

AN ACT

relating to the development, diversion, treatment, and use of groundwater and the discharge of treated groundwater and waste resulting from the development of the state's groundwater resources.

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

SECTION 1. (a) Texas faces periodic drought, continuing population growth, and the need to remain economically competitive. Water supply is critical to facing these challenges and every effort must be made to develop sufficient and cost-effective water supplies on a sustainable basis.

(b) The vast majority of Texans today rely on surface water projects that were developed in response to the prolonged drought of the 1950s. This drought of record has been exceeded in parts of the state, while the population continues to grow at a dramatic rate. Traditional sources of municipal water supply are no longer adequate to meet future demand. Diversifying the state's water portfolio must be balanced against the needs of future generations and the protection of the state's precious water resources.

H.B. No. _____

(c) Groundwater is a mainstay of rural and agricultural communities. Groundwater's value to the state economy and the food security of the nation cannot be overstated. Groundwater is a finite asset in that the majority of our state's groundwater is recharged slowly and the risk of overdraft is significant.

(d) The last decade has seen a surge in private efforts to market groundwater across vast distances to municipal end users with little regard for rural and agricultural communities or for projects based on sustainability, regional partnerships, or conjunctive use.

(e) The legislature finds that groundwater should be developed on a regional basis to prevent wasteful and duplicative projects, and should be developed, concurrently with other water planning solutions, to help this state meet its current and future water needs.

(f) The legislature finds that it is necessary and appropriate to grant authority and provide guidance to local governments and municipalities in order to develop the state's groundwater on a conjunctive, sustainable and regional basis, consistent with appropriate environmental and water right protections, while eliminating unnecessary and wasteful projects.

SECTION 2. Subtitle E, Title 2, Water Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. PROVISIONS GENERALLY APPLICABLE TO GROUNDWATER

Sec. 34.001. SHORT TITLE. This chapter may be cited as the Sustainable Groundwater Development Act.

Sec. 34.002. PURPOSE. The purpose of this chapter is to prevent waste of the state's groundwater resources and promote the sustainable development, production, collection, transportation, treatment, and disposal of groundwater pursuant to authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution.

Sec. 34.003. CONSTRUCTION OF CHAPTER. The terms and provisions of this chapter shall be liberally construed to accomplish its purposes.

Sec. 34.004. DEFINITIONS. (1) The definitions contained in Subchapter A, Chapter 35 and 36 of this code apply to this chapter.

(2) "Produced groundwater" means groundwater that has been removed or severed by sale lease or contract from the overlying surface acreage. It does not include groundwater used onsite for domestic and agricultural purposes.

(3) "Sustainable" means: groundwater projects designed to protect an aquifer from over-production by limiting production to that which can be sustained for future generations without damaging surface waters and local communities. Sustainable projects incorporate other sources of supply, including brackish

H.B. No. _____

groundwater, surface water, marine seawater and aquifer storage and recovery to minimize overreliance on any one source of supply.

(4) "Need" means: a sustainable project for which an end user or political subdivision is under obligation to purchase or has committed development funds prior to filing a permit application. Need does not include potential or speculative uses, including permit applications based on letters of intent or interest.

(5) "River authority" means any district or authority created by the legislature which contains an area within its boundaries of one or more counties and which is governed by a board of directors elected, appointed or designated in whole or in part by the governor, or by the Texas Water Development Board

Sec. 34.005. RELATIONSHIP TO OTHER LAWS. In the event of a conflict between this chapter and Chapter 11, 35 or 36, this chapter controls.

Sec. 34.006. DIVERSIONS OF GROUNDWATER. (a) A permit may not be granted, extended or renewed under Chapter 36 of this code absent a determination of need supported by substantial evidence.

(b) A political subdivision or entity otherwise subject to this code may not develop groundwater for domestic or municipal use, own or import groundwater from another planning region if the state water plan identifies equivalent water supplies from other

H.B. No. _____

sources in the entity's region capable of meeting the demands set out in the permit application.

(c) A district may not grant or amend a permit for export of groundwater outside of a district's boundaries if the state water plan identifies equivalent water supplies from other sources in the end user's region capable of meeting the demands set out in the permit application.

