) managed available groundwater in the
26 district based on the desired future condition adopted by rule
27 [~~established~~] under Section 36.108;

1 (B) the amount of groundwater being used within
2 the district on an annual basis;

3 (C) the annual amount of recharge from
4 precipitation, if any, to the groundwater resources within the
5 district;

6 (D) for each aquifer, the annual volume of water
7 that discharges from the aquifer to springs and any surface water
8 bodies, including lakes, streams, and rivers;

9 (E) the annual volume of flow into and out of the
10 district within each aquifer and between aquifers in the district,
11 if a groundwater availability model is available;

12 (F) the projected surface water supply in the
13 district according to the most recently adopted state water plan;
14 and

15 (G) the projected total demand for water in the
16 district according to the most recently adopted state water plan;
17 and

18 (4) consider the water supply needs and water
19 management strategies included in the adopted state water plan.

20 SECTION 4. Subchapter D, Chapter 36, Water Code, is amended
21 by amending Section 36.108 and adding Sections 36.1081, 36.1082,
22 36.1083, 36.1084, and 36.1085 to read as follows:

23 Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In
24 this section:

25 (1) "Development [,"development] board" means the
26 Texas Water Development Board.

27 (2) "District representative" means the presiding

1 officer or the presiding officer's designee for any district
2 located wholly or partly in the management area.

3 (b) If two or more districts are located within the
4 boundaries of the same management area, each district shall prepare
5 a comprehensive management plan as required by Section 36.1071
6 covering that district's respective territory. On completion and
7 approval of the plan as required by Section 36.1072, each district
8 shall forward a copy of the new or revised management plan to the
9 other districts in the management area. The boards of the districts
10 shall consider the plans individually and shall compare them to
11 other management plans then in force in the management area.

12 (c) The district representatives [~~The presiding officer, or~~
13 ~~the presiding officer's designee, of each district located in whole~~
14 ~~or in part in the management area~~] shall meet at least annually to
15 conduct joint planning with the other districts in the management
16 area and to review the management plans, the [~~and~~] accomplishments
17 of [~~for~~] the management area, and proposals to adopt new or amend
18 existing desired future conditions. In reviewing the management
19 plans, the districts shall consider:

20 (1) the goals of each management plan and its impact on
21 planning throughout the management area;

22 (2) the effectiveness of the measures established by
23 each management plan for conserving and protecting groundwater and
24 preventing waste, and the effectiveness of these measures in the
25 management area generally;

26 (3) any other matters that the boards consider
27 relevant to the protection and conservation of groundwater and the

1 prevention of waste in the management area; and

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

5 (d) Not later than September 1, 2010, and every five years
6 thereafter, the districts shall consider groundwater availability
7 models and other data or information for the management area and
8 shall propose for adoption [~~establish~~] desired future conditions
9 for the relevant aquifers within the management area. Before
10 voting on the proposed [~~In establishing the~~] desired future
11 conditions of the aquifers under Subsection (d-2) [~~this section~~],
12 the districts shall consider:

13 (1) aquifer uses or conditions within the management
14 area, including conditions that differ substantially from one
15 geographic area to another;

16 (2) the water supply needs and water management
17 strategies included in the state water plan;

18 (3) hydrological conditions, including for each
19 aquifer in the management area the total estimated recoverable
20 storage as provided by the executive administrator, and the average
21 annual recharge, inflows, and discharge;

22 (4) other environmental impacts, including impacts on
23 spring flow and other interactions between groundwater and surface
24 water;

25 (5) the impact on subsidence;

26 (6) socioeconomic impacts reasonably expected to
27 occur;

1 (7) the impact on the interests and rights in private
2 property, including ownership and the rights of management area
3 landowners and their lessees and assigns in groundwater as
4 recognized under Section 36.002;

5 (8) whether the desired future conditions are
6 physically possible; and

7 (9) any other information relevant to the specific
8 desired future conditions [~~uses or conditions of an aquifer within~~
9 ~~the management area that differ substantially from one geographic~~
10 ~~area to another~~].

11 (d-1) The districts may establish different desired future
12 conditions for:

13 (1) each aquifer, subdivision of an aquifer, or
14 geologic strata located in whole or in part within the boundaries of
15 the management area; or

16 (2) each geographic area overlying an aquifer in whole
17 or in part or subdivision of an aquifer within the boundaries of the
18 management area.

