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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 18, 2011

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TO: Honorable Allan Ritter, Chair, House Committee on Natural Resources

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **SB907** by Seliger (Relating to the management, operation, rulemaking authority, and oversight of groundwater conservation districts.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend and add Water Code provisions for adoption, approval, implementation, and violation of groundwater conservation district (district) management plans. The bill would establish procedures for the appeal of desired future conditions to a district court and for filing petitions to the Texas Commission on Environmental Quality (TCEQ) for a request to review panel inquiry into a district's actions.

Before a district's first management plan is approved by the executive administrator of the Texas Water Development Board (TWDB), a district could take certain actions, including adopting rules governing procedures before the district's board; but would not authorize a district to adopt rules limiting the production of groundwater from wells other than rules to prevent the waste of groundwater or require the beneficial use of the groundwater. A district would be required to adopt or amend rules limiting the production or allocation of groundwater from wells as necessary to implement the management plan and achieve the applicable desired future conditions. The bill would prohibit a district from adopting or amending rules limiting the production or allocation of groundwater if the district fails to adopt the initial management plan; readopt the management plan within a five-year period; or receive approval.

The bill would provide that within 60 days of finding a district management plan to be administratively complete, the TWDB would be required to perform a review of the district management plan goals to determine if they are consistent with the achievement of the applicable desired future conditions. The TWDB would be authorized to request additional information, recommend the district make substantial changes to the management plan or approve the management plan. The bill would establish new requirements for a district to prepare revised desired future conditions if the revisions are recommended by the TWDB.

The bill would require TCEQ to take appropriate action if a district does not comply with the requirements for a management plan. Under the present law, TCEQ is not authorized to take action if a district adopts or amends a rule without an approved management plan.

The bill would include the definition for desired future conditions (DFCs) and would provide a list of factors that district representatives must consider for the development of DFCs, including notice requirements for district representative meetings to adopt or amend DFCs. Proposed DFCs would be subject to a 30 to 90 day public comment period, and each district must make all relevant material used to develop the proposed DFCs available for public inspection and hold a public hearing. The bill would require a district to produce a DFC explanatory report for the groundwater management area and submit the report and proof of notice to the TWDB and each district.

The bill would require each district to adopt applicable DFCs in the resolution and report, and would authorize district representatives to elect one district to be responsible for providing notice. The bill

would require TCEQ and the TWDB to make technical staff available in a nonvoting advisory capacity upon request.

The bill would expand the number of individuals deemed an affected person with the ability to petition for inquiry in regard to the management plan and adoption of future desired conditions and would establish procedures for administrative appeal of desired future conditions. An affected person could file a petition requesting a district contract with the State Office of Administrative Hearings (SOAH) to appeal the desired future conditions and would require an affected person to pay all cost associated with the hearing. The bill would provide that the TWDB must provide a technical analysis for the hearing within 120 days if requested by the administrative law judge (ALJ). After the ALJ files the proposal for decision with the district, the district must issue a final order stating the district's decisions on the contested matter. If a district determines that a DFC is unreasonable, the districts in the groundwater management area must reconvene within 30 days of the date of the order to revise the DFC. TCEQ would have the authority to take action against a district if a district fails to meet the specified requirements.

The bill would require a district to provide DFC information to the TWDB within 60 days and would require the TWDB to provide managed available groundwater values based on the DFCs to the districts and the regional water planning groups. A district's management plan goals and objectives must be consistent with achieving the DFCs.

The Office of Administrative Hearings anticipates that any additional work resulting from the passage of the bill could be reasonably absorbed within current resources. Additional work from appellate hearings would result in approximately 500-1000 hours of case related time per year.

According to the Texas Water Development Board, the Office of Court Administration and the Texas Commission on Environmental Quality, no significant fiscal impact is anticipated.

Local Government Impact

Several groundwater conservation districts reported there could be estimated costs of $15,000 to each district due to additional public notices and hearings, and additional expenses for the groundwater management area. The amounts would result in 16 percent to 60 percent of the total budget for these districts.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality, 116 Sunset Advisory Commission

LBB Staff: JOB, SZ, TP