By: Bhojani H.B. No. 529

A BILL TO BE ENTITLED

AN ACT

relating to water conservation plans, data center and related facility water use and wastewater reporting, water resource impact assessments, notice to local entities, public participation, and public disclosure; providing for enforcement and fees.

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

SECTION 1. Subchapter K, Chapter 16, Water Code, is amended by adding Sections 16.405, 16.406, 16.407, 16.408, 16.409, 16.410, 16.411, 16.412, and 16.413 to read as follows:

Sec. 16.405. DEFINITIONS. In Sections 16.405 through 16.413:

(1) "Commercial use" means the use of water by a place of business, such as a hotel, restaurant, or office building. The term does not include multifamily residential, agricultural, industrial, or institutional use.

(2) "Covered data center" means a facility or integrated campus in this state used primarily to house or operate equipment for digital computing, processing, storage, transmission, or validation, including equipment for cryptocurrency or digital asset mining, together with related facilities, if the facility or campus:

(A) has, or is reasonably projected to have, an aggregate electric demand of at least 75 megawatts, including electricity generated on the site or supplied without an

interconnection to a transmission or distribution system; or

(B) withdraws, purchases, receives, or otherwise obtains, or is reasonably projected to obtain, at least 300,000 gallons of water for the operations of the facility, campus, and related facilities during any consecutive 30-day period.

(3) "Operator" means the person with operational control over the water supply, cooling, or water management systems of a covered data center. If more than one person has operational control, the persons shall designate an operator responsible for compliance with Sections 16.405 through 16.413.

(4) "Material expansion" means a change to a covered data center that increases the maximum monthly water demand stated in the most recent assessment submitted under Section 16.407 by at least 25 percent, adds a materially different source of water supply, or materially changes the destination or capacity required for wastewater service.

(5) "Water consumed" means water that is not returned to a water source, water supplier, or wastewater system after use, including water lost through evaporation, as determined under commission rules.

(6) "Water returned" means water discharged after use to a surface water body, groundwater resource, water supplier, or wastewater system, including a quantity conveyed for treatment or authorized reuse.

(7) "Water withdrawn" means water taken directly from a surface water or groundwater resource, other than water obtained from a public or private water supplier.

(8) "Affected local recipient" means:

(A) each county in which a covered data center is located and each county contiguous to that county;

(B) each municipality whose corporate limits or extraterritorial jurisdiction includes any portion of the tract containing a covered data center, and each municipality whose corporate limits are within one mile of that tract;

(C) each groundwater conservation district with jurisdiction over a withdrawal or well supplying a covered data center; and

(D) each political subdivision, water supply corporation, or public or private water or wastewater service provider that provides service to a covered data center or whose legally established service area includes all or part of the tract containing the facility.

(9) "Related facility" means a cooling installation, water withdrawal, treatment, storage, or reuse facility, wastewater management installation, dedicated power generation or energy storage installation, or other accessory infrastructure that directly supports a facility described by Subdivision (2) and is located on contiguous or adjacent property or operated as part of the same integrated development, regardless of whether operated through a separate legal entity.

Sec. 16.406. APPLICABILITY; REGISTRATION; COMMISSION AUTHORITY.

(a) The commission shall administer and enforce Sections 16.405 through 16.413 and shall establish and maintain a

registration program for covered data centers.

(b) The operator of a proposed covered data center shall register the facility with the commission not later than the 120th day before the date the facility is expected to begin operation.

(c) The operator of a facility that first meets the definition of a covered data center after beginning operation shall register the facility not later than the 90th day after the date the operator knows or reasonably should know that the facility meets that definition.

(d) For purposes of determining whether the thresholds under Section 16.405(2) are met and of reporting water use, the commission shall treat a data processing or storage facility and its related facilities as one covered data center when they are part of a single integrated development or share dedicated water supply, wastewater, or cooling infrastructure. This requirement applies regardless of separate legal entities, water providers, or on-site electric generation. A project may not be divided into separate facilities or accounts to evade this subchapter.

(e) Sections 16.405 through 16.413 apply without regard to whether a covered data center obtains water from a municipal utility, a district, a water supply corporation, a private provider, or its own groundwater or surface water source, or whether the water is classified as commercial, industrial, municipal, or another type of use. The use of electricity generated on-site or outside the ERCOT region does not exempt a facility that otherwise meets the definition of a covered data center.