19 (d-2) [~~(d-1)~~] The desired future conditions proposed
20 [~~established~~] under Subsection (d) must be approved [~~adopted~~] by a
21 two-thirds vote of all the district representatives for
22 distribution to the districts in the management area. A 30-day
23 period for public comments begins on the day the proposed desired
24 future conditions are mailed to the districts. During the public
25 comment period and after posting notice as required by Section
26 36.063, each district shall hold a public hearing on the proposed
27 desired future conditions relevant to that district. During the

1 public comment period, the district shall make available in its
2 office a copy of the proposed desired future conditions and any
3 supporting materials, such as the documentation of factors
4 considered under Subsection (d) and groundwater availability model
5 run results. After the public hearing, the district shall prepare
6 for consideration at the next joint planning meeting a district
7 report that includes comments received, suggested revisions to the
8 proposed desired future conditions, and the basis for the revisions
9 ~~[present at a meeting:~~

10 ~~[(1) at which at least two-thirds of the districts~~
11 ~~located in whole or in part in the management area have a voting~~
12 ~~representative in attendance, and~~

13 ~~[(2) for which all districts located in whole or in~~
14 ~~part in the management area provide public notice in accordance~~
15 ~~with Chapter 551, Government Code.~~

16 ~~[(d-2) Each district in the management area shall ensure~~
17 ~~that its management plan contains goals and objectives consistent~~
18 ~~with achieving the desired future conditions of the relevant~~
19 ~~aquifers as adopted during the joint planning process].~~

20 (d-3) After the districts have submitted their district
21 reports under Subsection (d-2), the district representatives shall
22 reconvene to review the reports, consider any district's suggested
23 revisions to the proposed desired future conditions, and finally
24 adopt the desired future conditions for the management area. The
25 desired future conditions must be adopted as a resolution by a
26 two-thirds vote of all the district representatives. The district
27 representatives shall produce a desired future conditions

1 explanatory report for the management area and submit to the
2 development board and each district in the management area proof
3 that notice was posted for the adoption meeting, a copy of the
4 resolution, and a copy of the explanatory report. The report must:

5 (1) identify each desired future condition;

6 (2) provide the policy and technical justifications
7 for each desired future condition;

8 (3) include documentation that the factors under
9 Subsection (d) were considered by the districts and a discussion of
10 how the adopted desired future conditions impact each factor;

11 (4) list other desired future condition options
12 considered and the reasons why those options were not adopted; and

13 (5) discuss reasons why recommendations made by
14 advisory committees and public comments received by the districts
15 were or were not incorporated into the desired future conditions.

16 (d-4) As soon as possible after a district receives the
17 desired future conditions resolution and explanatory report under
18 Subsection (d-3), the district by rule shall adopt the desired
19 future conditions in the resolution and report that apply to the
20 district.

21 (d-5) A district's adoption of a desired future condition
22 may be appealed in district court in the manner provided under
23 Subchapter H for a challenge to a district rule.

24 (e) Except as provided by this section, a [A] joint meeting
25 under this section must be held in accordance with Chapter 551,
26 Government Code. Each district shall comply with Chapter 552,
27 Government Code. Each district in the management area shall post

1 uniform notice [~~Notice~~] of the meeting [~~shall be given~~] in
2 accordance with Section 36.063 [~~the requirements for notice of~~
3 ~~district board of directors meetings under that Act~~].

4 Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT
5 PLANNING. (a) On request, the commission and the Texas Water
6 Development Board shall make technical staff available to serve in
7 a nonvoting advisory capacity to assist with the development of
8 desired future conditions during the joint planning process under
9 Section 36.108.

10 (b) During the joint planning process under Section 36.108,
11 the district representatives may appoint and convene nonvoting
12 advisory subcommittees who represent social, governmental,
13 environmental, or economic interests to assist in the development
14 of desired future conditions.

15 Sec. 36.1082. PETITION FOR INQUIRY. (a) In this section,
16 "affected person" means, with respect to a management area:

17 (1) an owner of land in the management area;
18 (2) a district in or adjacent to the management area;
19 (3) a regional water planning group with a water
20 management strategy in the management area;

21 (4) a person who holds or is applying for a permit from
22 a district in the management area;

23 (5) a person who has groundwater rights in the
24 management area; or

25 (6) any other person defined as affected by commission
26 rule.

27 (b) An affected person [~~(f) A district or person with a~~

1 ~~legally defined interest in the groundwater within the management~~
2 ~~area]~~ may file a petition with the commission requesting an inquiry
3 for any of the following reasons:

4 (1) a district fails to submit its management plan to
5 the executive administrator;

6 (2) [if] a district fails [or districts refused] to
7 participate [join] in the joint planning process under Section
8 36.108;

9 (3) a district fails to adopt rules;

10 (4) a district fails to adopt the applicable desired
11 future conditions adopted by the management area at a joint
12 meeting;

13 (5) a district fails to update its management plan
14 before the second anniversary of the adoption of desired future
15 conditions by the management area;

16 (6) a district fails to update its rules to implement
17 the applicable desired future conditions before the first
18 anniversary of the date it updated its management plan with the
19 adopted desired future conditions;

