

By: Creighton

S.B. No. 1528

A BILL TO BE ENTITLED

AN ACT

relating to the joint planning process for groundwater management.

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

SECTION 1. 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 most recent deadline for [date] the board to adopt the [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

1 of groundwater for regional planning purposes; the Texas Water
2 Development Board shall review and approve, prior to inclusion in
3 the regional water plan, that the groundwater supply for the
4 regional planning group without a groundwater conservation
5 district in its area is physically compatible, using the board's
6 groundwater availability models, with the desired future
7 conditions adopted under Section 36.108 for the relevant aquifers
8 in the groundwater management area that are regulated by
9 groundwater conservation districts;

10 (3) identifies:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (I) emergency transfer of water under Section
26 11.139, including information on the part of each permit, certified
27 filing, or certificate of adjudication for nonmunicipal use in the

1 region that may be transferred without causing unreasonable damage
2 to the property of the nonmunicipal water rights holder; and

3 (J) opportunities for and the benefits of
4 developing large-scale desalination facilities for:

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

7 (ii) [~~(J) opportunities for and the~~
8 ~~benefits of developing large-scale desalination facilities for~~]
9 seawater or brackish groundwater that serve local or regional
10 brackish groundwater production zones identified and designated
11 under Section 16.060(b)(5);

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

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

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

22 (9) includes information on:

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

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

1 SECTION 2. Section 36.108(a), Water Code, is amended by
2 adding Subdivision (3) to read as follows:

3 (3) "Management area planning group" means the group
4 described by Subsection (b-1).

5 SECTION 3. Section 36.108, Water Code, is amended by adding
6 Subsections (b-1), (b-2), and (f) and amending Subsections (c),
7 (d), (d-1), (d-2), (d-3), and (d-4) to read as follows:

8 (b-1) The management area planning group consists of:

9 (1) the district representatives as voting members;
10 and

11 (2) the members added to the group under Subsection
12 (b-2).

13 (b-2) The district representatives may add a voting or
14 nonvoting member to the management area planning group by a written
15 resolution adopted by a two-thirds vote of the district
16 representatives. The resolution must describe the scope of voting
17 authority for each member added to the management area planning
18 group.

19 (c) The management area planning group [~~district~~
20 ~~representatives~~] shall meet at least annually to conduct joint
21 planning [~~with the other districts in the management area~~] and to
22 review the management plans, the accomplishments of the management
23 area, and proposals to adopt new or amend existing desired future
24 conditions. In reviewing the management plans, the management area
25 planning group [~~districts~~] shall consider:

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

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

5 (3) any other matters that the boards consider
6 relevant to the protection and conservation of groundwater and the
7 prevention of waste in the management area; and

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

11 (d) Not later than May 1, 2021 [~~September 1, 2010~~], and
12 every five years thereafter, the management area planning group
13 [~~districts~~] shall consider groundwater availability models and
14 other data or information for the management area and shall propose
15 for adoption desired future conditions for the relevant aquifers
16 within the management area. Before voting on the proposed desired
17 future conditions of the aquifers under Subsection (d-2), the
18 management area planning group [~~districts~~] shall consider:

19 (1) aquifer uses or conditions within the management
20 area, including conditions that differ substantially from one
21 geographic area to another;

22 (2) the water supply needs and water management
23 strategies included in the state water plan;

24 (3) hydrological conditions, including for each
25 aquifer in the management area the total estimated recoverable
26 storage as provided by the executive administrator, and the average
27 annual recharge, inflows, and discharge;

1 (4) other environmental impacts, including impacts on
2 spring flow and other interactions between groundwater and surface
3 water;

4 (5) the impact on subsidence;

5 (6) socioeconomic impacts reasonably expected to
6 occur;

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

11 (8) the feasibility of achieving the desired future
12 condition; and

13 (9) any other information relevant to the specific
14 desired future conditions.

