

AN ACT

relating to certain duties and information regarding water planning and development matters in the state.

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

SECTION 1. Sections 9.002 through 9.009, 9.016, and 9.017, Water Code, are amended to read as follows:

Sec. 9.002. CREATION AND MEMBERSHIP. (a) The council is created to provide the governor, lieutenant governor, speaker of the house of representatives, and legislature with the resource of a select council with expertise on state water issues and consists of 15 [~~13~~] members as follows:

(1) the chairman, or a board member designated by the chairman, of the Texas Water Development Board;

(2) the chairman, or a commissioner designated by the chairman, of the commission;

(3) the chairman, or a commissioner designated by the chairman, of the Parks and Wildlife Commission;

(4) the commissioner of agriculture;

(5) the commissioner of the General Land Office;

(6) three members of the house of representatives appointed by the speaker of the house of representatives;

(7) three [~~two~~] members of the senate appointed by the lieutenant governor; and

(8) four [~~three~~] members of the general public

1 appointed by the governor, one representing groundwater  
2 management, one representing surface water management, ~~[and]~~ one  
3 representing the environmental community, and one representing the  
4 coastal region.

5 (b) Except as provided by Subsection (c), council ~~[Council]~~  
6 members may not delegate participation or council duties to staff.

7 (c) A council member who is a member of the governing body of  
8 a state agency may delegate participation and council duties to the  
9 agency's executive administrator, executive director, or deputy  
10 commissioner, as appropriate.

11 Sec. 9.003. TERMS. (a) Public members serve staggered  
12 three-year terms ~~[Except for the commissioner of the General Land~~  
13 ~~Office and the commissioner of agriculture, council members who are~~  
14 ~~officials of state agencies serve terms as determined by the~~  
15 ~~chairman of each agency].~~

16 (b) Public ~~[Council members who are members of the general~~  
17 ~~public serve staggered six-year terms with the term of one member~~  
18 ~~expiring August 31 of each odd-numbered year.~~

19 ~~[(c) Council]~~ members may be reappointed to serve  
20 additional terms.

21 (c) Legislative members serve at the discretion of the  
22 original appointing authority.

23 (d) A vacancy on the council shall be filled by appointment  
24 by the original appointing authority for the unexpired term.

25 Sec. 9.004. OFFICERS OF THE COUNCIL. (a) The council shall  
26 elect a chair from among the legislative members of the council.

27 The ~~[governor shall appoint a council member as the]~~ chair of the

1 council shall serve [~~for~~] a two-year term [~~expiring May 31 of each~~  
2 ~~even-numbered year~~].

3 (b) The council shall alternate the selection of the chair  
4 every two years between a house and senate council member [~~have a~~  
5 ~~secretary of the council who serves at the pleasure of the council~~  
6 ~~and is accountable only to the council~~].

7 Sec. 9.005. COUNCIL STAFF. On request by the council, the  
8 senate and house standing committees with primary responsibility  
9 over water resource management, the commission, the Parks and  
10 Wildlife Department, the Department of Agriculture, and the Texas  
11 Water Development Board shall provide any staff [~~other than the~~  
12 ~~secretary of the council~~] necessary to assist the council in the  
13 performance of its duties.

14 Sec. 9.006. MEETINGS. (a) The council shall conduct public  
15 meetings at the discretion of the chair at least twice a year [~~meet~~  
16 ~~at least once in each calendar quarter~~]. Eight [~~Six~~] members  
17 constitute a quorum.

18 (b) The council is subject to Chapters 551 and 2001,  
19 Government Code.

20 Sec. 9.007. COMPENSATION OF MEMBERS. (a) Members of the  
21 council serve without compensation but public members may be  
22 reimbursed by legislative appropriation for actual and necessary  
23 expenses related to the performance of council duties.

24 (b) Reimbursement under Subsection (a) is subject to the  
25 approval of the council [~~chair~~].

26 Sec. 9.008. POWERS AND DUTIES OF COUNCIL. (a) The  
27 governor, lieutenant governor, and speaker of the house of

1 representatives may issue charges to the council on state water  
2 issues. The council shall provide recommendations to the governor,  
3 lieutenant governor, or speaker of the house of representatives, as  
4 appropriate, based on the charges [~~The council shall.~~

5 [~~(1) heighten the level of dialogue on significant~~  
6 ~~water policy issues and, in an advisory role only, strive to provide~~  
7 ~~focus and recommendations on state water policy initiatives,~~  
8 ~~including:~~

9 [~~(A) promoting flexibility and incentives for~~  
10 ~~water desalination, brush control, regionalization, weather~~  
11 ~~modification projects, and public-private partnerships relating to~~  
12 ~~water projects;~~