20 (7) [or the process failed to result in adequate
21 planning, including the establishment of reasonable future desired
22 conditions of the aquifers, and the petition provides evidence
23 that:

24 ~~[(1) a district in the groundwater management area has~~
25 ~~failed to adopt rules,~~

26 ~~[(2)]~~ the rules adopted by a district are not designed
27 to achieve the desired future conditions adopted by ~~[condition of~~

1 ~~the groundwater resources in~~ the [~~groundwater~~] management area
2 [~~established~~] during the joint planning process;

3 (8) [~~(3)~~] the groundwater in the management area is
4 not adequately protected by the rules adopted by a district; or

5 (9) [~~(4)~~] the groundwater in the [~~groundwater~~]
6 management area is not adequately protected due to the failure of a
7 district to enforce substantial compliance with its rules.

8 (c) [~~(g)~~] Not later than the 90th day after the date the
9 petition is filed, the commission shall review the petition and
10 either:

11 (1) dismiss the petition if the commission finds that
12 the evidence is not adequate to show that any of the conditions
13 alleged in the petition exist; or

14 (2) select a review panel as provided in Subsection
15 (d) [~~(h)~~].

16 (d) [~~(h)~~] If the petition is not dismissed under Subsection
17 (c) [~~(g)~~], the commission shall appoint a review panel consisting
18 of a chairman and four other members. A director or general manager
19 of a district located outside the [~~groundwater~~] management area
20 that is the subject of the petition may be appointed to the review
21 panel. The commission may not appoint more than two members of the
22 review panel from any one district. The commission also shall
23 appoint a disinterested person to serve as a nonvoting recording
24 secretary for the review panel. The recording secretary may be an
25 employee of the commission. The recording secretary shall record
26 and document the proceedings of the panel.

27 (e) [~~(i)~~] Not later than the 120th day after appointment,

1 the review panel shall review the petition and any evidence
2 relevant to the petition and, in a public meeting, consider and
3 adopt a report to be submitted to the commission. The commission
4 may direct the review panel to conduct public hearings at a location
5 in the [~~groundwater~~] management area to take evidence on the
6 petition. The review panel may attempt to negotiate a settlement or
7 resolve the dispute by any lawful means.

8 (f) [~~(j)~~] In its report, the review panel shall include:

9 (1) a summary of all evidence taken in any hearing on
10 the petition;

11 (2) a list of findings and recommended actions
12 appropriate for the commission to take and the reasons it finds
13 those actions appropriate; and

14 (3) any other information the panel considers
15 appropriate.

16 (g) [~~(k)~~] The review panel shall submit its report to the
17 commission. The commission may take action under Section 36.3011.

18 Sec. 36.1083. MANAGED AVAILABLE GROUNDWATER. The Texas
19 Water Development Board shall require the [~~(1)~~] ~~A person with a~~
20 ~~legally defined interest in the groundwater in the groundwater~~
21 ~~management area, a district in or adjacent to the groundwater~~
22 ~~management area, or a regional water planning group for a region in~~
23 ~~the groundwater management area may file a petition with the~~
24 ~~development board appealing the approval of the desired future~~
25 ~~conditions of the groundwater resources established under this~~
26 ~~section. The petition must provide evidence that the districts did~~
27 ~~not establish a reasonable desired future condition of the~~

1 ~~groundwater resources in the groundwater management area.~~

2 ~~[(m) The development board shall review the petition and any~~
3 ~~evidence relevant to the petition. The development board shall~~
4 ~~hold at least one hearing at a central location in the management~~
5 ~~area to take testimony on the petition. The development board may~~
6 ~~delegate responsibility for a hearing to the executive~~
7 ~~administrator or to a person designated by the executive~~
8 ~~administrator. If the development board finds that the conditions~~
9 ~~require revision, the development board shall submit a report to~~
10 ~~the districts that includes a list of findings and recommended~~
11 ~~revisions to the desired future conditions of the groundwater~~
12 ~~resources.~~

13 ~~[(n) The districts shall prepare a revised plan in~~
14 ~~accordance with development board recommendations and hold, after~~
15 ~~notice, at least one public hearing at a central location in the~~
16 ~~groundwater management area. After consideration of all public and~~
17 ~~development board comments, the districts shall revise the~~
18 ~~conditions and submit the conditions to the development board for~~
19 ~~review.~~

20 ~~[(o) The] districts in a management area to ~~[shall]~~ submit~~

21 ~~the desired future conditions resolution adopted ~~[established]~~~~
22 ~~under Section 36.108, proof that notice was posted for the adoption~~
23 ~~meeting, and the desired future conditions explanatory report ~~[this~~~~
24 ~~section] to the executive administrator. The executive~~
25 ~~administrator shall provide each district and regional water~~
26 ~~planning group located wholly or partly in the management area with~~
27 ~~the managed available groundwater in the management area based upon~~

1 those [~~the~~] desired future conditions [~~condition of the groundwater~~
2 ~~resources established under this section~~].

