

BILL ANALYSIS

C.S.S.B. 1511
By: Perry
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note the need to update the state and regional water planning process in order to provide for better efficiency, cooperation, and transparency. C.S.S.B. 1511 seeks to address this need by revising provisions relating to water planning.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1511 amends the Water Code to specify that the rules the Texas Water Development Board (TWDB) is required to adopt regarding the use of money in the state water implementation fund for Texas include rules that specify the manner for the prioritization of applicable projects by regional water planning groups. The bill includes among the required contents of the state water plan, with respect to projects included in the preceding state water plan that were given a high priority by the TWDB for purposes of providing financial assistance under the fund, an assessment of the extent to which the projects were implemented in the decade in which they were needed and an analysis of any impediments to the implementation of any projects that were not implemented in the decade in which they were needed.

C.S.S.B. 1511 requires the TWDB, at an appropriate time in each five-year cycle for the adoption of a new state water plan, to appoint an interregional planning council that consists of one member of each regional water planning group and specifies that the members serve on the council until a new state water plan is adopted. The bill requires each regional water planning group to nominate one or more members for appointment to the council, requires the TWDB to consider the nominations in making appointments to the council, and requires the TWDB to appoint the members of the initial council not later than September 1, 2018. The bill establishes as the council's purposes the improvement of coordination among the regional water planning groups, and between each regional water planning group and the TWDB, in meeting the goals of the state water planning process and the water needs of the state as a whole; the facilitation of dialogue regarding water management strategies that could affect multiple regional water planning areas; and the sharing of best practices regarding operation of the regional water planning process. The bill requires the council to hold at least one public meeting and prepare a report to the TWDB on the council's work.

C.S.S.B. 1511 includes representatives of the State Soil and Water Conservation Board as ex

officio members of each regional water planning group. The bill expands the required contents of a regional water planning group's regional water plan that is submitted to the TWDB to include identification of unnecessary or counterproductive variations in specific drought response strategies, including outdoor watering restrictions, among user groups in the regional water planning area that may confuse the public or otherwise impede drought response efforts; if the regional water planning area has significant identified water needs, provision of a specific assessment of the potential for aquifer storage and recovery projects to meet those needs; the setting of one or more specific goals for gallons of water use per capita per day in each decade of the period covered by the plan for the municipal water user groups in the regional water planning area; and an assessment of the progress of the regional water planning area in encouraging cooperation between water user groups for the purpose of achieving economies of scale and otherwise incentivizing strategies that benefit the entire region. The bill specifies that the central location at which certain public meetings and hearings are held by a regional water planning group with regard to the development or revision of a regional water plan, or at which certain public hearings are held by a groundwater conservation district with regard to certain revisions of the district's management plan, is a central location readily accessible to the public within the regional water planning area or within the district, as applicable.

C.S.S.B. 1511 requires a regional water planning group to amend a regional water plan that has been approved by the TWDB and includes a water management strategy or project that ceases to be feasible to exclude that water management strategy or project and consider amending the plan to include a feasible water management strategy or project in order to meet the need that was to be addressed by the infeasible water management strategy or project. The bill establishes that a water management strategy or project is considered infeasible if the proposed sponsor of the water management strategy or project has not taken an affirmative vote or other action to make expenditures necessary to construct or file applications for permits required in connection with the implementation of the water management strategy or project under federal or state law on a schedule that is consistent with the completion of the implementation of the water management strategy or project by the time the water management strategy or project is projected by the regional water plan or the state water plan to be needed.

C.S.S.B. 1511 includes as legislative recommendations a regional water planning group should make in conjunction with the submission of an adopted regional water plan to the TWDB for approval and inclusion in the state water plan recommendations, if any, for changes that the members of the planning group believe would improve the water planning process. The bill provides an exception to the requirement that regional water plans be submitted to the TWDB at least every five years that authorizes a regional water planning group to elect to implement simplified planning, not more often than every other five-year planning cycle and in accordance with guidance provided by the TWDB, if the group, based on an analysis by the group using updated information relating to groundwater and surface water availability, determines that no significant changes to water availability, water supplies, or water demands in the regional water planning area have occurred since the most recent regional water plan was adopted. The bill establishes that, at a minimum, simplified planning requires updating information in the regional water plan relating to groundwater and surface water availability, meeting any new statutory or other planning requirements that come into effect during each five-year planning cycle, and formally adopting and submitting the regional water plan for approval.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1511 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 15.439(a), Water Code, is amended.

SECTION 2. Section 16.051(a-1), Water Code, is amended.

No equivalent provision.