13 [~~(B) promoting adequate financing for surface~~  
14 ~~water and groundwater projects;~~

15 [~~(C) development of water conservation and~~  
16 ~~drought management projects;~~

17 [~~(D) implementation of approved regional and~~  
18 ~~state water plans;~~

19 [~~(E) encouraging commonality of technical data~~  
20 ~~and information such as joint agency studies, freshwater inflow~~  
21 ~~recommendations, surface water and groundwater availability~~  
22 ~~models, and bay and estuary and instream flow recommendations~~  
23 ~~developed by the Parks and Wildlife Department, the commission, and~~  
24 ~~the Texas Water Development Board; and~~

25 [~~(F) encouraging the use of supplemental~~  
26 ~~environmental projects for water infrastructure needs and~~  
27 ~~enhancing the aquatic environment and habitat in enforcement~~

1 ~~proceedings at a state agency or political subdivision;~~

2 ~~[(2) encourage the enhancement and coordination of~~  
3 ~~state, interstate, and international efforts to improve~~  
4 ~~environmental quality and living conditions along the Texas-Mexico~~  
5 ~~border;~~

6 ~~[(3) coordinate a unified state position on federal~~  
7 ~~and international water issues; and~~

8 ~~[(4) advise the Texas Water Development Board on~~  
9 ~~developing criteria for prioritizing the funding of projects in the~~  
10 ~~state water plan].~~

11 (b) If the governor, lieutenant governor, or speaker of the  
12 house of representatives does not issue charges to the council, the  
13 council may create a list of state water issues and present the list  
14 to the governor, lieutenant governor, and speaker of the house of  
15 representatives. The governor, lieutenant governor, and speaker of  
16 the house of representatives may select a total of not more than  
17 four issues from the list. The council shall provide  
18 recommendations based on that list.

19 (c) The council may draft and review proposed legislation,  
20 for purposes of recommendation only, to communicate specific policy  
21 changes that may be needed.

22 (d) The council may request reports from river authorities,  
23 surface water authorities, and water districts.

24 (e) The council shall coordinate its efforts with the senate  
25 and house standing committees with primary responsibility over  
26 water resource management.

27 (f) The council may appoint subcommittees of council

1 members to analyze specific issues within charges to the council or  
2 issues selected from the council's list by the governor, lieutenant  
3 governor, and speaker of the house of representatives.

4 (g) The council may appoint a technical committee to analyze  
5 specific issues within charges to the council or issues selected  
6 from the council's list by the governor, lieutenant governor, and  
7 speaker of the house of representatives. The technical committee  
8 may contain noncouncil members.

9 (h) The council may not:

- 10 (1) adopt rules;
- 11 (2) regulate water use, water quality, or any other  
12 aspect of water resource management;
- 13 (3) plan or construct water resource projects or have  
14 such projects planned or constructed;
- 15 (4) grant or lend money for the construction of water  
16 resource projects;
- 17 (5) establish water resource management standards or  
18 otherwise usurp the authority of or infringe upon the duties,  
19 responsibilities, or powers of local, regional, or state water  
20 management entities, including groundwater districts, river  
21 authorities and compacts, regional water planning groups, or member  
22 agencies of the council; or
- 23 (6) consider or discuss a specific permit or project  
24 or recommendation for a project until the water permit has been  
25 issued by the state and all motions for rehearing have been  
26 overruled.

27 Sec. 9.009. REPORT. (a) The council shall submit a report

1 on its recommendations [~~Not later than December 1 of each~~  
2 ~~even-numbered year, the council shall submit a report~~] to the  
3 governor, lieutenant governor, and speaker of the house of  
4 representatives and to the senate and house standing committees  
5 with primary responsibility over water resource management not  
6 later than December 31 each year [~~and financing~~].

7 (b) The report must include recommendations [~~findings of~~]  
8 the council made on charges issued by or issues selected from the  
9 council's list by the governor, lieutenant governor, and speaker of  
10 the house of representatives during the year [~~in the periodic~~  
11 ~~reviews of authorities during the preceding two-year period and any~~  
12 ~~other findings and recommendations the council considers~~  
13 ~~necessary~~].

14 (c) The governor, lieutenant governor, and speaker of the  
15 house of representatives may request additional reports on specific  
16 charges at any time.

17 (d) The council may request reports from committees  
18 established under Sections 9.008(f) and (g).

19 Sec. 9.016. PUBLIC PARTICIPATION. The council shall  
20 encourage public participation at council meetings and public input  
21 regarding the council's purpose, the exercise of its powers and  
22 duties under Section 9.008, and its preparation of the report  
23 described in Section 9.009 [~~and its analysis of authorities under~~  
24 ~~Sections 9.010 and 9.011~~].