(f) A registration must identify the name and location of

the covered data center and each related facility included in the reporting boundary; the operator and a responsible contact person; the anticipated or actual date of operation; the basis for coverage under Section 16.405(2); the known sources of water supply and wastewater service; and the affected local recipients identified under Section 16.405(8). The operator shall update registration information not later than the 30th day after a material change.

(g) Not later than the 10th business day after submitting a registration, water resource impact assessment, facility water conservation plan, annual report, or material amendment to the commission, the operator shall send a copy of the corresponding nonconfidential submission to each affected local recipient by electronic means or other documented delivery method approved by rule. The operator shall certify delivery to the commission and shall bear the cost of preparing and transmitting the copies.

(h) The commission shall maintain a current electronic list of affected local recipients for each facility and shall notify those recipients of public hearing and comment opportunities under Section 16.410. This section does not require an affected local recipient to maintain a website or create an independent filing system.

Sec. 16.407. WATER RESOURCE IMPACT ASSESSMENT.

(a) An operator required to register under Section 16.406 shall submit to the commission a water resource impact assessment with the registration. An operator proposing a material expansion shall submit an updated assessment not later than the 120th day before the expected date of the expansion.

(b) The assessment must contain, to the extent reasonably ascertainable, the following information:

(1) the current or proposed source of each water supply, identifying groundwater, surface water, purchased potable water, reclaimed water, and other sources separately;

(2) the name of each water and wastewater service provider, if any; the groundwater conservation district, if any; and the applicable river basin, aquifer, or other water resource identified by the operator;

(3) the location of each known or proposed withdrawal and return point, including latitude and longitude when reasonably available;

(4) the projected average and maximum monthly quantities of water withdrawn or received, consumed, returned, and reused, including demand attributable to related facilities, seasonal conditions, and reasonably anticipated drought conditions;

(5) the water cooling and management technologies to be used, the assumptions and methodology supporting the projections, and reasonably available alternatives for reducing potable water use;

(6) a description of reasonably foreseeable water quantity and water quality effects associated with the proposed use, including expected temperature changes or pollutants in water returns, anticipated wastewater discharges, and the need for permits governing a discharge;

(7) a discussion, based on reasonably available public

information and information provided by the operator's water and wastewater service providers, of water supply availability, existing and projected local demands, water and wastewater service capacity, and the compatibility of the proposed use with applicable drought contingency and water conservation plans;

(8) to the extent reasonably ascertainable, potential cumulative effects of the proposed use with existing covered data center water demands in the county, regional water planning area, and shared water source;

(9) identification of applicable water rights, groundwater district authorizations, water supply and wastewater service agreements, and discharge authorizations, if any, without requiring submission of confidential contractual terms;

(10) projected average and maximum monthly wastewater volumes, the expected type and destination of the wastewater discharge or transfer, the receiving wastewater service provider or treatment facility if known, and any reasonably foreseeable effect on wastewater service capacity; and

(11) to the extent reasonably ascertainable, an explanation of how shared or related facilities have been included in the water use and wastewater projections, with measures to prevent double counting.

(c) The assessment must identify data limitations and distinguish measurements from estimates. The commission shall prescribe reasonable methodologies and may request supplemental information reasonably necessary to determine whether an assessment is complete and accurate.

(d) An assessment under this section is for information, conservation planning, and public disclosure and is not a permit, water right, or agency determination that a proposed water use is authorized or prohibited. Submission of an assessment does not substitute for any authorization otherwise required by law.

Sec. 16.408. FACILITY WATER CONSERVATION PLAN.

(a) An operator shall submit with the water resource impact assessment required by Section 16.407 a facility water conservation plan that describes the practices, techniques, and technologies the operator proposes to use to reduce waste and improve efficient water use.

(b) The plan must include:

(1) a description of water measurement, leak detection, inspection, and maintenance practices;

(2) an evaluation of reasonably available water reuse, recycling, and alternative nonpotable water sources, including an explanation when an alternative is not reasonably practicable;

(3) measurable, facility-specific water efficiency goals, a schedule for implementing the measures selected by the operator, and the method of measuring progress toward those goals;

(4) procedures for coordinating with the applicable water or wastewater service provider, including the provider's drought contingency plan, and complying with restrictions otherwise lawfully imposed under existing law or a service agreement;

(5) practices for coordinating with wastewater service providers regarding discharge volumes, pretreatment

requirements, and service capacity, to the extent otherwise required by an applicable law, permit, or agreement.

