

## **BILL ANALYSIS**

H.B. 2388  
By: Harris, Cody  
Natural Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Statutes that created the Texas Water Development Board (TWDB) in 1957 and that subsequently combined the TWDB with two other water agencies in 1977 to create the Texas Department of Water Resources did not contain requirements related to memoranda of understanding (MOUs). In 1985, the 69th Legislature passed sunset legislation that split the Texas Department of Water Resources into two agencies, creating the Texas Water Commission, which is a predecessor to the Texas Commission on Environmental Quality (TCEQ), and recreating the TWDB. Within this sunset legislation was a requirement that MOUs specifically between the Texas Water Commission and the TWDB, or generally between each new agency and any other state agency, be adopted by rule. Later, the 72nd Legislature removed the specific requirement related to MOUs between the Texas Water Commission and the TWDB, but the general statutory requirement for TWDB MOUs with any other state agency remains.

It is likely that the TWDB's statutory requirements related to MOUs arose from the need to coordinate closely with other state agencies, particularly its newly formed, regulatory sister agency, following the reorganization in 1985. Other than the TCEQ, no other Article VI agencies have a similar, general statutory requirement to adopt all MOUs in rule. Removing this requirement would decrease administrative burdens on TWDB program and legal staff who prepare time-intensive rulemaking packages each time an MOU is updated by the TWDB. Additionally, each time an MOU is updated by the TWDB and another agency, the updated language must be published in rule.

The rulemaking process takes time, with a required 30-day public comment period. Therefore, updates to the MOU text in rule are not timely. The purpose of the rulemaking process established by the Administrative Procedure Act is to provide for public participation in the rulemaking process. In the situation of an MOU between the TWDB and another agency, the substance of the rule, the MOU text, would already be established in an executed contract before publication as a proposed rule. Therefore, the rulemaking process of publication, public comment, and response to public comment is not applicable to the situation of executed contracts such as MOUs.

H.B. 2388 seeks to resolve this issue by removing the requirement for the TWDB to adopt any MOU into which it enters with any other state agency by rule.

### **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**

H.B. 2388 amends the Water Code to remove the requirement for the Texas Water Development Board to adopt by rule any memorandum of understanding (MOU) into which it enters with any other state agency. The bill applies only to an MOU entered into on or after the bill's effective date.

## **EFFECTIVE DATE**

September 1, 2023.