25 Sec. 9.017. DISSOLUTION OF COUNCIL AND ACCOUNT. Unless  
26 extended by the 79th [~~78th~~] Texas Legislature, this chapter and the  
27 interagency water advisory account expire on December 31 [~~September~~

1 ±], 2005.

2 SECTION 2. Sections 15.005(a), (b), and (d), Water Code,  
3 are amended to read as follows:

4 (a) On submission of a project application under this  
5 chapter, the executive administrator [~~development fund manager~~]  
6 shall determine if the application includes a project that will  
7 have flood control as one of its purposes and if the political  
8 subdivision submitting the application includes all of the  
9 watershed in which the project is to be located.

10 (b) If the executive administrator [~~development fund~~  
11 ~~manager~~] finds that the application includes a project that has  
12 flood control as one of its purposes and that the watershed in which  
13 the project is located is partially located outside the political  
14 subdivision making the application, the executive administrator  
15 [~~development fund manager~~] shall require the applicant to submit a  
16 written memorandum of understanding relating to the management of  
17 the watershed in which the project is to be located.

18 (d) The board shall not consider any application for which a  
19 memorandum of understanding must be filed under this section until  
20 that memorandum of understanding is filed with the executive  
21 administrator [~~development fund manager~~].

22 SECTION 3. Section 16.012(m), Water Code, is amended to  
23 read as follows:

24 (m) The executive administrator may conduct surveys of  
25 entities using groundwater and surface water for municipal,  
26 industrial, power generation, or mining purposes at intervals  
27 determined appropriate by the executive administrator to gather

1 data to be used for long-term water supply planning. Recipients of  
2 the survey shall complete and return the survey to the executive  
3 administrator. A person who fails to timely complete and return the  
4 survey is not eligible for funding from the board for board programs  
5 and is ineligible to obtain permits, permit amendments, or permit  
6 renewals from the commission under Chapter 11. A person who fails  
7 to complete and return the survey commits an offense that is  
8 punishable as a Class C misdemeanor. [~~Surveys obtained by the board  
9 from nongovernmental entities are excepted from the requirements of  
10 Section 552.021, Government Code, unless otherwise directed in  
11 writing by the person completing the survey.~~] This subsection does  
12 not apply to survey information regarding windmills used for  
13 domestic and livestock use.

14 SECTION 4. Section 16.012, Water Code, is amended by adding  
15 Subsection (n) to read as follows:

16 (n) Information collected through field investigations on a  
17 landowner's property by the executive administrator after  
18 September 1, 2003, solely for use in the development of groundwater  
19 availability models under Subsection (l) of this section that  
20 reveals site-specific information about such landowner is not  
21 subject to Chapter 552, Government Code, and may not be disclosed to  
22 any person outside the board if the landowner on whose land the  
23 information is collected has requested in writing that such  
24 information be deemed confidential. If a landowner requests that  
25 his or her information not be disclosed, the executive  
26 administrator may release information regarding groundwater  
27 information only if the information is summarized in a manner that

1 prevents the identification of an individual or specific parcel of  
2 land and the landowner. This subsection does not apply to a parcel  
3 of land that is publicly owned.

4 SECTION 5. Section 16.053, Water Code, is amended by  
5 amending Subsections (d) and (e) and adding Subsection (e-1) to  
6 read as follows:

7 (d) The board shall provide guidelines for the  
8 consideration of existing regional planning efforts by regional  
9 water planning groups. The board shall provide guidelines for the  
10 format in which information shall be presented in the regional  
11 water plans. [~~The board by rule shall require a holder of a surface  
12 water permit, a certified filing, or a certificate of adjudication  
13 for surface water, a holder of a permit for the export of  
14 groundwater from a groundwater conservation district, a retail  
15 public water supplier, a wholesale water provider, an irrigation  
16 district, and any other person who is transporting groundwater or  
17 surface water 20 miles or more to report to the board information on  
18 certain water pipelines and other facilities that can be used for  
19 water conveyance. Nothing in the initial planning effort shall  
20 prevent development of a management plan or project where local or  
21 regional needs require action prior to completion of the initial  
22 regional water plan under this section.]~~

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

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

27 (2) provides information based on data provided or

1 approved by the board in a format consistent with the guidelines  
2 provided by the board under Subsection (d);

3 (3) identifies:

4 (A) each source of water supply in the regional  
5 water planning area in accordance with the guidelines provided by  
6 the board under Subsections (d) and (f);

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

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

12 [~~(D) information on water pipelines and other  
13 facilities that can be used for water conveyance, including, but  
14 not limited to, currently used and abandoned oil, gas, and water  
15 pipelines, as provided by board rules and guidelines,]~~

