

Texas Water Development Board

Project Manager: Sarah Kirkle

Agency at a Glance

The Texas Water Development Board (Board) was created in 1957 through a state constitutional amendment that authorized the Board to issue general obligation water development bonds through loans to political subdivisions. Since the 1960s, the Board has assumed increased responsibility for ensuring sufficient water supplies for the state through its roles in water planning and in providing technical assistance and water-related data. The Board's mission is to provide leadership, planning, financial assistance, information, and education for the conservation and responsible development of water for Texas. To accomplish its goals for addressing the State's water needs, the Board performs the following activities.

- Provides financial assistance in the form of loans and grants through state and federal programs to Texas communities for the construction of water supply, wastewater treatment, flood control, and agricultural water conservation projects.
- Supports the development of regional water plans and prepares the State Water Plan for the development of the State's water resources.
- Collects, analyzes, and disseminates water-related data, conducts studies on surface water and groundwater resources, and develops and maintains surface water and groundwater availability models to support planning, conservation, and development of surface water and groundwater for Texas.

Summary

The Board is not accustomed to being square in the eye of controversy. Since its creation, the Board has enjoyed its position of providing funding for water projects and infrastructure and, more recently, has won over fans for its regional water planning process. Controversies related to the intractable nature of water issues have always surrounded the agency. Now, however, they threaten the Board's fundamental ability to support the development of the State's water resources on several fronts.

First, the Board's remaining bond authority may be exhausted as soon as the end of fiscal year 2011. Without additional bond authority, the Board will be unable to fulfill its constitutional mission to provide financial assistance through loans to political subdivisions to meet water and wastewater infrastructure needs.

Several threats exist to the development of the State's water resources.

Second, evolving processes associated with groundwater affect the Board's ability to effectively conduct statewide water planning and ultimately affect the management of this vital resource. Much of this controversy surrounds a joint planning process in which groundwater districts join together to make decisions about the desired future condition of aquifers they manage. While the joint planning process and groundwater districts are distinct elements apart from the Board, they can have a clear impact on the Board's operations. Specifically, the Board's process for considering the reasonableness of a desired future condition decision does not provide for a complete or meaningful administrative process that ensures final resolution. The following material summarizes the Sunset Commission's recommendations on the Texas Water Development Board.

Issue 1

The Board's Remaining Development Fund Bond Authority Is Insufficient to Fulfill Its Constitutional Responsibility.

The Board was created in 1957 through constitutional amendment to provide financial assistance for water and wastewater projects throughout the state. However, because of increased demand for its financing programs, the Board's largest constitutional bond authority, Development Fund, will be insufficient to sustain the Board's responsibilities as soon as the end of this biennium. Without additional authority, the Board may not be able to meet the State's water and wastewater needs and the State will lose federal funds.

Recommendations

Constitutional Amendment

- 1.1 Authorize the Board to issue Development Fund general obligation bonds, at its discretion, on a continuing basis, in amounts such that the aggregate principal amount outstanding at any time does not exceed \$6 billion.**

This recommendation would allow the Board to issue additional general obligation bonds for one or more accounts of the Development Fund up to \$6 billion. This recommendation would require the Legislature to pass a joint resolution containing this evergreen authority and Texas voters to approve an amendment to the State Constitution.

Change in Statute

- 1.2 Clarify that the Board's authorized but unissued Development Fund general obligation bonds are not considered state debt payable from general revenue for purposes of calculating the constitutional debt limit until the Legislature appropriates debt service to the Board.**

This recommendation would clarify current practice whereby the Board's Development Fund bonds would be treated as state debt repayable with state general revenues only if the Legislature appropriates debt service to the Board, and, at the time of issuance, the bond resolution states that the bonds are to be repaid with state general revenues. This recommendation would require the Board, when requesting the Bond Review Board's approval of bond issues, to certify the debt service on the bonds is expected to be paid from either the State's general revenues or another revenue source. This recommendation would also require the Bond Review Board, during its approval of the Board's bond issues, to confirm that the Legislature appropriated debt service to support the issuance of any not self-supporting debt.