(d) The commission by rule shall prescribe reasonable measures to enforce this section.

Sec. 34.007. OWNERSHIP OF GROUNDWATER DISCHARGED INTO WATERS OF THE STATE. (a) The state becomes owner of groundwater severed by sale, lease or other conveyance for transportation and treatment and subsequently discharged, directly or indirectly, into waters of the state. This section does not apply to groundwater dedicated to agricultural uses.

Sec. 34.008. REGIONAL DEVELOPMENT OF GROUNDWATER. (a) It is the policy of this state to promote the development of groundwater on a regional scale. A political subdivision may not expand or develop groundwater as a source of supply without consideration of regional alternatives in the state water plan.

Sec. 34.009. BED AND BANKS AUTHORIZATION. (a) With prior authorization granted under rules prescribed by the commission, a person may use the bed and banks of any flowing natural stream in

H.B. No. _____

this state or a lake, reservoir, or other impoundment in this state to convey groundwater that has been treated so as to meet standards that are at least as stringent as the water quality standards applicable to the receiving stream or impoundment adopted by the commission.

(b) The commission shall provide for notice and an opportunity for a contested case hearing regarding commission actions relating to an application for an authorization under this section.

(c) Groundwater that is conveyed under an authorization granted under this section may be used only by the person to whom the authorization is granted.

Sec. 34.010. PROPERTY RIGHTS. (a) A permit granted under Chapter 36 of this code does not convey any property rights of any sort, or any exclusive privilege. The proper jurisdiction for takings or other property related claims is the District Court where the property is located.

Sec. 34.011. SURFACE - GROUNDWATER EXCHANGE. (a) A permit granted under Chapter 36 of this code may not diminish or otherwise negatively impact the surface waters of the state, existing or future surface water rights, or environmental flows.

(b) River authorities shall collect data on the surface groundwater exchange in their respective basins and identify all

H.B. No. _____

negative impacts of groundwater withdrawals on distribution and flow of surface waters. River authorities are delegated the responsibility and the right to defend surface water rights against infringement or diminishment by groundwater withdrawals and may assess costs associated therewith as an administrative overhead on any services provided by the authority.

SECTION 3. Title 2, Agriculture Code, is amended by adding Chapter 11A to read as follows:

CHAPTER 11A. OFFICE OF PUBLIC INTEREST COUNSEL

Sec. 11A.001. CREATION AND GENERAL RESPONSIBILITY OF THE OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest counsel is created to ensure that the commission promotes the public's interest in rural and agricultural water supply. The primary duty of the office is to represent the public interest as a party to matters before groundwater conservation districts.

Sec. 11A.002. PUBLIC INTEREST COUNSEL. The office shall be headed by a public interest counsel appointed by the commissioner of agriculture.

Sec. 11A.003. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The office of public interest counsel shall report to the commission each year in a public meeting held on a date determined by the commission:

(1) an evaluation of the office's performance in representing

the public interest in the preceding year;

(2) an assessment of the budget needs of the office, including the need to contract for outside expertise; and

(3) any legislative or regulatory changes recommended under Section 5.273.

(b) The commission and the office of public interest counsel shall work cooperatively to identify performance measures for the office.

Sec. 11A.004. DUTIES OF THE PUBLIC INTEREST COUNSEL. (a) The counsel shall represent the public interest and be a party to all groundwater conservation district proceedings.

(b) The counsel may recommend needed legislative and regulatory changes.

Sec. 11A.005. STAFF; OUTSIDE TECHNICAL SUPPORT. (a) The office shall be adequately staffed to carry out its functions under this code.

(b) The counsel may obtain and use outside technical support to carry out its functions under this code.

(c) The office shall be funded by an assessment on all groundwater export permits and all permits issued for over 2500 acre-feet. The commissioner shall determine the assessment on annual basis, effective September 1 of each year.

Sec. 11A.006. APPEAL. A ruling, decision, or other act of

H.B. No. _____

a groundwater conservation district may be appealed by the counsel.

Sec. 11A.007. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

The commission by rule, after consideration of recommendations from the office of public interest counsel, shall establish factors the public interest counsel may consider before the public interest counsel decides to represent the public interest as a party to a groundwater conservation district proceeding.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.