3 Sec. 36.1084. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each
4 district in the management area shall ensure that its management
5 plan contains goals and objectives consistent with achieving the
6 desired future conditions of the relevant aquifers as adopted
7 during the joint planning process.

8 Sec. 36.1085. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT
9 AREA. [~~(p)~~] Districts located within the same [~~groundwater~~]
10 management areas or in adjacent management areas may contract to
11 jointly conduct studies or research, or to construct projects,
12 under terms and conditions that the districts consider beneficial.
13 These joint efforts may include studies of groundwater availability
14 and quality, aquifer modeling, and the interaction of groundwater
15 and surface water; educational programs; the purchase and sharing
16 of equipment; and the implementation of projects to make
17 groundwater available, including aquifer recharge, brush control,
18 weather modification, desalination, regionalization, and treatment
19 or conveyance facilities. The districts may contract under their
20 existing authorizations including those of Chapter 791, Government
21 Code, if their contracting authority is not limited by Sections
22 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

23 SECTION 5. Section 36.3011, Water Code, is amended to read
24 as follows:

25 Sec. 36.3011. COMMISSION ACTION REGARDING [~~FAILURE OF~~]
26 DISTRICT DUTIES [~~TO CONDUCT JOINT PLANNING~~]. Not later than the
27 45th day after receiving the review panel's report under Section

1 36.1082 [~~36.108~~], the executive director or the commission shall
2 take action to implement any or all of the panel's recommendations.
3 The commission may take any action against a district it considers
4 necessary in accordance with Section 36.303 if the commission finds
5 that:

6 (1) the [~~a~~] district has failed to submit its
7 management plan to the executive administrator;

8 (2) the district has failed to participate in the
9 joint planning process under Section 36.108;

10 (3) the [~~(2)—a~~] district has failed to adopt rules;

11 (4) the district has failed to adopt the applicable
12 desired future conditions adopted by the management area at a joint
13 meeting;

14 (5) the district has failed to update its management
15 plan before the second anniversary of the adoption of desired
16 future conditions by the management area;

17 (6) the district has failed to update its rules to
18 implement the applicable desired future conditions before the first
19 anniversary of the date it updated its management plan with the
20 adopted desired future conditions;

21 (7) [~~(3)~~] the rules adopted by the district are not
22 designed to achieve the desired future conditions adopted by
23 [~~condition of the groundwater resources in~~] the [~~groundwater~~]
24 management area during the joint planning process; [~~or~~]

25 (8) [~~(4)~~] the groundwater in the management area is
26 not adequately protected by the rules adopted by the district; [~~7~~]

27 or

1 (9) the groundwater in the management area is not
2 adequately protected because of the district's failure to enforce
3 substantial compliance with its rules.

4 SECTION 6. The notice provisions of Sections 36.063(b) and
5 (c), Water Code, as added by this Act, apply only to a meeting or
6 hearing of a groundwater conservation district or a joint planning
7 meeting of groundwater conservation districts held on or after the
8 effective date of this Act. A meeting or hearing held before the
9 effective date of this Act is subject to the notice provisions in
10 effect at the time of the meeting or hearing, and those provisions
11 are continued in effect for that purpose.

12 SECTION 7. The requirement that a groundwater conservation
13 district's management plan under Section 36.1071(e), Water Code, as
14 amended by this Act, include the desired future conditions adopted
15 under Section 36.108, Water Code, as amended by this Act, for
16 submission to the executive administrator of the Texas Water
17 Development Board before the plan is considered administratively
18 complete applies only to a district management plan submitted to
19 the executive administrator on or after the effective date of this
20 Act. A management plan submitted before the effective date of this
21 Act is governed by the law in effect on the date the plan was
22 submitted, and that law is continued in effect for that purpose.

23 SECTION 8. The procedures for the adoption and reporting of
24 desired future conditions of groundwater resources in a management
25 area under Section 36.108, Water Code, as amended by this Act, and
26 36.1083, Water Code, as added by this Act, apply only to the
27 adoption of desired future conditions that occurs on or after the

1 effective date of this Act. Desired future conditions adopted
2 before the effective date of this Act are governed by the law in
3 effect on the date the desired future conditions were adopted, and
4 that law is continued in effect for that purpose.

5 SECTION 9. A petition filed and pending on the effective
6 date of this Act before the Texas Water Development Board to appeal
7 the adoption of desired future conditions by a groundwater
8 management area under former Section 36.108(1), Water Code, shall
9 be handled by the Texas Water Development Board in compliance with
10 Sections 36.108(1), (m), and (n), Water Code, as those sections
11 existed before the effective date of this Act.

12 SECTION 10. This Act takes effect September 1, 2011.