SECTION 3. Section 16.053(c), Water Code, is amended.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Subchapter C, Chapter 16, Water Code, is amended by adding Section 16.052 to read as follows:

Sec. 16.052. INTERREGIONAL PLANNING COUNCIL. (a) The board, at an appropriate time in each five-year cycle for the adoption of a new state water plan, shall appoint an interregional planning council. The members of the council serve until a new state water plan is adopted.

(b) The council consists of one member of each regional water planning group. Each regional water planning group shall nominate one or more members for appointment to the council, and the board shall consider the nominations in making appointments to the council.

(c) The purposes of the council are to:

(1) improve coordination among the regional water planning groups, and between each regional water planning group and the board, in meeting the goals of the state water planning process and the water needs of the state as a whole;

(2) facilitate dialogue regarding water management strategies that could affect multiple regional water planning areas; and
(3) share best practices regarding operation of the regional water planning process.

(d) The council shall:

(1) hold at least one public meeting; and
(2) prepare a report to the board on the council's work.

SECTION 4. Same as engrossed version.

SECTION 5. Section 16.053(e), Water Code, as amended by Chapters 756 (H.B. 2031), 990 (H.B. 30), and 1180 (S.B. 1101), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan; provided, however, that if no groundwater conservation district exists within the area of the regional water planning group, the regional water planning group shall determine the supply of groundwater for regional planning purposes; the Texas Water Development Board shall review and approve, prior to inclusion in the regional water plan, that the groundwater supply for the regional planning group without a groundwater conservation district in its area is physically compatible, using the board's groundwater availability models, with the desired future conditions adopted under Section 36.108 for the relevant aquifers in the groundwater management area that are regulated by groundwater conservation districts;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; ~~and~~

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water; and

(E) unnecessary or counterproductive variations in specific drought response strategies, including outdoor watering

restrictions, among user groups in the regional water planning area that may confuse the public or otherwise impede drought response efforts;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region and potential impacts on public health, safety, or welfare in this state;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements;

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; and

(J) opportunities for and the benefits of developing large-scale desalination facilities for;

(i) marine seawater that serve local or regional entities; and

(ii) [~~(J)~~ opportunities for and the benefits of

~~developing large-scale desalination facilities for seawater or~~ brackish groundwater that serve local or regional brackish groundwater production zones identified and designated under Section 16.060(b)(5);

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists;

(8) describes the impact of proposed water projects on water quality; ~~and~~

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands;

(10) if the regional water planning area has significant identified water needs, provides a specific assessment of the potential for aquifer storage and recovery projects to meet those needs;

(11) sets one or more specific goals for gallons of water use per capita per day in each decade of the period covered by the plan for the municipal water user groups in the regional water planning area; and

(12) assesses the progress of the regional water planning area in encouraging cooperation between water user groups for the purpose of achieving economies of scale and otherwise incentivizing strategies that benefit the entire region.

SECTION 4. Sections 16.053(h)(1), (3), (6), and (10), Water Code, are amended to read as follows:

(1) Prior to the preparation of the regional water plan, the regional water planning group shall, after notice, hold at least one public meeting at some central location readily accessible to the public within the regional water planning area to gather suggestions and recommendations from the public as to issues that should be addressed in the plan or provisions that should be considered for inclusion in the plan.

SECTION 6. Sections 16.053(h)(1), (3), (6), and (10), Water Code, are amended to read as follows:

(1) Prior to the preparation of the regional water plan, the regional water planning group shall, after notice, hold at least one public meeting at some central location readily accessible to the public within the regional water planning area to gather suggestions and recommendations from the public as to issues that should be addressed in the plan or provisions that should be considered for inclusion in the plan.

(3) After the regional water plan is initially prepared, the regional water planning group shall, after notice, hold at least one public hearing at some central location readily accessible to the public within the regional water planning area. The group shall make copies of the plan available for public inspection at least one month before the hearing by providing a copy of the plan in the county courthouse and at least one public library of each county having land in the region. Notice for the hearing shall include a listing of these and any other location where the plan is available for review.

(6) If an interregional conflict exists, the board shall facilitate coordination between the involved regions to resolve the conflict. If conflict remains, the board shall resolve the conflict. On resolution of the conflict, the involved regional water planning groups shall prepare revisions to their respective plans and hold, after notice, at least one public hearing at some central location readily accessible to the public within their respective regional water planning areas. The regional water planning groups shall consider all public and board comments; prepare, revise, and adopt their respective plans; and submit their plans to the board for approval and inclusion in the state water plan.

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. The regional water planning group shall consider amending the approved regional water plan to include a feasible water management strategy or project in order to meet the need that was to be addressed by an infeasible water management strategy or project, and the regional water planning group shall exclude that infeasible water management strategy or project from consideration in the regional water plan currently under development if, after the original plan has been approved by the board, the plan includes a water management strategy or project that becomes no longer feasible.

(3) After the regional water plan is initially prepared, the regional water planning group shall, after notice, hold at least one public hearing at some central location readily accessible to the public within the regional water planning area. The group shall make copies of the plan available for public inspection at least one month before the hearing by providing a copy of the plan in the county courthouse and at least one public library of each county having land in the region. Notice for the hearing shall include a listing of these and any other location where the plan is available for review.

(6) If an interregional conflict exists, the board shall facilitate coordination between the involved regions to resolve the conflict. If conflict remains, the board shall resolve the conflict. On resolution of the conflict, the involved regional water planning groups shall prepare revisions to their respective plans and hold, after notice, at least one public hearing at some central location readily accessible to the public within their respective regional water planning areas. The regional water planning groups shall consider all public and board comments; prepare, revise, and adopt their respective plans; and submit their plans to the board for approval and inclusion in the state water plan.

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. If, after the regional water plan has been approved by the board, the plan includes a water management strategy or project that ceases to be feasible, the regional water planning group shall amend the plan to exclude that water management strategy or project and shall consider amending the plan to include a feasible water management strategy or project in order to meet the need that was to be addressed by the infeasible water management strategy or project. For purposes of this subdivision, a water management strategy or project is considered infeasible if the proposed sponsor of the water management strategy or project has not taken an affirmative vote or other action to make expenditures necessary to construct or file applications for permits required in connection with the implementation of the water management

Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

SECTION 5. Sections 16.053(i), (p-1), and (p-2), Water Code, are amended to read as follows:

(i) The regional water planning groups shall submit their adopted regional water plans to the board by January 5, 2001, for approval and inclusion in the state water plan. In conjunction with the submission of regional water plans, each planning group should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region.

Subsequent regional water plans shall be submitted at least every five years thereafter, except that a regional water planning group may elect to implement simplified planning, no more often than every other five-year planning cycle, and in accordance with guidance to be provided by the board, if the group determines that, based on its own initial analyses using updated groundwater and surface water availability information, there are no significant changes to the water availability, water supplies, or water demands in the regional water planning area.

At a minimum, simplified planning will require updating groundwater and surface water availability values in the regional water plan, meeting any other new statutory or other planning requirements that come into effect during each five-year planning cycle, and formally adopting and submitting the regional water plan for approval. Public participation for revised regional plans shall follow the procedures under Subsection (h).

(p-1) If the development board determines that resolution of the conflict requires a revision of an approved regional water plan,

strategy or project under federal or state law on a schedule that is consistent with the completion of the implementation of the water management strategy or project by the time the water management strategy or project is projected by the regional water plan or the state water plan to be needed. Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

SECTION 7. Sections 16.053(i), (p-1), and (p-2), Water Code, are amended to read as follows:

(i) The regional water planning groups shall submit their adopted regional water plans to the board by January 5, 2001, for approval and inclusion in the state water plan. In conjunction with the submission of regional water plans, each planning group should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region or for any other changes that the members of the planning group believe would improve the water planning process. Subsequent regional water plans shall be submitted at least every five years thereafter, except that a regional water planning group may elect to implement simplified planning, not more often than every other five-year planning cycle and in accordance with guidance provided by the board, if the group, based on an analysis by the group using updated information relating to groundwater and surface water availability, determines that no significant changes to water availability, water supplies, or water demands in the regional water planning area have occurred since the most recent regional water plan was adopted.

At a minimum, simplified planning requires updating information in the regional water plan relating to groundwater and surface water availability, meeting any new statutory or other planning requirements that come into effect during each five-year planning cycle, and formally adopting and submitting the regional water plan for approval. Public participation for revised regional plans shall follow the procedures under Subsection (h).

(p-1) If the development board determines that resolution of the conflict requires a revision of an approved regional water plan,

the development board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the regional water planning area. The regional water planning group shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval and inclusion in the state water plan.

(p-2) If the development board determines that resolution of the conflict requires a revision of the district's approved groundwater conservation district management plan, the development board shall provide information to the district. The groundwater district shall prepare any revisions to its plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the district. The groundwater district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board.

No equivalent provision.

No equivalent provision.

SECTION 6. This Act takes effect September 1, 2017.

the development board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the regional water planning area. The regional water planning group shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval and inclusion in the state water plan.

(p-2) If the development board determines that resolution of the conflict requires a revision of the district's approved groundwater conservation district management plan, the development board shall provide information to the district. The groundwater district shall prepare any revisions to its plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the district. The groundwater district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board.

SECTION 8. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. The Texas Water Development Board shall appoint the members of the initial interregional planning council under Section 16.052, Water Code, as added by this Act, not later than September 1, 2018.

SECTION 10. Same as engrossed version.