1.3 Authorize the Board to request the Attorney General take legal action to compel a recipient of any of the Board’s financial assistance programs to cure or prevent default in payment.

This recommendation would ensure the Board has full statutory authority across all funding programs to request the Attorney General compel borrowers to perform specific duties legally required of them in documents such as bond ordinances and loan and grant agreements. This recommendation would provide the Board consistent statutory authority across all the Board’s financial assistance programs and all types of borrowing entities, including certain water supply corporations.

Issue 2

The Lack of Coordination Among Separate Water Planning Processes Impedes the Board’s Statewide Water Planning.

The separation between the regional water planning process and the development of desired future conditions (DFCs) for aquifers hurts the Board’s ability to conduct statewide water planning. Ensuring that members of groundwater management areas (GMAs) responsible for developing DFCs serve as voting members of regional water planning groups would increase communication between the two separate planning groups. Additionally, specifying a point in time at which a DFC will be used in the water planning process could provide certainty that an adopted DFC would be used in the next round of water planning. Strengthened public notice requirements would also ensure reasonable opportunity for stakeholders’ notice and comment regarding a proposed DFC.

Recommendations

Change in Statute

2.1 Add a representative of each groundwater management area that overlaps with a regional water planning group as a voting member of that regional water planning group.

This recommendation would add a representative of each groundwater management area that overlaps with a regional water planning group as a voting member of that regional water planning group. In addition, the groundwater management area representative must come from a groundwater conservation district that overlaps with the regional water planning group.

2.2 Require regional water planning groups to use the desired future conditions in place at the time of adoption of the Board’s State Water Plan in the next water planning cycle.

This recommendation would require DFCs adopted before the State Water Plan due date to be used by regional water planning groups in the subsequent water planning cycle. The recommendation would allow GMAs to make changes to their DFC, if they choose, by a certain date, with assurance that the new managed available groundwater number will be used in the next regional – and state – water plan adopted by the Board. As a result, DFCs adopted at any point before January 5, 2012 would be used in the water planning cycle resulting in the 2017 State Water Plan.

2.3 Strengthen the public notice requirements for groundwater management area meetings and adoption of desired future conditions and require proof of notice be included in submission of conditions to the Board.

This recommendation would require each GMA to provide uniform notice posted in each district's office, the courthouse of each county wholly or partially in the GMA, the Texas Register, and each district's website, if available, at least 10 days before the GMA meeting. Notice for any GMA meeting must include:

- the date, time, and location of the public meeting or hearing;
- a list of agenda items;
- names of each groundwater conservation district making up the GMA;
- the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and
- information on how the public may submit comments.

Additionally, before a GMA adopts a DFC, a 30-day public comment period must be provided, during which time each district would be required to conduct a public hearing on any proposed DFC relevant to their district and make a copy of the proposed DFC and any supporting materials, such as groundwater availability model runs, available to the public in the district's office. Notice for the public hearing in each district would include the same elements as GMA meeting notices above, as well as the proposed DFC.

GMA meetings would be considered open meetings under Chapter 551 of the Texas Government Code. As a requirement for the Board to accept a DFC, the GMA must provide proof of notice of the adopted DFC. The Board could define additional methods for stakeholder notice in rule to ensure reasonable opportunity for notice to, and comment from, affected stakeholders, such as landowners, permit holders, local officials, and other members of the public.

Issue 3

The State's Processes to Petition an Aquifer's Desired Future Conditions Are Fundamentally Flawed.

The process for questioning the reasonableness of DFCs at the Board lacks standard components of administrative processes designed to ensure a clear resolution, which ultimately wastes state time and resources. Removing *any* challenge to the reasonableness of the DFC and instead establishing a more rigorous process for adopting DFCs through rule, with challenges to a district's proper adoption of the rule, would replace the existing, unworkable process with an improved process for local decision making in groundwater matters.

Additionally, processes guiding the development of DFCs lack statutory guidance for districts in establishing a reasonable DFC and documenting the impacts of the DFC. Further, the processes do not ensure adequate public notice or opportunities for public participation in the development of a DFC. Strengthening the process to develop a DFC would promote more input into the joint planning process during the establishment of the DFC.

Recommendations

Change in Statute

3.1 Require groundwater management areas to document consideration of factors or criteria that comprise a reasonable desired future condition and to submit that documentation to the Board.

This recommendation would require districts in a GMA, in determining their DFC, to document the factors or criteria they considered that demonstrate the reasonableness of their DFC. The Board would require that districts in a GMA include documentation of consideration of reasonableness factors and impacts of a DFC in writing for the submission of the DFC to be accepted as administratively complete. Districts could submit this documentation through such means as the DFC resolution.

3.2 Remove the process to petition the reasonableness of a desired future condition at the Board and strengthen the process for developing desired future conditions.

This recommendation would repeal the process to petition the reasonableness of a DFC at the Texas Water Development Board and instead add requirements and guidelines for developing and adopting DFCs by groundwater conservation districts within each GMA.¹

The recommendation would require the presiding officer or the presiding officer's designee of each groundwater conservation district wholly or partially in each groundwater management area to serve as delegates and convene at least annually to conduct joint planning at a DFC Joint Planning Conference. Delegates at the DFC Joint Planning Conference would perform current requirements to review the management plans and develop desired future conditions.²

Delegates could appoint and convene non-voting advisory committees consisting of social, governmental, environmental, or economic segments within each groundwater management area to assist in the development of DFCs. Both the Board and the Texas Commission on Environmental Quality (TCEQ) would make technical staff available to serve in a non-voting advisory capacity to the DFC Joint Planning Conference and or advisory committees if requested.

Proposed DFC(s) would require support from two-thirds of all eligible voting delegates before being submitted to individual districts within the groundwater management area for consideration. Each district would be required to consider all proposed DFC(s) relevant to the district during a public hearing, wherein the districts would solicit public comment on the proposed DFC(s). Upon conclusion of the public hearing, districts would be required to each prepare a report for consideration at the DFC Joint Planning Conference describing public comment received and proposing any revisions, including the basis for the revisions, to the proposed DFC.

The conference delegates would be required to reconvene to review the reports from individual districts, and consider revisions to the proposed DFC. The delegates would issue a DFC report for the GMA. The DFC report would identify each DFC, policy and technical justification for each DFC, other DFC options considered and reasons why they were not adopted, and discuss reasons why recommendations made by advisory committees and public comment received by the districts were or were not incorporated into the DFC.

The DFC report would also document consideration and impacts of the following criteria in establishing reasonable desired future conditions:

- aquifer uses and conditions within the management area, including uses or conditions that differ substantially from one geographic area to another;
- the water supply needs and water management strategies included in the adopted state water plan;
- whether the desired future conditions are physically possible;
- socioeconomic impacts reasonably expected to occur;
- environmental impacts, including spring flow and other interactions between groundwater and surface water;
- the impact on the interests and rights in private property, including ownership and rights of owners of the land and their lessees and assigns in groundwater as recognized in law;³
- hydrogeological conditions including, but not limited to, total estimated recoverable storage provided by the executive administrator, recharge, inflows, and discharge;
- impact on subsidence; and
- any other information relevant to the specific desired future condition.

Upon issuance of the DFC report, each district within the groundwater management area would be required to adopt the relevant DFCs identified in the report by rule under district rulemaking procedures.⁴ The Board would be prohibited from approving a district's management plan that has not adopted relevant DFCs and incorporated the DFCs into the management plan.

Appeals of district rule adoption of a DFC would be made to district court in the same manner as any challenge to a district rule under substantial evidence review in any county in which the district lies.⁵

An affected person by the DFC would be eligible to file an inquiry with the TCEQ for any of the following:

- failure of a district to engage in joint planning, including failure to formally adopt a DFC;
- failure of a district to update its management plan within two years of the GMA's adoption of a DFC or failure to adopt rules within one year after updating its management plan to implement the DFC;
- the rules adopted by a district are not designed to achieve the DFC in the GMA;
- the groundwater in the management area is not adequately protected by the rules adopted by a district; or
- the groundwater in the groundwater management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.⁶

An affected person would be defined as a landowner in the GMA, a district in or adjacent to the GMA, a regional water planning group with a water management strategy in the GMA, a permit holder or permit applicant in the GMA, any holder of groundwater rights in the GMA, or any other affected person, as defined by TCEQ in rule. TCEQ would be authorized to take action against a district related to its failure to conduct joint planning, as modified to be consistent with changes above.⁷

Management Action

3.3 TCEQ should promote mediation in desired future condition petition cases where appropriate.

Under this recommendation, TCEQ should promote mediation as a means to resolve a petition in any DFC petition case it determines is an appropriate candidate for mediation. TCEQ should use procedures similar to those it currently uses in its other regulatory processes to make the parties aware of mediation options.

Issue 4

Structural and Technical Barriers Prevent the Board From Providing Effective Leadership in Geographic Information Systems.

The Texas Natural Resources Information System (TNRIS), housed within the Board, is responsible for acquisition of statewide data sets used to develop and disseminate geographic data products. However, the data center services contract administered by the Department of Information Resources (DIR) constrains TNRIS' ability to timely disseminate key geographic data sets, especially during an emergency. In addition, the Texas Geographic Information Council (TGIC) does not provide effective leadership or coordination in advancing the use of Geographic Information System (GIS), and its separate functions are no longer needed.

Recommendations

Management Action

4.1 The Board should request a full exemption for TNRIS from the data center services contract at DIR to accommodate its statutory emergency management responsibilities.

The Board should pursue a full TNRIS exemption from the data center services contract at DIR to allow both TNRIS' development and production environments to operate outside the contract. The Board's other data center resources, such as email and accounting systems and geographic data outside of TNRIS, would remain in the contract.

Change in Statute

4.2 Clarify TNRIS' duties regarding coordinating and advancing GIS initiatives.

In accordance with TNRIS' existing role as the centralized clearinghouse and referral center for state geographic data, this recommendation would designate the Director of TNRIS as the State Geographic Information Officer, reporting to the Board's Executive Administrator, responsible for:

- coordinating the acquisition and use of high priority imagery and data sets;
- establishing, supporting, and/or disseminating authoritative statewide geographic data sets;
- supporting geographic data needs of emergency management responders during emergencies;

- monitoring trends in geographic information technology; and
- supporting public access to state geographic data and resources.

4.3 Require the Board, in consultation with stakeholders, to report TNRIS' progress in executing its responsibilities and to propose new initiatives for geographic data to the Legislature.

The Board shall, in consultation with stakeholders, submit a report at least once every five years to the Governor, Lieutenant Governor, and Speaker of the House of Representatives with recommendations related to:

- statewide geographic data acquisition needs and priorities, including updates on the progress in maintaining the statewide digital base maps;
- policy initiatives to address the acquisition, use, storage, and sharing of geographic data across state government;
- funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and
- opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data.

In fulfilling this requirement, the Board may establish advisory committees, as needed, to accomplish its functions or to obtain input from state agencies in preparing its report to the Legislature. In designating the membership of any advisory committees, the Board must consider inclusion of the major users of geographic data in state government. Advisory committees should include liaisons from other interests, such as federal or local agencies, and the state information technology agency.

4.4 Abolish the Texas Geographic Information Council.

This recommendation would remove TGIC and its related functions from statute, as its functions are either no longer needed or already performed by the Board through TNRIS. This recommendation does not eliminate any of the Executive Administrator's statutory duties related to TNRIS operations and other duties related to geographic data. However, performing these duties will no longer require guidance from TGIC. Abolishing TGIC should not preclude DIR, or any other agency, from pursuing GIS initiatives, but they should coordinate those initiatives with TNRIS and other state agencies that may benefit from those efforts.

Issue 5

The Board Lacks Data to Determine Whether Implementation of Conservation and Other Water Management Strategies Is Meeting the State's Future Water Needs.

As the State wraps up its third water planning cycle, opportunities exist for evaluating the State's progress in meeting future water needs. Compiling and tracking implementation of strategies or projects as part of the State Water Plan could answer questions about the extent to which the water planning process has facilitated meeting future water demands. Additionally, a lack of uniform reporting requirements for measuring municipal water conservation, through gallons per capita daily (GPCD) figures, prevents the State from effectively gauging progress of water conservation methods.