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

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

20 (A) any existing water or drought planning  
21 efforts addressing all or a portion of the region;

22 (B) certified groundwater conservation district  
23 management plans and other plans submitted under Section 16.054;

24 (C) all potentially feasible water management  
25 strategies, including but not limited to improved conservation,  
26 reuse, and management of existing water supplies, acquisition of  
27 available existing water supplies, and development of new water

1 supplies;

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

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

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

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

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

16 (I) emergency transfer of water under Section  
17 11.139, including information on the part of each permit, certified  
18 filing, or certificate of adjudication for nonmunicipal use in the  
19 region that may be transferred without causing unreasonable damage  
20 to the property of the nonmunicipal water rights holder;

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

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

1 ecological value exists; and

2 (8) describes the impact of proposed water projects on  
3 water quality.

4 (e-1) On request of the Texas Water Advisory Council, a  
5 regional planning group shall provide the council a copy of that  
6 planning group's regional water plan.

7 SECTION 6. Section 17.183, Water Code, is amended to read as  
8 follows:

9 Sec. 17.183. CONSTRUCTION CONTRACT REQUIREMENTS. The  
10 governing body of each political subdivision receiving financial  
11 assistance from the board shall require in all contracts for the  
12 construction of a project:

13 (1) that each bidder furnish a bid guarantee  
14 equivalent to five percent of the bid price;

15 (2) that each contractor awarded a construction  
16 contract furnish performance and payment bonds:

17 (A) the performance bond shall include without  
18 limitation guarantees that work done under the contract will be  
19 completed and performed according to approved plans and  
20 specifications and in accordance with sound construction  
21 principles and practices; and

22 (B) the performance and payment bonds shall be in  
23 a penal sum of not less than 100 percent of the contract price and  
24 remain in effect for one year beyond the date of approval by the  
25 engineer of the political subdivision; and

26 (3) that payment be made in partial payments as the  
27 work progresses;

1           (4) that each partial payment shall not exceed 95  
2 percent of the amount due at the time of the payment as shown by the  
3 engineer of the project, but, if the project is substantially  
4 complete, a partial release of the five percent retainage may be  
5 made by the political subdivision with approval of the executive  
6 administrator;

7           (5) that payment of the retainage remaining due upon  
8 completion of the contract shall be made only after:

9                   (A) approval by the engineer for the political  
10 subdivision as required under the bond proceedings;

11                   (B) approval by the governing body of the  
12 political subdivision by a resolution or other formal action; and

13                   (C) certification by the executive administrator  
14 [~~development fund manager~~] in accordance with the rules of the  
15 board that the work to be done under the contract has been completed  
16 and performed in a satisfactory manner and in accordance with sound  
17 engineering principles and practices;

18           (6) that no valid approval may be granted unless the  
19 work done under the contract has been completed and performed in a  
20 satisfactory manner according to approved plans and  
21 specifications; and

22           (7) that, if a political subdivision receiving  
23 financial assistance under Subchapter K of this chapter, labor  
24 from inside the political subdivision be used to the extent  
25 possible.

26           SECTION 7. Section 17.276(a), Water Code, is amended to  
27 read as follows:

1 (a) After an application is received for financial  
2 assistance, the executive administrator [~~development fund manager~~]  
3 shall submit the application to the board together with comments  
4 and recommendations concerning the best method of making financial  
5 assistance available.

6 SECTION 8. Section 30.003, Water Code, is amended by adding  
7 Subdivision (11) to read as follows:

8 (11) "Canal" means a man-made navigable channel or  
9 waterway of at least two miles in length.

10 SECTION 9. Sections 9.010, 9.011, 9.012, and 11.155(c),  
11 Water Code, are repealed.

12 SECTION 10. (a) The terms of public members serving on the  
13 Texas Water Advisory Council on the effective date of this Act  
14 expire on that date.

15 (b) As soon as practicable after the effective date of this  
16 Act, the governor shall appoint four members of the general public  
17 to the Texas Water Advisory Council as provided by Section 9.002,  
18 Water Code, as amended by this Act. The governor may reappoint a  
19 person who was serving on the council on the effective date of this  
20 Act. The newly appointed public members shall draw lots to  
21 determine which two members serve two-year terms and which two  
22 members serve three-year terms.

23 SECTION 11. This Act takes effect immediately if it  
24 receives a vote of two-thirds of all the members elected to each  
25 house, as provided by Section 39, Article III, Texas Constitution.  
26 If this Act does not receive the vote necessary for immediate  
27 effect, this Act takes effect September 1, 2003.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1378 was passed by the House on April 2, 2003, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1378 on May 30, 2003, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1378 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor