

1-1 By: Geren (Senate Sponsor - Duncan) H.B. No. 1378
1-2 (In the Senate - Received from the House April 3, 2003;
1-3 April 7, 2003, read first time and referred to Committee on Natural
1-4 Resources; May 7, 2003, reported favorably; May 9, 2003,
1-5 recommitted to Committee on Natural Resources; May 20, 2003,
1-6 reported adversely, with favorable Committee Substitute by the
1-7 following vote: Yeas 10, Nays 0; May 20, 2003, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 1378 By: Estes

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to certain duties and information regarding water planning
1-12 and development matters in the state.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Sections 9.002 through 9.009, 9.016, and 9.017,
1-15 Water Code, are amended to read as follows:

1-16 Sec. 9.002. CREATION AND MEMBERSHIP. (a) The council is
1-17 created to provide the governor, lieutenant governor, speaker of
1-18 the house of representatives, and legislature with the resource of
1-19 a select council with expertise on state water issues and consists
1-20 of 15 [13] members as follows:

1-21 (1) the chairman, or a board member designated by the
1-22 chairman, of the Texas Water Development Board;

1-23 (2) the chairman, or a commissioner designated by the
1-24 chairman, of the commission;

1-25 (3) the chairman, or a commissioner designated by the
1-26 chairman, of the Parks and Wildlife Commission;

1-27 (4) the commissioner of agriculture;

1-28 (5) the commissioner of the General Land Office;

1-29 (6) three members of the house of representatives
1-30 appointed by the speaker of the house of representatives;

1-31 (7) three [two] members of the senate appointed by the
1-32 lieutenant governor; and

1-33 (8) four [three] members of the general public
1-34 appointed by the governor, one representing groundwater
1-35 management, one representing surface water management, ~~and~~ one
1-36 representing the environmental community, and one representing the
1-37 coastal region.

1-38 (b) Except as provided by Subsection (c), council [Council]
1-39 members may not delegate participation or council duties to staff.

1-40 (c) A council member who is a member of the governing body of
1-41 a state agency may delegate participation and council duties to the
1-42 agency's executive administrator, executive director, or deputy
1-43 commissioner, as appropriate.

1-44 Sec. 9.003. TERMS. (a) Public members serve staggered
1-45 three-year terms [Except for the commissioner of the General Land
1-46 Office and the commissioner of agriculture, council members who are
1-47 officials of state agencies serve terms as determined by the
1-48 chairman of each agency].

1-49 (b) Public [Council members who are members of the general
1-50 public serve staggered six-year terms with the term of one member
1-51 expiring August 31 of each odd-numbered year.

1-52 ~~[(c) Council]~~ members may be reappointed to serve
1-53 additional terms.

1-54 (c) Legislative members serve at the discretion of the
1-55 original appointing authority.

1-56 (d) A vacancy on the council shall be filled by appointment
1-57 by the original appointing authority for the unexpired term.

1-58 Sec. 9.004. OFFICERS OF THE COUNCIL. (a) The council shall
1-59 elect a chair from among the legislative members of the council.
1-60 The [governor shall appoint a council member as the] chair of the
1-61 council shall serve [for] a two-year term [expiring May 31 of each
1-62 even-numbered year].

1-63 (b) The council shall alternate the selection of the chair

2-1 every two years between a house and senate council member ~~[have a~~
 2-2 ~~secretary of the council who serves at the pleasure of the council~~
 2-3 ~~and is accountable only to the council]~~.

2-4 Sec. 9.005. COUNCIL STAFF. On request by the council, the
 2-5 senate and house standing committees with primary responsibility
 2-6 over water resource management, the commission, the Parks and
 2-7 Wildlife Department, the Department of Agriculture, and the Texas
 2-8 Water Development Board shall provide any staff ~~[other than the~~
 2-9 ~~secretary of the council]~~ necessary to assist the council in the
 2-10 performance of its duties.

2-11 Sec. 9.006. MEETINGS. (a) The council shall conduct public
 2-12 meetings at the discretion of the chair at least twice a year ~~[meet~~
 2-13 ~~at least once in each calendar quarter]~~. Eight ~~[Six]~~ members
 2-14 constitute a quorum.

2-15 (b) The council is subject to Chapters 551 and 2001,
 2-16 Government Code.

2-17 Sec. 9.007. COMPENSATION OF MEMBERS. (a) Members of the
 2-18 council serve without compensation but public members may be
 2-19 reimbursed by legislative appropriation for actual and necessary
 2-20 expenses related to the performance of council duties.

2-21 (b) Reimbursement under Subsection (a) is subject to the
 2-22 approval of the council ~~[chair]~~.

2-23 Sec. 9.008. POWERS AND DUTIES OF COUNCIL. (a) The
 2-24 governor, lieutenant governor, and speaker of the house of
 2-25 representatives may issue charges to the council on state water
 2-26 issues. The council shall provide recommendations to the governor,
 2-27 lieutenant governor, or speaker of the house of representatives, as
 2-28 appropriate, based on the charges ~~[The council shall:~~

2-29 ~~[(1) heighten the level of dialogue on significant~~
 2-30 ~~water policy issues and, in an advisory role only, strive to provide~~
 2-31 ~~focus and recommendations on state water policy initiatives,~~
 2-32 ~~including:~~

2-33 ~~[(A) promoting flexibility and incentives for~~
 2-34 ~~water desalination, brush control, regionalization, weather~~
 2-35 ~~modification projects, and public-private partnerships relating to~~
 2-36 ~~water projects;~~

2-37 ~~[(B) promoting adequate financing for surface~~
 2-38 ~~water and groundwater projects;~~

2-39 ~~[(C) development of water conservation and~~
 2-40 ~~drought management projects;~~

2-41 ~~[(D) implementation of approved regional and~~
 2-42 ~~state water plans;~~

2-43 ~~[(E) encouraging commonality of technical data~~
 2-44 ~~and information such as joint agency studies, freshwater inflow~~
 2-45 ~~recommendations, surface water and groundwater availability~~
 2-46 ~~models, and bay and estuary and instream flow recommendations~~
 2-47 ~~developed by the Parks and Wildlife Department, the commission, and~~
 2-48 ~~the Texas Water Development Board; and~~

2-49 ~~[(F) encouraging the use of supplemental~~
 2-50 ~~environmental projects for water infrastructure needs and~~
 2-51 ~~enhancing the aquatic environment and habitat in enforcement~~
 2-52 ~~proceedings at a state agency or political subdivision;~~

2-53 ~~[(2) encourage the enhancement and coordination of~~
 2-54 ~~state, interstate, and international efforts to improve~~
 2-55 ~~environmental quality and living conditions along the Texas-Mexico~~
 2-56 ~~border;~~

2-57 ~~[(3) coordinate a unified state position on federal~~
 2-58 ~~and international water issues; and~~

2-59 ~~[(4) advise the Texas Water Development Board on~~
 2-60 ~~developing criteria for prioritizing the funding of projects in the~~
 2-61 ~~state water plan].~~

2-62 (b) If the governor, lieutenant governor, or speaker of the
 2-63 house of representatives does not issue charges to the council, the
 2-64 council may create a list of state water issues and present the list
 2-65 to the governor, lieutenant governor, and speaker of the house of
 2-66 representatives. The governor, lieutenant governor, and speaker of
 2-67 the house of representatives may select a total of not more than
 2-68 four issues from the list. The council shall provide
 2-69 recommendations based on that list.

3-1 (c) The council may draft and review proposed legislation,
3-2 for purposes of recommendation only, to communicate specific policy
3-3 changes that may be needed.

3-4 (d) The council may request reports from river authorities,
3-5 surface water authorities, and water districts.

3-6 (e) The council shall coordinate its efforts with the senate
3-7 and house standing committees with primary responsibility over
3-8 water resource management.

3-9 (f) The council may appoint subcommittees of council
3-10 members to analyze specific issues within charges to the council or
3-11 issues selected from the council's list by the governor, lieutenant
3-12 governor, and speaker of the house of representatives.

3-13 (g) The council may appoint a technical committee to analyze
3-14 specific issues within charges to the council or issues selected
3-15 from the council's list by the governor, lieutenant governor, and
3-16 speaker of the house of representatives. The technical committee
3-17 may contain noncouncil members.

3-18 (h) The council may not:

3-19 (1) adopt rules;

3-20 (2) regulate water use, water quality, or any other
3-21 aspect of water resource management;

3-22 (3) plan or construct water resource projects or have
3-23 such projects planned or constructed;

3-24 (4) grant or lend money for the construction of water
3-25 resource projects;

3-26 (5) establish water resource management standards or
3-27 otherwise usurp the authority of or infringe upon the duties,
3-28 responsibilities, or powers of local, regional, or state water
3-29 management entities, including groundwater districts, river
3-30 authorities and compacts, regional water planning groups, or member
3-31 agencies of the council; or

3-32 (6) consider or discuss a specific permit or project
3-33 or recommendation for a project until the water permit has been
3-34 issued by the state and all motions for rehearing have been
3-35 overruled.

3-36 Sec. 9.009. REPORT. (a) The council shall submit a report
3-37 on its recommendations [Not later than December 1 of each
3-38 even-numbered year, the council shall submit a report] to the
3-39 governor, lieutenant governor, and speaker of the house of
3-40 representatives and to the senate and house standing committees
3-41 with primary responsibility over water resource management not
3-42 later than December 31 each year [and financing].

3-43 (b) The report must include recommendations [findings of]
3-44 the council made on charges issued by or issues selected from the
3-45 council's list by the governor, lieutenant governor, and speaker of
3-46 the house of representatives during the year [in the periodic
3-47 reviews of authorities during the preceding two-year period and any
3-48 other findings and recommendations the council considers
3-49 necessary].

3-50 (c) The governor, lieutenant governor, and speaker of the
3-51 house of representatives may request additional reports on specific
3-52 charges at any time.

3-53 (d) The council may request reports from committees
3-54 established under Sections 9.008(f) and (g).

3-55 Sec. 9.016. PUBLIC PARTICIPATION. The council shall
3-56 encourage public participation at council meetings and public input
3-57 regarding the council's purpose, the exercise of its powers and
3-58 duties under Section 9.008, and its preparation of the report
3-59 described in Section 9.009[, and its analysis of authorities under
3-60 Sections 9.010 and 9.011].

3-61 Sec. 9.017. DISSOLUTION OF COUNCIL AND ACCOUNT. Unless
3-62 extended by the 79th [78th] Texas Legislature, this chapter and the
3-63 interagency water advisory account expire on December 31 [September
3-64 1], 2005.

3-65 SECTION 2. Sections 15.005(a), (b), and (d), Water Code,
3-66 are amended to read as follows:

3-67 (a) On submission of a project application under this
3-68 chapter, the executive administrator [development fund manager]
3-69 shall determine if the application includes a project that will

4-1 have flood control as one of its purposes and if the political
4-2 subdivision submitting the application includes all of the
4-3 watershed in which the project is to be located.

4-4 (b) If the executive administrator [~~development fund~~
4-5 ~~manager~~] finds that the application includes a project that has
4-6 flood control as one of its purposes and that the watershed in which
4-7 the project is located is partially located outside the political
4-8 subdivision making the application, the executive administrator
4-9 [~~development fund manager~~] shall require the applicant to submit a
4-10 written memorandum of understanding relating to the management of
4-11 the watershed in which the project is to be located.

4-12 (d) The board shall not consider any application for which a
4-13 memorandum of understanding must be filed under this section until
4-14 that memorandum of understanding is filed with the executive
4-15 administrator [~~development fund manager~~].

4-16 SECTION 3. Section 16.012(m), Water Code, is amended to
4-17 read as follows:

4-18 (m) The executive administrator may conduct surveys of
4-19 entities using groundwater and surface water for municipal,
4-20 industrial, power generation, or mining purposes at intervals
4-21 determined appropriate by the executive administrator to gather
4-22 data to be used for long-term water supply planning. Recipients of
4-23 the survey shall complete and return the survey to the executive
4-24 administrator. A person who fails to timely complete and return the
4-25 survey is not eligible for funding from the board for board programs
4-26 and is ineligible to obtain permits, permit amendments, or permit
4-27 renewals from the commission under Chapter 11. A person who fails
4-28 to complete and return the survey commits an offense that is
4-29 punishable as a Class C misdemeanor. [~~Surveys obtained by the board~~
4-30 ~~from nongovernmental entities are excepted from the requirements of~~
4-31 ~~Section 552.021, Government Code, unless otherwise directed in~~
4-32 ~~writing by the person completing the survey.~~] This subsection does
4-33 not apply to survey information regarding windmills used for
4-34 domestic and livestock use.

4-35 SECTION 4. Section 16.012, Water Code, is amended by adding
4-36 Subsection (n) to read as follows:

4-37 (n) Information collected through field investigations on a
4-38 landowner's property by the executive administrator after
4-39 September 1, 2003, solely for use in the development of groundwater
4-40 availability models under Subsection (l) of this section that
4-41 reveals site-specific information about such landowner is not
4-42 subject to Chapter 552, Government Code, and may not be disclosed to
4-43 any person outside the board if the landowner on whose land the
4-44 information is collected has requested in writing that such
4-45 information be deemed confidential. If a landowner requests that
4-46 his or her information not be disclosed, the executive
4-47 administrator may release information regarding groundwater
4-48 information only if the information is summarized in a manner that
4-49 prevents the identification of an individual or specific parcel of
4-50 land and the landowner. This subsection does not apply to a parcel
4-51 of land that is publicly owned.

4-52 SECTION 5. Section 16.053, Water Code, is amended by
4-53 amending Subsections (d) and (e) and adding Subsection (e-1) to
4-54 read as follows:

4-55 (d) The board shall provide guidelines for the
4-56 consideration of existing regional planning efforts by regional
4-57 water planning groups. The board shall provide guidelines for the
4-58 format in which information shall be presented in the regional
4-59 water plans. [~~The board by rule shall require a holder of a surface~~
4-60 ~~water permit, a certified filing, or a certificate of adjudication~~
4-61 ~~for surface water, a holder of a permit for the export of~~
4-62 ~~groundwater from a groundwater conservation district, a retail~~
4-63 ~~public water supplier, a wholesale water provider, an irrigation~~
4-64 ~~district, and any other person who is transporting groundwater or~~
4-65 ~~surface water 20 miles or more to report to the board information on~~
4-66 ~~certain water pipelines and other facilities that can be used for~~
4-67 ~~water conveyance. Nothing in the initial planning effort shall~~
4-68 ~~prevent development of a management plan or project where local or~~
4-69 ~~regional needs require action prior to completion of the initial~~

5-1 ~~regional water plan under this section.]~~

5-2 (e) Each regional water planning group shall submit to the
5-3 board a regional water plan that:

5-4 (1) is consistent with the guidance principles for the
5-5 state water plan adopted by the board under Section 16.051(d);

5-6 (2) provides information based on data provided or
5-7 approved by the board in a format consistent with the guidelines
5-8 provided by the board under Subsection (d);

5-9 (3) identifies:

5-10 (A) each source of water supply in the regional
5-11 water planning area in accordance with the guidelines provided by
5-12 the board under Subsections (d) and (f);

5-13 (B) factors specific to each source of water
5-14 supply to be considered in determining whether to initiate a
5-15 drought response; and

5-16 (C) actions to be taken as part of the response;
5-17 [and

5-18 [~~(D) information on water pipelines and other
5-19 facilities that can be used for water conveyance, including, but
5-20 not limited to, currently used and abandoned oil, gas, and water
5-21 pipelines, as provided by board rules and guidelines,]~~

5-22 (4) has specific provisions for water management
5-23 strategies to be used during a drought of record;

5-24 (5) includes but is not limited to consideration of
5-25 the following:

5-26 (A) any existing water or drought planning
5-27 efforts addressing all or a portion of the region;

5-28 (B) certified groundwater conservation district
5-29 management plans and other plans submitted under Section 16.054;

5-30 (C) all potentially feasible water management
5-31 strategies, including but not limited to improved conservation,
5-32 reuse, and management of existing water supplies, acquisition of
5-33 available existing water supplies, and development of new water
5-34 supplies;

5-35 (D) protection of existing water rights in the
5-36 region;

5-37 (E) opportunities for and the benefits of
5-38 developing regional water supply facilities or providing regional
5-39 management of water supply facilities;

5-40 (F) appropriate provision for environmental
5-41 water needs and for the effect of upstream development on the bays,
5-42 estuaries, and arms of the Gulf of Mexico and the effect of plans on
5-43 navigation;

5-44 (G) provisions in Section 11.085(k)(1) if
5-45 interbasin transfers are contemplated;

5-46 (H) voluntary transfer of water within the region
5-47 using, but not limited to, regional water banks, sales, leases,
5-48 options, subordination agreements, and financing agreements; and

5-49 (I) emergency transfer of water under Section
5-50 11.139, including information on the part of each permit, certified
5-51 filing, or certificate of adjudication for nonmunicipal use in the
5-52 region that may be transferred without causing unreasonable damage
5-53 to the property of the nonmunicipal water rights holder;

5-54 (6) identifies river and stream segments of unique
5-55 ecological value and sites of unique value for the construction of
5-56 reservoirs that the regional water planning group recommends for
5-57 protection under Section 16.051;

5-58 (7) assesses the impact of the plan on unique river and
5-59 stream segments identified in Subdivision (6) if the regional water
5-60 planning group or the legislature determines that a site of unique
5-61 ecological value exists; and

5-62 (8) describes the impact of proposed water projects on
5-63 water quality.

5-64 (e-1) On request of the Texas Water Advisory Council, a
5-65 regional planning group shall provide the council a copy of that
5-66 planning group's regional water plan.

5-67 SECTION 6. Section 17.183, Water Code, is amended to read as
5-68 follows:

5-69 Sec. 17.183. CONSTRUCTION CONTRACT REQUIREMENTS. The

6-1 governing body of each political subdivision receiving financial
6-2 assistance from the board shall require in all contracts for the
6-3 construction of a project:

6-4 (1) that each bidder furnish a bid guarantee
6-5 equivalent to five percent of the bid price;

6-6 (2) that each contractor awarded a construction
6-7 contract furnish performance and payment bonds:

6-8 (A) the performance bond shall include without
6-9 limitation guarantees that work done under the contract will be
6-10 completed and performed according to approved plans and
6-11 specifications and in accordance with sound construction
6-12 principles and practices; and

6-13 (B) the performance and payment bonds shall be in
6-14 a penal sum of not less than 100 percent of the contract price and
6-15 remain in effect for one year beyond the date of approval by the
6-16 engineer of the political subdivision; and

6-17 (3) that payment be made in partial payments as the
6-18 work progresses;

6-19 (4) that each partial payment shall not exceed 95
6-20 percent of the amount due at the time of the payment as shown by the
6-21 engineer of the project, but, if the project is substantially
6-22 complete, a partial release of the five percent retainage may be
6-23 made by the political subdivision with approval of the executive
6-24 administrator;

6-25 (5) that payment of the retainage remaining due upon
6-26 completion of the contract shall be made only after:

6-27 (A) approval by the engineer for the political
6-28 subdivision as required under the bond proceedings;

6-29 (B) approval by the governing body of the
6-30 political subdivision by a resolution or other formal action; and

6-31 (C) certification by the executive administrator
6-32 [~~development fund manager~~] in accordance with the rules of the
6-33 board that the work to be done under the contract has been completed
6-34 and performed in a satisfactory manner and in accordance with sound
6-35 engineering principles and practices;

6-36 (6) that no valid approval may be granted unless the
6-37 work done under the contract has been completed and performed in a
6-38 satisfactory manner according to approved plans and
6-39 specifications; and

6-40 (7) that, if a political subdivision receiving
6-41 financial assistance under Subchapter K of this chapter, labor
6-42 from inside the political subdivision be used to the extent
6-43 possible.

6-44 SECTION 7. Section 17.276(a), Water Code, is amended to
6-45 read as follows:

6-46 (a) After an application is received for financial
6-47 assistance, the executive administrator [~~development fund manager~~]
6-48 shall submit the application to the board together with comments
6-49 and recommendations concerning the best method of making financial
6-50 assistance available.

6-51 SECTION 8. Section 30.003, Water Code, is amended by adding
6-52 Subdivision (11) to read as follows:

6-53 (11) "Canal" means a man-made navigable channel or
6-54 waterway of at least two miles in length.

6-55 SECTION 9. Sections 9.010, 9.011, 9.012, and 11.155(c),
6-56 Water Code, are repealed.

6-57 SECTION 10. (a) The terms of public members serving on the
6-58 Texas Water Advisory Council on the effective date of this Act
6-59 expire on that date.

6-60 (b) As soon as practicable after the effective date of this
6-61 Act, the governor shall appoint four members of the general public
6-62 to the Texas Water Advisory Council as provided by Section 9.002,
6-63 Water Code, as amended by this Act. The governor may reappoint a
6-64 person who was serving on the council on the effective date of this
6-65 Act. The newly appointed public members shall draw lots to
6-66 determine which two members serve two-year terms and which two
6-67 members serve three-year terms.

6-68 SECTION 11. This Act takes effect immediately if it
6-69 receives a vote of two-thirds of all the members elected to each

7-1 house, as provided by Section 39, Article III, Texas Constitution.
7-2 If this Act does not receive the vote necessary for immediate
7-3 effect, this Act takes effect September 1, 2003.

7-4

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