Recommendations

Change in Statute

5.1 As part of the State Water Plan, require the Board to evaluate the State's progress in meeting its water needs.

This recommendation would require the Board to evaluate the State's progress in meeting future water needs through such means as tracking water management strategies and/or projects implemented since the last State Water Plan and report this information to the Legislature as part of the Board's State Water Plan. The Board would work with regional water planning groups to obtain implementation data and should include a summary of progress toward meeting the State's water needs as part of all future State Water Plans. Additionally, the Board should continue its analysis of how many implemented state water plan projects received its financial assistance, and include that analysis in the State Water Plan.

5.2 Require the Board and TCEQ, in consultation with the Water Conservation Advisory Council, to develop uniform, detailed gallons per capita daily reporting requirements.

This recommendation would require the Board and TCEQ to work with the Water Conservation Advisory Council to develop uniform GPCD reporting requirements outlining how entities calculate and report municipal water use. The agencies should incorporate the uniform methodologies into their existing annual report and five-year implementation report requirements. The recommendation would clarify that water use reporting applies only to entities required to submit municipal water use data to the Board or TCEQ. The recommendation is not intended to require metering of individual water wells.

Because the Board and TCEQ would only be developing reporting methodologies to include as part of their current processes, no cost to the State is anticipated. While some larger entities that submit water conservation plans currently have advanced billing systems capable of reporting detailed GPCD data immediately, smaller entities and those with fewer resources may not have such advanced capabilities. As such, the Board and TCEQ should require entities to report the most detailed level of data currently available, but should not require entities report information that is more detailed than their billing system is capable of producing. The Board and TCEQ should consider phasing in more detailed reporting as capabilities improve and billing systems evolve.

Management Action

5.3 As additional tools and data evolve, the Board should continue exploring ways to develop metrics for additional water use sectors and incentivize water conservation efforts.

The Board should continue working with the Advisory Council to develop metrics to track implementation and reporting of water conservation strategies for water use sectors beyond municipal use to optimize water planning across the state. Additionally, as the Council makes new recommendations, data collection capabilities evolve, and entities' reporting systems improve, the Board should continue exploring ways to incentivize conservation efforts.

Issue 6

The Board's Statute Does Not Reflect Standard Language Typically Applied Across-the-Board During Sunset Reviews.

The Sunset Commission adopts across-the-board recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. Some aspects of the Board's statute do not conform to these commonly applied standards.

Recommendation

Change in Statute

6.1 Apply standard Sunset across-the-board requirements to the Texas Water Development Board.

The recommendation would update the Board's complaint information requirements to clarify that the Board must maintain complaint information on all complaints, not just written complaints, and must provide information on its complaint procedures to the public.

The recommendation would also ensure that the Board develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

Fiscal Implication Summary

These recommendations would cost the State \$109,907, but could also result in potential savings to the General Revenue Fund over the next two years. The specific fiscal impact of each of these recommendations is summarized below.

- **Issue 1** – A constitutional amendment to allow the Board to issue additional bond authority would not have an immediate fiscal impact to state general revenue, beyond the State's one-time \$109,907 publication cost for placing the constitutional amendment on the ballot. Because the bond authority would be limited to self-supporting debt unless the Legislature appropriates funds for debt service, the fiscal impact for debt service cannot be determined.
- **Issue 4** – Depending on approval by DIR, exempting TNRIS from the data center services contract could save the State about \$2.7 million in general revenue over the next biennium, due primarily to a reduction in geographic data storage costs.

Fiscal Year	Cost to the General Revenue Fund
2012	\$109,907
2013	\$0
2014	\$0
2015	\$0
2016	\$0

-
- 1 Texas Water Code, sec. 36.108(l)-(n).
 - 2 Texas Water Code, sec. 36.108(c) and (d).
 - 3 Texas Water Code, sec. 36.002.
 - 4 Texas Water Code, sec. 36.101.
 - 5 Texas Water Code, ch. 36, Subchapter H.
 - 6 Texas Water Code, sec. 36.108(f).
 - 7 Texas Water Code, sec. 36.3011.