15 (d-1) After considering and documenting the factors
16 described by Subsection (d) and other relevant scientific and
17 hydrogeological data, the management area planning group
18 [~~districts~~] may establish different desired future conditions for:

19 (1) each aquifer, subdivision of an aquifer, or
20 geologic strata located in whole or in part within the boundaries of
21 the management area; or

22 (2) each geographic area overlying an aquifer in whole
23 or in part or subdivision of an aquifer within the boundaries of the
24 management area.

25 (d-2) The desired future conditions proposed under
26 Subsection (d) must provide a balance between the highest
27 practicable level of groundwater production and the conservation,

1 preservation, protection, recharging, and prevention of waste of
2 groundwater and control of subsidence in the management area. This
3 subsection does not prohibit the establishment of desired future
4 conditions that provide for the reasonable long-term management of
5 groundwater resources consistent with the management goals under
6 Section 36.1071(a). The desired future conditions proposed under
7 Subsection (d) must be approved by a two-thirds vote of ~~[all]~~ the
8 voting members of the management area planning group ~~[district~~
9 ~~representatives]~~ for distribution to the districts in the
10 management area. A period of not less than 90 days for public
11 comments begins on the day the proposed desired future conditions
12 are mailed to the districts. During the public comment period and
13 after posting notice as required by Section 36.063, each district
14 shall hold a public hearing on any proposed desired future
15 conditions relevant to that district. During the public comment
16 period, the district shall make available in its office a copy of
17 the proposed desired future conditions and any supporting
18 materials, such as the documentation of factors considered under
19 Subsection (d) and groundwater availability model run results.
20 After the close of the public comment period ~~[hearing]~~, the
21 district shall compile for consideration at the next joint planning
22 meeting a summary of relevant comments received, any suggested
23 revisions to the proposed desired future conditions, and the basis
24 for the revisions.

25 (d-3) After ~~[the earlier of the date on which]~~ all the
26 districts have submitted their district summaries ~~[or the~~
27 ~~expiration of the public comment period under Subsection (d-2)]~~,

1 the management area planning group [~~district representatives~~]
2 shall reconvene to review the reports, consider any district's
3 suggested revisions to the proposed desired future conditions, and
4 finally adopt the desired future conditions for the management
5 area. The desired future conditions must be approved by [~~adopted~~
6 ~~as~~] a resolution adopted by a two-thirds vote of [~~all~~] the voting
7 members of the management area planning group [~~district~~
8 ~~representatives~~]. The management area planning group [~~district~~
9 ~~representatives~~] shall produce a desired future conditions
10 explanatory report for the management area and submit to the
11 development board and each district in the management area proof
12 that notice was posted for the joint planning meeting, a copy of the
13 resolution, and a copy of the explanatory report. The report must:

14 (1) identify each desired future condition;
15 (2) provide the policy and technical justifications
16 for each desired future condition;

17 (3) include documentation that the factors under
18 Subsection (d) were considered by the management area planning
19 group [~~districts~~] and a discussion of how the adopted desired
20 future conditions impact each factor;

21 (4) list other desired future condition options
22 considered, if any, and the reasons why those options were not
23 adopted; and

24 (5) discuss reasons why recommendations made by
25 advisory committees and relevant public comments received by the
26 districts were or were not incorporated into the desired future
27 conditions.

1 (d-4) After [~~As soon as possible after~~] a district receives
2 notification from the Texas Water Development Board that the
3 desired future conditions resolution and explanatory report under
4 Subsection (d-3) is administratively complete, the district shall
5 adopt the applicable desired future conditions in the resolution
6 and report not later than January 5, 2022, and every five years
7 thereafter [~~that apply to the district~~].

8 (f) At least once during every five-year period for the
9 development and adoption of desired future conditions and not less
10 than three years or more than four years before the deadline for
11 adoption of the desired future conditions, the management area
12 planning group shall hold a public meeting for the purpose of
13 receiving recommendations for desired future conditions from the
14 joint planning advisory committee created under Section 36.1081.
15 The management area planning group shall coordinate with the joint
16 planning advisory committee to schedule the meeting.

17 SECTION 4. Section 36.1081, Water Code, is amended to read
18 as follows:

19 Sec. 36.1081. TECHNICAL STAFF AND [~~SUBCOMMITTEES FOR~~] JOINT
20 PLANNING ADVISORY COMMITTEE. (a) On request, the commission and
21 the Texas Water Development Board shall make technical staff
22 available to serve in a nonvoting advisory capacity to assist the
23 management area planning group and the joint planning advisory
24 committee with the development of desired future conditions during
25 the joint planning process under Section 36.108.

26 (b) In this section:

27 (1) "Management area planning group" has the meaning

1 assigned by Section 36.108.

2 (2) "Regional water planning group" means a group
3 created under Section 16.053.

4 (c) During the joint planning process under Section 36.108,
5 the management area planning group and the presiding officer of
6 each regional water planning group located wholly or partly in the
7 management area shall ~~[district representatives may]~~ appoint a
8 joint planning ~~[and convene nonvoting]~~ advisory committee of
9 persons to represent the interests described by Section 16.053(c)
10 ~~[subcommittees who represent social, governmental, environmental,~~
11 ~~or economic interests to assist in the development of desired~~
12 ~~future conditions].~~

13 (d) The presiding officer of each regional water planning
14 group located wholly or partly in the management area shall provide
15 written notification to the management area planning group of:

16 (1) whether the officer or the officer's designee will
17 serve on the joint planning advisory committee; and

18 (2) which interest described by Section 16.053(c) the
19 officer or the officer's designee represents.

20 (e) After the management area planning group receives a
21 notification under Subsection (d) from each regional water planning
22 group that is located wholly or partly in the management area, the
23 management area planning group shall appoint additional members of
24 the joint planning advisory committee:

25 (1) in a manner that ensures the greatest
26 representation of the interests described by Section 16.053(c); and

27 (2) to the extent that the management area planning

1 group is able to identify qualified people willing to serve on the
2 committee.

3 (f) The management area planning group shall provide notice
4 in the manner described by Section 36.108(e) that describes:

5 (1) the purpose of the joint planning advisory
6 committee; and

7 (2) the process by which a person may submit
8 nominations to the committee.

9 (g) On request by the management area planning group, the
10 Texas Water Development Board shall provide assistance in
11 soliciting additional members of the joint planning advisory
12 committee.

13 (h) Members of the joint planning advisory committee are not
14 required to reside in the management area or a regional water
15 planning area that is located wholly or partly in the management
16 area.

17 (i) The joint planning advisory committee may adopt written
18 bylaws to govern the committee's performance of its duties.

19 (j) A vacancy on the joint planning advisory committee shall
20 be filled by the regional water planning group presiding officer or
21 designee or the management area planning group that appointed the
22 person whose position is vacant.

23 (k) The joint planning advisory committee is not subject to
24 the provisions of Chapters 551 and 552, Government Code.

25 SECTION 5. Section 36.108(d-5), Water Code, is repealed.

26 SECTION 6. To the extent of any conflict, this Act prevails
27 over another Act of the 85th Legislature, Regular Session, 2017,

1 relating to nonsubstantive additions to and corrections in enacted
2 codes.

3 SECTION 7. (a) Not later than the 120th day after the
4 effective date of this Act, each regional water planning group
5 described by Section 16.053, Water Code, as reenacted and amended
6 by this Act, shall appoint a joint planning advisory committee as
7 provided by Section 36.1081, Water Code, as amended by this Act.

8 (b) Not later than the 180th day after the date that the
9 final appointment is made under Subsection (a) of this section for a
10 joint planning advisory committee, the management area planning
11 group described by Section 36.108, Water Code, as amended by this
12 Act, for that joint planning advisory committee shall appoint
13 additional members to the joint planning advisory committee as
14 provided by Section 36.1081, Water Code, as amended by this Act.

15 (c) Not earlier than July 1, 2019, and not later than
16 November 1, 2019, a joint planning advisory committee described by
17 Section 36.1081, Water Code, as amended by this Act, shall make its
18 recommendations to the management area planning group that
19 appointed the members of that joint planning advisory committee.

20 (d) This section expires December 31, 2019.

21 SECTION 8. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2017.