(c) An operator shall implement the measures identified as commitments in the operator's plan and shall review the plan at least once every five years and after each material expansion. Failure to achieve a projected efficiency goal, without more, does not constitute a violation if the operator implemented the committed measures and accurately reported the results.

(d) The commission may prescribe minimum plan content and a form for submission but may not under this section impose a water withdrawal quota or require a specific cooling technology.

Sec. 16.409. ANNUAL WATER USE REPORTING; MEASUREMENT.

(a) Not later than March 31 of each year, the operator of each covered data center shall submit to the commission a report describing the facility's water use for the preceding calendar year.

(b) The annual report must state separately, for each month and each source or provider to the extent reasonably practicable, the quantities attributable to the covered data center and its related facilities, without duplicating transfers within the reporting boundary:

(1) the actual volume of water withdrawn directly from surface water and groundwater resources;

(2) the actual volume of water purchased or received from each municipal, district, nonprofit, or private water supplier;

(3) the volume of water consumed, returned, and reused

at the facility, including the destination of returned water and a separate identification of water conveyed to a wastewater service provider;

(4) the maximum quantity of water used during any single day of the month, if measured or reasonably estimable;

(5) whether each reported quantity is metered, calculated from billing records, or estimated by a generally accepted method prescribed by the commission;

(6) a summary of water conservation measures implemented, progress toward the plan's efficiency goals, and material changes in water or wastewater service sources or facility operations; and

(7) the volume of wastewater conveyed to each wastewater service provider or other authorized receiving facility, and the basis for measurement or estimation, without requiring disclosure of information that is confidential under other law.

(c) An operator shall use metered measurements or supplier billing data if reasonably available. If reliable direct measurement is not reasonably available, the operator shall use a scientifically reasonable estimate or indirect calculation approved by commission rule and disclose the method and its limitations.

(d) The commission shall establish reasonable measurement and reporting standards appropriate to different facility types. The commission may require metering of new water supply and return connections when practicable, and shall provide reasonable

compliance periods for existing facilities.

(e) This section applies to water purchased or received from any public or private water supplier, including a municipal utility, district, or water supply corporation, even if the supplier separately reports its withdrawals. The commission shall identify purchased or transferred water separately in data provided to the board to avoid double counting statewide or regional withdrawals.

(f) Notwithstanding Section 16.404, the commission may require facility-specific information under this section that is more detailed than a water supplier's billing system can produce, if the information can reasonably be obtained by the operator through metering or an accepted estimation method.

Sec. 16.410. PUBLIC DISCLOSURE; PUBLIC HEARING AND COMMENT.

(a) The commission shall establish and maintain a publicly accessible Internet website containing a registry of covered data centers and nonconfidential information submitted or prepared under Sections 16.406 through 16.409. The commission, and not a county, municipality, district, or water supply corporation, is responsible under this subchapter for maintaining the statewide project website.

(b) For each covered data center, the website must identify the facility, operator, county and regional water planning area, water source categories, and water and wastewater service provider names, if any, and must make available:

(1) the nonconfidential water resource impact assessment and facility water conservation plan;

(2) annual facility-level data on water withdrawn, received, consumed, returned, and reused and wastewater conveyed for service, including monthly totals and the water source categories from which water was obtained; and

(3) any public notice, written comment, hearing summary, and commission response prepared under this section.

(b-1) The operator shall furnish the commission with project-specific narrative, maps, notices, and nonconfidential electronic documents needed for the website in a format approved by the commission. The commission may not require an affected local recipient to establish or maintain a project website to satisfy this section.

(c) For an initial assessment submitted before operation of a proposed covered data center, or an updated assessment submitted before a material expansion, the commission shall conduct at least one public informational hearing in the county in which the facility is or will be located. The commission may coordinate a joint hearing with an affected local governmental entity that consents and may provide remote access.

(d) The commission shall provide notice of the hearing at least 30 days before the hearing by publishing notice on its website and in a newspaper of general circulation in the county and by electronically notifying affected local recipients. The notice must identify the proposed facility, provide the date, time, and place of the hearing, and explain how the public may inspect nonconfidential documents and submit comments.

(e) The commission shall accept public comments during the

hearing and for at least 30 days after the hearing, including comments submitted electronically by affected local recipients. The commission shall prepare a written response addressing significant comments concerning water and wastewater service, water availability, cumulative effects, conservation measures, and the completeness of the assessment. The response shall be posted on the website and provided to the operator and affected local recipients.

(f) A public informational hearing under this section is not a contested case hearing and does not constitute an approval or denial of a water use or a permit.

(g) The operator shall provide to the commission, in an electronic format specified by rule, a complete submission and a separate proposed public version of each submission, with each proposed redaction identified and supported by a citation to an applicable law providing confidentiality. A claim that information is proprietary, without more, does not make that information confidential. The commission shall make nonconfidential information available under this section in accordance with Chapter 552, Government Code, and other applicable law.

(h) Information made confidential by state or federal law must be withheld from public posting to the extent required by that law. A designation as proprietary does not independently justify withholding the facility name, county, water source categories, water or wastewater supplier names, or monthly and annual volume data required to be published under Subsection (b). The duties of governmental bodies and interested third parties concerning

requests for information are governed by Chapter 552, Government Code, including Section 552.305 of that code. An operator asserting a proprietary exception is responsible for submitting the arguments and evidence required by applicable law; a county, municipality, district, or other local governmental entity is not required by this subchapter to advocate the operator's proprietary interest.

(i) The operator shall pay the reasonable direct costs of preparing and providing project-specific documents, required publication of hearing notices, and other project-specific informational materials required by this section. The commission by rule may assess a fee not exceeding its reasonable, documented direct costs of providing the project-specific hearing, notice, and public website posting required by this section, less costs paid directly by the operator. Money collected under this subsection shall be deposited as provided by Section 5.701 and used only as authorized by law. The commission may not assess the same cost twice.

(j) An affected local governmental entity may, to the extent otherwise authorized by law, hold a separate informational hearing or participate in a joint hearing with the commission. This subchapter does not require an affected local recipient to conduct a hearing, make a determination about proprietary claims, or incur unreimbursed project-specific publication or website expenses.

Sec. 16.411. STATEWIDE ANALYSIS; INTERAGENCY COOPERATION.

(a) The commission shall annually analyze information reported under this subchapter to evaluate individual and cumulative water demands associated with covered data centers,

including withdrawals, consumption, returns, reuse, wastewater service demands, regional water availability, and reasonably ascertainable water quality effects. The analysis must separately present nonconfidential aggregated results by county and by regional water planning area and, when practicable, by major aquifer or river basin.

(b) The commission shall coordinate with the board, affected groundwater conservation districts, regional water planning groups, municipalities, counties, water supply corporations, and public or private water and wastewater service providers. The commission may request or exchange information to the extent authorized by law and shall use reasonably available regional water planning and utility service data in its analysis.

(c) Not later than November 1 of each year, the commission shall publish a statewide report, including county and regional water planning area tables, on the commission's website and transmit the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of each house having primary jurisdiction over water resources. The commission shall provide the underlying nonconfidential data and a county and regional water planning area summary to the board and applicable regional water planning groups.

(d) A report under this section must distinguish direct withdrawals from water received from suppliers, as well as wastewater conveyed to a provider, to avoid double counting and shall identify material data limitations, allocation assumptions, and instances of information withheld under applicable

confidentiality law.

(e) The board shall consider information provided under this section, including county and regional water planning area totals, in preparing the next regularly scheduled update of the state water plan under Section 16.051 and shall make the information available to regional water planning groups for use in preparing regional water plans under Section 16.053. Nothing in this subsection requires the board to amend a plan before its next regularly scheduled update.

Sec. 16.412. COMPLIANCE AND ENFORCEMENT.

(a) The commission is the lead state regulatory and enforcement agency for Sections 16.405 through 16.413 and rules adopted under those sections. This subsection does not displace or limit the lawful regulatory, contractual, or enforcement authority of a local governmental entity or water or wastewater service provider under other law.

(b) The operator shall retain records reasonably necessary to substantiate a registration, impact assessment, conservation plan, and annual report for at least five years and shall make those records available to the commission on lawful request.

(c) The commission may review submissions, require correction of materially incomplete or inaccurate information, and issue notices of violation and orders requiring timely compliance with the reporting, recordkeeping, and plan implementation duties imposed by Sections 16.405 through 16.413.

(d) Notwithstanding Section 7.051(b), a violation of Sections 16.405 through 16.413 or a rule adopted by the commission

under those sections is enforceable in the manner provided by Chapter 7 for a violation of a provision of this code within the commission's jurisdiction or a rule adopted by the commission under a provision of this code within the commission's jurisdiction.

(e) The commission may assess administrative penalties and obtain other remedies available under Chapter 7, subject to the procedures and limitations of that chapter. An enforcement order under this section may compel submission, correction, verification, or implementation of a measure expressly committed to in a filed conservation plan, but may not independently require a reduction in a water withdrawal or water use otherwise lawful under existing law.

Sec. 16.413. RULEMAKING; CONSTRUCTION OF LAW.

(a) The commission shall adopt rules necessary to implement and enforce Sections 16.405 through 16.413, including standards for registration, identification of affected local recipients, water and wastewater measurement, accepted estimates, impact assessment content, conservation plans, public notice, operator-supported confidentiality claims, electronic reporting, and cost recovery under Section 16.410. In adopting rules, the commission shall consult with the board and representatives of municipalities, counties, groundwater conservation districts, water and wastewater service providers, and affected data center operators.

(b) Nothing in Sections 16.405 through 16.413:

(1) creates or modifies a right to appropriate, withdraw, or use surface water or groundwater, or a duty of a water or wastewater service provider to furnish service, or modifies a

permit, authorization, contract, or property right otherwise recognized by law;

(2) authorizes the commission to deny, suspend, revoke, reduce, condition, or otherwise alter a person's existing lawful water withdrawal or use solely on the basis of an assessment, conservation plan, report, or public comment required by those sections;

(3) supersedes the authority of a groundwater conservation district under Chapter 36; a water right holder under Chapter 11; a municipality, county, or district; or a public or private water or wastewater service provider under otherwise applicable law; or

(4) authorizes the commission to impose a fee for water or wastewater infrastructure costs, alter a utility's lawful rates or charges, or modify the terms of an existing water or wastewater service agreement; the fees expressly authorized by Section 16.410 are limited to administration of that section.

(c) Nothing in this section affects the commission's independent authority under other law concerning water quality, discharge permits, or enforcement of existing permits and orders.

(d) This subchapter does not preempt or diminish otherwise lawful municipal, county, or district authority over zoning, land use, development, building and fire codes, floodplain management, stormwater, nuisance abatement, or other local matters; or the authority of an affected water or wastewater service provider to establish and enforce lawful rates, tariffs, capacity requirements, service conditions, conservation or drought

restrictions, or service agreements. No such authority is newly created or expanded by this subsection.

(e) A reporting, hearing, or public disclosure duty created by this subchapter is independent of, and does not substitute for, any permit, consent, or service authorization required under another law. Except for an operator's obligations expressly stated in this subchapter, the subchapter does not require a local governmental entity or water or wastewater service provider to issue a permit, approve a development, or provide service.

SECTION 2. The Texas Commission on Environmental Quality shall adopt the rules necessary to implement Sections 16.405 through 16.413, Water Code, as added by this Act, not later than May 1, 2028.

SECTION 3. (a) Notwithstanding Section 16.406(c), Water Code, as added by this Act, an operator of a covered data center, as defined by Section 16.405, Water Code, as added by this Act, that is operating before January 1, 2029, and meets that definition on that date shall register the facility and submit the initial water resource impact assessment and facility water conservation plan required by this Act not later than July 1, 2029.

(b) The annual report required by Section 16.409, Water Code, as added by this Act, is first due on March 31, 2030, for calendar year 2029.

(c) The advance-registration, assessment, and public-hearing requirements applicable to a proposed covered data center apply to a facility expected to begin operation on or after January 1, 2029. A material expansion expected to begin on or after

that date is subject to the applicable advance-submission requirements.

(d) The first statewide report required by Section 16.411(c), Water Code, as added by this Act, is due November 1, 2030.

SECTION 4. This Act takes effect September 1, 2027.