

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE C. WATER DEVELOPMENT

CHAPTER 16. PROVISIONS GENERALLY APPLICABLE TO WATER DEVELOPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 16.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (3) "Chairman" means the chairman of the Texas Water Development Board.
- (4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.
- (5) "Executive administrator" means the executive administrator of the Texas Water Development Board.
- (6) "Development fund manager" means the development fund manager of the Texas Water Development Board.
- (7) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Chapter 67.
- (8) "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.
- (9) "Waste" has the same meaning as provided in Section 26.001 of this code.
- (10) "Water development bonds" means the Texas Water Development Bonds authorized by Article III, Sections 49-c and 49-d, of the Texas Constitution and bonds dedicated to use for the purposes of those sections under Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution.
- (11) "State facility" means a project in which the board has acquired an ownership interest.

(12) "Acquisition of a state facility" means the act or series of actions by the board in making payment for a state facility.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.08, 2.14; Acts 1985, 69th Leg., ch. 795, Sec. 1.044, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 821, Sec. 2, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 7, Sec. 3(1), eff. March 24, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 9, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 1; Acts 1989, 71st Leg., ch. 1062, Sec. 1; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.064, eff. Aug. 12, 1991; Acts 1999, 76th Leg., ch. 62, Sec. 18.58, eff. Sept. 1, 1999.

Sec. 16.002. OPEN MEETINGS AND OPEN RECORDS LAWS. Nonprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 551, Government Code, and to Chapter 552, Government Code.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.19. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(78), (90), eff. Sept. 1, 1995.

SUBCHAPTER B. DUTIES OF THE EXECUTIVE ADMINISTRATOR

Sec. 16.011. GENERAL RESPONSIBILITIES OF THE EXECUTIVE ADMINISTRATOR. The executive administrator shall determine the responsibilities of each administrative division of the board and its staff in carrying out the authority, duties, and functions provided in this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.012. STUDIES, INVESTIGATIONS, SURVEYS. (a) The executive administrator shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state and shall, in cooperation with other entities of the state, guide the development of a statewide water resource data collection and dissemination

network. For these purposes the executive administrator shall collect, receive, analyze, process, and facilitate access to basic data and summary information concerning water resources of the state and provide guidance regarding data formats and descriptions required to access and understand Texas water resource data.

(b) The executive administrator shall:

(1) determine suitable locations for future water facilities, including reservoir sites;

(2) determine suitable, cost-effective water supply alternatives on a regional basis, including voluntary means of encouraging aggressive water conservation;

(3) locate land best suited for irrigation;

(4) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

(5) examine and survey reservoir sites;

(6) monitor the effects of fresh water inflows upon the bays and estuaries of Texas;

(7) monitor instream flows;

(8) lead a statewide effort, in coordination with federal, state, and local governments, institutions of higher education, and other interested parties, to develop a network for collecting and disseminating water resource-related information that is sufficient to support assessment of ambient water conditions statewide;

(9) make recommendations for optimizing the efficiency and effectiveness of water resource data collection and dissemination as necessary to ensure that basic water resource data are maintained and available for Texas; and

(10) make basic data and summary information developed under this subsection accessible to state agencies and other interested persons.

(c) In performing the duties required under Subdivisions (1), (4), (5), (6), and (7) of Subsection (b), the executive administrator shall consider advice from the Parks and Wildlife Department. In addition, the Department of Agriculture may provide advice to the executive administrator, where appropriate, regarding any of the duties to be performed under Subsection (b).

(d) All entities of the state, including institutions of higher education, that collect or use water data or information shall cooperate with the board in the development of a coordinated, efficient, and effective statewide water resource data collection and dissemination network.

(e) The executive administrator shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

(f) In performing his duties under this section, the executive administrator shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.

(g) No later than December 31, 1999, the commission shall obtain or develop an updated water availability model for six river basins as determined by the commission. The commission shall obtain or develop an updated water availability model for all remaining river basins no later than December 31, 2001.

(h) Not later than December 31, 2003, the commission shall obtain or develop an updated water supply model for the Rio Grande. Recognizing that the Rio Grande is an international river touching on three states of the United States and five states of the United Mexican States and draining an area larger than the State of Texas, the model shall encompass to the extent practicable the significant water demands within the watershed of the river as well as the unique geology and hydrology of the region. The commission may collect data from all jurisdictions that allocate the waters of the river, including jurisdictions outside this state.

(i) Within 90 days of completing a water availability model for a river basin, the commission shall provide to all holders of existing permits, certified filings, and certificates of adjudication in that river basin the projected amount of water that would be available during a drought of record.

(j) Within 90 days of completing a water availability model for a river basin, the commission shall provide to each regional water planning group created under Section 16.053 of this code in that river basin the projected amount of water that would be available if cancellation procedures were instigated under the provisions of Subchapter E, Chapter 11, of this code.

(k) Within 90 days of completing a water availability model for a river basin, the commission, in coordination with the Parks and Wildlife Department and with input from the Department of Agriculture, where appropriate, shall determine the potential impact of reusing municipal and industrial effluent on existing water rights, instream uses, and freshwater inflows to bays and estuaries. Within 30 days of making this determination, the commission shall provide the projections to the board and each regional water planning group created under Section 16.053 of this code in that river basin.

(l) The executive administrator shall obtain or develop groundwater availability models for major and minor aquifers in coordination with groundwater conservation districts and regional water planning groups created under Section 16.053 that overlie the aquifers. Modeling of major aquifers shall be completed not later than October 1, 2004. On completing a groundwater availability model for an aquifer, the executive administrator shall provide the model to each groundwater conservation district and each regional water planning group created under Section 16.053 overlying that aquifer.

(m) The executive administrator may conduct surveys of entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return the survey is not eligible for funding from the board for board programs and is ineligible to obtain permits, permit amendments, or permit renewals from the commission under Chapter 11. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

(n) Information collected through field investigations on a landowner's property by the executive administrator after September 1, 2003, solely for use in the development of groundwater

availability models under Subsection (1) of this section that reveals site-specific information about such landowner is not subject to Chapter 552, Government Code, and may not be disclosed to any person outside the board if the landowner on whose land the information is collected has requested in writing that such information be deemed confidential. If a landowner requests that his or her information not be disclosed, the executive administrator may release information regarding groundwater information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner. This subsection does not apply to a parcel of land that is publicly owned.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 7.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 3, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 518, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 3, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1222, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.15, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1057, Sec. 3, 4, eff. June 20, 2003.

Sec. 16.0121. WATER AUDITS. (a) In this section, "retail public utility" has the meaning assigned by Section 13.002.

(b) Except as provided by Subsection (b-1), a retail public utility providing potable water shall perform and file with the board an annual water audit computing the utility's system water loss during the preceding year.

(b-1) A retail public utility providing potable water that does not receive from the board financial assistance and is providing service to 3,300 or fewer connections shall perform and file with the board every five years a water audit computing the utility's most recent annual system water loss.

(c) The board shall develop appropriate methodologies and submission dates for a water audit required under Subsection (b) or (b-1) for the following categories of retail public utilities:

(1) retail public utilities serving populations of

100,000 or more;

(2) retail public utilities serving populations of 50,000 or more but less than 100,000;

(3) retail public utilities serving populations of more than 10,000 but less than 50,000; and

(4) retail public utilities serving populations of 10,000 or less.

(d) In developing the methodologies required by Subsection (c), the board shall ensure that each methodology:

(1) is financially feasible for the category of retail public utility for which it is developed; and

(2) considers differences in population density, source of water supply, the mean income of the service population, and other factors determined by the board.

(e) The methodologies required by Subsection (c) shall account for various components of system water loss, including loss from distribution lines, inaccuracies in meters or accounting practices, and theft.

(f) The board shall compile the information included in the water audits required by Subsections (b) and (b-1) according to category of retail public utility and according to regional water planning area. The regional planning group for a regional planning area shall use the information to identify appropriate water management strategies in the development of a regional water plan under Section [16.053](#).

(g) A retail public utility providing potable water that receives from the board financial assistance shall use a portion of that financial assistance, or any additional financial assistance provided by the board for the purpose described by this subsection, to mitigate the utility's system water loss if, based on a water audit filed by the utility under this section, the water loss meets or exceeds the threshold established by board rule. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily addressing the utility's system water loss.

(h) For each category of retail public utility listed in Subsection (c), the board shall adopt rules regarding:

(1) the amount of system water loss that requires a utility to take action under Subsection (g); and

(2) the use of financial assistance from the board as required by Subsection (g) to mitigate system water loss.

(i) The board by rule shall require the audits required by Subsections (b) and (b-1) to be completed by a person trained to conduct water loss auditing.

(j) The board shall make training on water loss auditing available without charge from the board's website. The board may provide training in person or by video or a functionally similar and widely available medium. Training provided under this subsection must include comprehensive knowledge of water utility systems and terminology and any tools available for analyzing audit results. In creating training materials, the board may consider other organizations' training programs.

Added by Acts 2003, 78th Leg., ch. 744, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1041 (H.B. 3090), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 278 (H.B. 857), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1139 (H.B. 3605), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 155 (H.B. 949), Sec. 1, eff. May 28, 2015.

Acts 2017, 85th Leg., R.S., Ch. 347 (H.B. 1573), Sec. 1, eff. September 1, 2017.

Sec. 16.013. ENGINEERING, HYDROLOGIC, AND GEOLOGIC FUNCTIONS. The executive administrator shall advise and assist the board and the commission with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The executive administrator shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff.

Sept. 1, 1985.

Sec. 16.014. SILT LOAD OF STREAMS, ETC. The executive administrator shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.015. STUDIES OF UNDERGROUND WATER SUPPLY. The executive administrator may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state and may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists, and in determining the need, the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.016. POLLUTION OF RED RIVER TRIBUTARIES. Within the limits of available money and facilities, the executive administrator shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.017. TOPOGRAPHIC AND GEOLOGIC MAPPING. (a) The executive administrator shall carry out the program for topographic and geologic mapping of the state.

(b) The executive administrator shall operate as part of the Texas Natural Resources Information System a strategic mapping program to acquire, store, and distribute digital, geospatial information.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.12, eff. September 1, 2007.

Sec. 16.018. SOIL RESOURCE PLANNING. The executive administrator may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the executive administrator. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.019. COOPERATIVE AGREEMENTS. With the approval of the board, the executive administrator may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.020. MASTER PLANS OF DISTRICTS, ETC. The executive director shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies and shall make its recommendations to the commission in all cases where approval of the commission is required by law or is requested by a district, authority, or agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.021. TEXAS NATURAL RESOURCES INFORMATION SYSTEM.

(a) The executive administrator shall establish the Texas Natural Resources Information System (TNRIS) to serve Texas agencies and citizens as a centralized clearinghouse and referral center for:

- (1) natural resource data;
- (2) census data;
- (3) data related to emergency management; and
- (4) other socioeconomic data.

(b) The executive administrator may, on behalf of TNRIS, enter into partnerships with private entities to provide additional funding for improved access to TNRIS information. The board shall adopt administrative rules to describe the process of establishing partnerships, define the types of partnerships that may be formed, establish the fee collection process, and define the nondiscriminatory methods used to determine which private entities may enter into partnerships. Any process developed by the board must comply with all applicable laws regarding ethics, purchasing, and contracts.

(c) The executive administrator shall designate the director of the Texas Natural Resources Information System to serve as the state geographic information officer. The state geographic information officer shall:

- (1) coordinate the acquisition and use of high-priority imagery and data sets;
- (2) establish, support, and disseminate authoritative statewide geographic data sets;
- (3) support geographic data needs of emergency

management responders during emergencies;

(4) monitor trends in geographic information technology; and

(5) support public access to state geographic data and resources.

(d) Not later than December 1, 2016, and before the end of each successive five-year period after that date, the board shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

(1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6);

(2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;

(3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and

(4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data.

(d-1) The board shall consult with stakeholders in preparing the report required by Subsection (d).

(e) The executive administrator shall:

(1) further develop the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;

(2) obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;

(3) make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature subject to the limitations provided by Subsection (f);

(4) make recommendations to the Department of Information Resources to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;

(5) acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and

(6) coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.

(f) A recommendation may not be made under Subsection (e)(3) for:

(1) a feature previously named under statutory authority or recognized by an agency of the federal government, the state, or a political subdivision of the state;

(2) a feature located on private property for which consent of the property owner cannot be obtained; or

(3) naming a natural or cultural feature for a living person.

(g) The board may establish one or more advisory committees to assist the board or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection (d). In appointing members to an advisory committee, the board shall consider including representatives of:

(1) state agencies that are major users of geographic data;

(2) federal agencies;

(3) local governments; and

(4) the Department of Information Resources.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 21, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1010, Sec. 7.02, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1234, Sec. 24, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 67 (S.B. 622), Sec. 1, eff. May 11, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 6, eff. September 1, 2011.

Sec. 16.022. WATER CONSERVATION STUDY. (a) The board and the State Soil and Water Conservation Board shall jointly conduct a study of the ways to improve or expand water conservation efforts and report to the legislature.

(b) The report must include:

(1) an assessment of both agricultural and municipal water conservation issues;

(2) information on existing conservation efforts by the board and the State Soil and Water Conservation Board;

(3) information on existing conservation efforts by municipalities receiving funding from the board, as specified in water conservation plans submitted by the municipalities as part of their applications for assistance;

(4) a discussion of future conservation needs;

(5) an analysis of programmatic approaches and funding for additional conservation efforts;

(6) an assessment of existing statutory authority and whether changes are needed to more effectively promote and fund conservation projects; and

(7) an assessment of the board's agricultural water conservation program.

(c) The report shall be issued as part of, or as a supplement to, the state water plan.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 24, eff. Sept. 1, 2001.

Sec. 16.023. STRATEGIC MAPPING ACCOUNT. (a) The strategic mapping account is an account in the general revenue fund. The account consists of:

(1) money directly appropriated to the board;

(2) money transferred by the board from other funds

available to the board;

(3) money from gifts or grants from the United States government, state, regional, or local governments, educational institutions, private sources, or other sources;

(4) proceeds from the sale of maps, data, publications, and other items; and

(5) interest earned on the investment of money in the account and depository interest allocable to the account.

(b) The account may be appropriated only to the board to:

(1) develop, administer, and implement the strategic mapping program;

(2) provide grants to political subdivisions for projects related to the development, use, and dissemination of digital, geospatial information; and

(3) administer, implement, and operate other programs of the Texas Natural Resources Information System, including:

(A) the operation of a Texas-Mexico border region information center for the purpose of implementing Section [16.021\(e\)\(5\)](#);

(B) the acquisition, storage, and distribution of historical maps, photographs, and paper map products;

(C) the maintenance and enhancement of information technology; and

(D) the production, storage, and distribution of other digital base maps, as determined by the executive administrator.

(c) The board may invest, reinvest, and direct the investment of any available money in the fund as provided by law for the investment of money under Section [404.024](#), Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 2.13, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. [660](#)), Sec. 7, eff. September 1, 2011.

Sec. 16.024. FINANCIAL ASSISTANCE FOR DIGITAL, GEOSPATIAL INFORMATION PROJECTS. (a) A political subdivision seeking a grant

under Section 16.023 must file an application with the board.

(b) An application must be filed in the manner and form required by board rules.

(c) In reviewing an application by a political subdivision for a grant, the board shall consider:

(1) the degree to which the political subdivision has used other available resources to finance the development, use, and dissemination of digital, geospatial information;

(2) the willingness and ability of the political subdivision to develop, use, and disseminate digital, geospatial information; and

(3) the benefits that will be gained by making the grant.

(d) The board may approve a grant to a political subdivision only if the board finds that:

(1) the grant will supplement rather than replace money of the political subdivision;

(2) the public interest is served by providing the grant; and

(3) the grant will further the state's ability to gather, develop, use, and disseminate digital, geospatial information.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.13, eff. September 1, 2007.

SUBCHAPTER C. PLANNING

Sec. 16.051. STATE WATER PLAN: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN. (a) Not later than January 5, 2002, and before the end of each successive five-year period after that date, the board shall prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053. The state water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure

public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state.

(a-1) The state water plan must include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress;

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the board; and

(3) with respect to projects included in the preceding state water plan that were given a high priority by the board for purposes of providing financial assistance under Subchapter G, Chapter 15:

(A) an assessment of the extent to which the projects were implemented in the decade in which they were needed; and

(B) an analysis of any impediments to the implementation of any projects that were not implemented in the decade in which they were needed.

(a-2) To assist the board in evaluating the state's progress in meeting future water needs, the board may obtain implementation data from the regional water planning groups.

(b) The state water plan, as formally adopted by the board, shall be a guide to state water policy. The commission shall take the plan into consideration in matters coming before it.

(c) The board by rule shall define and designate river basins and watersheds.

(d) The board, in coordination with the commission, the Department of Agriculture, and the Parks and Wildlife Department, shall adopt by rule guidance principles for the state water plan which reflect the public interest of the entire state. When adopting guidance principles, due consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution

of water resources. The board shall review and update the guidance principles, with input from the commission, the Department of Agriculture, and the Parks and Wildlife Department, as necessary but at least every five years to coincide with the five-year cycle for adoption of a new water plan as described in Subsection (a).

(e) On adoption the board shall deliver the state water plan to the governor, the lieutenant governor, and the speaker of the house of representatives and present the plan for review to the appropriate legislative committees. The plan shall include legislative recommendations that the board believes are needed and desirable to facilitate more voluntary water transfers. The plan shall identify river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the board recommends for protection under this section.

(f) The legislature may designate a river or stream segment of unique ecological value. This designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream segment designated by the legislature under this subsection.

(g) The legislature may designate a site of unique value for the construction of a reservoir. A state agency or political subdivision of the state may not obtain a fee title or an easement that would significantly prevent the construction of a reservoir on a site designated by the legislature under this subsection.

(g-1) Notwithstanding any other provisions of law, a site is considered to be a designated site of unique value for the construction of a reservoir if the site is recommended for designation in the 2007 state water plan adopted by the board and in effect on May 1, 2007. The designation of a unique reservoir site under this subsection terminates on September 1, 2015, unless there is an affirmative vote by a proposed project sponsor to make expenditures necessary in order to construct or file applications for permits required in connection with the construction of the reservoir under federal or state law.

(h) The board, the commission, or the Parks and Wildlife Department or a political subdivision affected by an action taken in violation of Subsection (f) or (g) may bring a cause of action to

remedy or prevent the violation. A cause of action brought under this subsection must be filed in a district court in Travis County or in the county in which the action is proposed or occurring.

(i) For purposes of this section, the acquisition of fee title or an easement by a political subdivision for the purpose of providing retail public utility service to property in the reservoir site or allowing an owner of property in the reservoir site to improve or develop the property may not be considered a significant impairment that prevents the construction of a reservoir site under Subsection (g). A fee title or easement acquired under this subsection may not be considered the basis for preventing the future acquisition of land needed to construct a reservoir on a designated site.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.046, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 516, Sec. 4, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 1.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 4, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 4, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1223, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.16, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 3.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 4.01, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 8, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. 1511), Sec. 2, eff. September 1, 2017.

Sec. 16.053. REGIONAL WATER PLANS. (a) The regional water planning group in each regional water planning area shall prepare a regional water plan, using an existing state water plan identified in Section 16.051 of this code and local water plans prepared under Section 16.054 of this code as a guide, if present, that provides for the orderly development, management, and conservation of water

resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of that particular region.

(b) No later than September 1, 1998, the board shall designate the areas for which regional water plans shall be developed, taking into consideration such factors as river basin and aquifer delineations, water utility development patterns, socioeconomic characteristics, existing regional water planning areas, political subdivision boundaries, public comment, and other factors the board deems relevant. The board shall review and update the designations as necessary but at least every five years.

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the groundwater conservation districts located in each management area, as defined by Section [36.001](#), located in the regional water planning area shall appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group. In addition, representatives of the board, the Parks and Wildlife Department, the Department of Agriculture, and the State Soil and Water Conservation Board shall serve as ex officio members of each regional water planning group.

(d) The board shall provide guidelines for the

consideration of existing regional planning efforts by regional water planning groups. The board shall provide guidelines for the format in which information shall be presented in the regional water plans.

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

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section [16.051\(d\)](#);

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

(2-a) is consistent with the desired future conditions adopted under Section [36.108](#) for the relevant aquifers located in the regional water planning area as of the most recent deadline for the board to adopt the state water plan under Section [16.051](#) or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan; provided, however, that if no groundwater conservation district exists within the area of the regional water planning group, the regional water planning group shall determine the supply of groundwater for regional planning purposes; the Texas Water Development Board shall review and approve, prior to inclusion in the regional water plan, that the groundwater supply for the regional planning group without a groundwater conservation district in its area is physically compatible, using the board's groundwater availability models, with the desired future conditions adopted under Section [36.108](#) for the relevant aquifers in the groundwater management area that are regulated by groundwater conservation districts;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a

drought response;

(C) actions to be taken as part of the response;

and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

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

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

(A) any existing water or drought planning efforts addressing all or a portion of the region and potential impacts on public health, safety, or welfare in this state;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

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

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

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

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

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

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the

region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; and

(J) opportunities for and the benefits of developing large-scale desalination facilities for:

(i) marine seawater that serve local or regional entities; and

(ii) seawater or brackish groundwater that serve local or regional brackish groundwater production zones identified and designated under Section 16.060(b)(5);

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

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

(8) describes the impact of proposed water projects on water quality; and

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands.

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

(f) No later than September 1, 1998, the board shall adopt rules:

(1) to provide for the procedures for adoption of regional water plans by regional water planning groups and for approval of regional water plans by the board; and

(2) to govern procedures to be followed in carrying out the responsibilities of this section.

(g) The board shall provide technical and financial assistance to the regional water planning groups in the development

of their plans. The board shall simplify, as much as possible, planning requirements in regions with abundant water resources. The board, if requested, may facilitate resolution of conflicts within regions.

(h)(1) Prior to the preparation of the regional water plan, the regional water planning group shall, after notice, hold at least one public meeting at some central location readily accessible to the public within the regional water planning area to gather suggestions and recommendations from the public as to issues that should be addressed in the plan or provisions that should be considered for inclusion in the plan.

(2) The regional water planning group shall provide an ongoing opportunity for public input during the preparation of the regional water plan.

(3) After the regional water plan is initially prepared, the regional water planning group shall, after notice, hold at least one public hearing at some central location readily accessible to the public within the regional water planning area. The group shall make copies of the plan available for public inspection at least one month before the hearing by providing a copy of the plan in the county courthouse and at least one public library of each county having land in the region. Notice for the hearing shall include a listing of these and any other location where the plan is available for review.

(4) After the regional water plan is initially prepared, the regional water planning group shall submit a copy of the plan to the board. The board shall submit comments on the regional water plan as to whether the plan meets the requirements of Subsection (e) of this section.

(5) If no interregional conflicts exist, the regional water planning group shall consider all public and board comments; prepare, revise, and adopt the final plan; and submit the adopted plan to the board for approval and inclusion in the state water plan.

(6) If an interregional conflict exists, the board shall facilitate coordination between the involved regions to resolve the conflict. If conflict remains, the board shall resolve

the conflict. On resolution of the conflict, the involved regional water planning groups shall prepare revisions to their respective plans and hold, after notice, at least one public hearing at some central location readily accessible to the public within their respective regional water planning areas. The regional water planning groups shall consider all public and board comments; prepare, revise, and adopt their respective plans; and submit their plans to the board for approval and inclusion in the state water plan.

(7) The board may approve a regional water plan only after it has determined that:

(A) all interregional conflicts involving that regional water planning area have been resolved;

(B) the plan includes water conservation practices and drought management measures incorporating, at a minimum, the provisions of Sections [11.1271](#) and [11.1272](#); and

(C) the plan is consistent with long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles adopted under Section [16.051\(d\)](#).

(8) Notice required by Subdivision (1), (3), or (6) of this subsection must be:

(A) published once in a newspaper of general circulation in each county located in whole or in part in the regional water planning area before the 30th day preceding the date of the public meeting or hearing; and

(B) mailed to:

(i) each mayor of a municipality with a population of 1,000 or more that is located in whole or in part in the regional water planning area;

(ii) each county judge of a county located in whole or in part in the regional water planning area;

(iii) each special or general law district or river authority with responsibility to manage or supply water in the regional water planning area;

(iv) each retail public utility that:

(a) serves any part of the regional

water planning area; or

(b) receives water from the regional water planning area; and

(v) each holder of record of a permit, certified filing, or certificate of adjudication for the use of surface water the diversion of which occurs in the regional water planning area.

(9) Notice published or mailed under Subdivision (8) of this subsection must contain:

(A) the date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information on how the public may submit comments.

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. If, after the regional water plan has been approved by the board, the plan includes a water management strategy or project that ceases to be feasible, the regional water planning group shall amend the plan to exclude that water management strategy or project and shall consider amending the plan to include a feasible water management strategy or project in order to meet the need that was to be addressed by the infeasible water management strategy or project. For purposes of this subdivision, a water management strategy or project is considered infeasible if the proposed sponsor of the water management strategy or project has not taken an affirmative vote or other action to make expenditures necessary to construct or file applications for permits required in connection with the implementation of the water management strategy or project under federal or state law on a schedule that is consistent with the completion of the implementation of the water management strategy or project by the time the water management strategy or project is projected by the regional water plan or the state water plan to be needed. Subdivisions (1)-(9) apply to an amendment to the plan in

the same manner as those subdivisions apply to the plan.

(11) This subdivision applies only to an amendment to a regional water plan approved by the board. This subdivision does not apply to the adoption of a subsequent regional water plan for submission to the board as required by Subsection (i). Notwithstanding Subdivision (10), the regional water planning group may amend the plan in the manner provided by this subdivision if the executive administrator makes a written determination that the proposed amendment qualifies for adoption in the manner provided by this subdivision before the regional water planning group votes on adoption of the amendment. A proposed amendment qualifies for adoption in the manner provided by this subdivision only if the amendment is a minor amendment, as defined by board rules, that will not result in the overallocation of any existing or planned source of water, does not relate to a new reservoir, and will not have a significant effect on instream flows or freshwater inflows to bays and estuaries. If the executive administrator determines that a proposed amendment qualifies for adoption in the manner provided by this subdivision, the regional water planning group may adopt the amendment at a public meeting held in accordance with Chapter 551, Government Code. The proposed amendment must be placed on the agenda for the meeting, and notice of the meeting must be given in the manner provided by Chapter 551, Government Code, at least two weeks before the date the meeting is held. The public must be provided an opportunity to comment on the proposed amendment at the meeting.

(12) Each regional water planning group and any committee or subcommittee of a regional water planning group are subject to Chapters 551 and 552, Government Code.

(i) The regional water planning groups shall submit their adopted regional water plans to the board by January 5, 2001, for approval and inclusion in the state water plan. In conjunction with the submission of regional water plans, each planning group should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region. Subsequent regional water plans shall be submitted at least every five years thereafter, except that a regional water planning group may elect

to implement simplified planning, no more often than every other five-year planning cycle, and in accordance with guidance to be provided by the board, if the group determines that, based on its own initial analyses using updated groundwater and surface water availability information, there are no significant changes to the water availability, water supplies, or water demands in the regional water planning area. At a minimum, simplified planning will require updating groundwater and surface water availability values in the regional water plan, meeting any other new statutory or other planning requirements that come into effect during each five-year planning cycle, and formally adopting and submitting the regional water plan for approval. Public participation for revised regional plans shall follow the procedures under Subsection (h).

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, D, E, F, J, O, Q, and R, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

(1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan;

(2) beginning January 5, 2002, the board:

(A) has approved a regional water plan as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and

(B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan; and

(3) the board finds that the water audit required under Section 16.0121 has been completed and filed.

(k) The board may waive the requirements of Subsection (j) of this section if the board determines that conditions warrant the waiver.

(l) A political subdivision may contract with a regional water planning group to assist the regional water planning group in developing or revising a regional water plan.

(m) A cause of action does not accrue against a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (1) for an act or omission in the course and scope of the person's work relating to the regional water planning group.

(n) A regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (1) is not liable for damages that may arise from an act or omission in the course and scope of the person's work relating to the regional water planning group.

(o) The attorney general, on request, shall represent a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (1) in a suit arising from an act or omission relating to the regional water planning group.

(p) If a groundwater conservation district files a petition with the development board stating that a conflict requiring resolution may exist between the district's approved management plan developed under Section [36.1071](#) and an approved state water plan, the development board shall provide technical assistance to and facilitate coordination between the district and the involved region to resolve the conflict. Not later than the 45th day after the date the groundwater conservation district files a petition with the development board, if the conflict has not been resolved, the district and the involved region shall mediate the conflict. The district and the involved region may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter [152](#), Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved region cannot

resolve the conflict through mediation, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed as provided by Subsections (p-1) and (p-2).

(p-1) If the development board determines that resolution of the conflict requires a revision of an approved regional water plan, the development board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the regional water planning area. The regional water planning group shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval and inclusion in the state water plan.

(p-2) If the development board determines that resolution of the conflict requires a revision of the district's approved groundwater conservation district management plan, the development board shall provide information to the district. The groundwater district shall prepare any revisions to its plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the district. The groundwater district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board.

(p-3) If the groundwater conservation district disagrees with the decision of the development board under Subsection (p), the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.

(p-4) On the request of the involved region or groundwater conservation district, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section [16.051\(e\)](#).

(q) Each regional planning group shall examine the financing needed to implement the water management strategies and projects identified in the group's most recent approved regional plan and, not later than June 1, 2002, shall report to the board regarding:

(1) how local governments, regional authorities, and other political subdivisions in the region propose to pay for water infrastructure projects identified in the plan; and

(2) what role the regional planning group proposes for the state in financing projects identified in the plan, giving particular attention to proposed increases in the level of state participation in funding for regional projects to meet needs beyond the reasonable financing capability of local governments, regional authorities, and other political subdivisions involved in building water infrastructure.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1200
(H.B. 578), Sec. 1

(r) Information described by Subsection (e)(3)(D) that is included in a regional water plan submitted to the board is excepted from required disclosure under the public information law, Chapter 552, Government Code.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1097
(H.B. 2201), Sec. 8 and amended by Acts 2007, 80th Leg., R.S., Ch.
1430 (S.B. 3), Sec. 2.15

(r) The board by rule shall provide for reasonable flexibility to allow for a timely amendment of a regional water plan, the board's approval of an amended regional water plan, and the amendment of the state water plan. If an amendment under this subsection is to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Section 5.001, the rules may allow for amending a regional water plan without providing notice and without a public meeting or hearing under Subsection (h) if the amendment does not:

(1) significantly change the regional water plan, as reasonably determined by the board; or

(2) adversely affect other water management strategies in the regional water plan.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 5, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 5, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1180, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1222, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1223, Sec. 3, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.17 to 2.19, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 25, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 744, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1057, Sec. 5, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 3(45), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. [1763](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1097 (H.B. [2201](#)), Sec. 8, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1200 (H.B. [578](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 2.14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 2.15, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. [181](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. [660](#)), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. [2031](#)), Sec. 9, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 990 (H.B. [30](#)), Sec. 2, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1180 (S.B. [1101](#)), Sec. 1, eff.

September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 7 (S.B. [347](#)), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. [1488](#)), Sec. 19.001, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 471 (H.B. [2215](#)), Sec. 1, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. [1511](#)), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. [1511](#)), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. [1511](#)), Sec. 5, eff. September 1, 2017.

Sec. 16.054. LOCAL WATER PLANNING. (a) Notwithstanding the provisions of this subsection, groundwater districts are the state's preferred method of managing groundwater resources. It is the policy of the state that water resource management, water conservation, and drought planning should occur on an ongoing basis. The board, commission, and Parks and Wildlife Department shall make available where appropriate technical and financial assistance for such planning. In addition, the Department of Agriculture may provide input and assistance, as appropriate, for local water planning.

(b) Local plans may be submitted to the appropriate regional water planning group for the area as follows:

(1) holders of existing permits, certified filings, or certificates of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more may submit plans required by Section [11.1271](#) of this code;

(2) retail and wholesale public water suppliers and irrigation districts may submit plans required by Section [11.1272](#) of this code;

(3) groundwater districts may submit management plans certified under Section [36.1072](#) of this code; and

(4) special districts may submit conservation or management plans required by general or special law.

(c) When preparing a plan to be submitted under this section, a person shall consider the implementation of a desalination program if practicable.

(d) The regional water planning group shall consider any plan submitted under this section when preparing the regional water plan under Section 16.053 of this code. A political subdivision, including a groundwater conservation district, in the regional water planning area may request a regional water planning group to consider specific changes to a regional water plan based on changed conditions or new information. The regional water planning group shall consider the request and shall amend its regional water plan if it determines that an amendment is warranted. If the entity requesting the change is dissatisfied with the decision of the regional planning group, the entity may request that the board review the decision and consider changing the state-approved regional plan.

(e) After January 5, 2002, when preparing individual water plans that address drought or the development, management, or conservation of water resources from the holders of existing permits, certified filings, or certificates of adjudication, the water suppliers, special districts, irrigation districts, and other water users should ensure that the plan is not in conflict with the applicable approved regional water plan for their region. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 6, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 6, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.20, eff. Sept. 1, 2001.

Sec. 16.055. DROUGHT RESPONSE PLAN. (a) The chief of the Texas Division of Emergency Management is the state drought manager. The state drought manager is responsible for managing and coordinating the drought response component of the state water plan.

(b) The drought preparedness council is created and shall meet as necessary to carry out the provisions of this section. The

council is composed of one representative from each of the following entities, appointed by the administrative head of that entity:

- (1) the Texas Division of Emergency Management;
- (2) the board;
- (3) the commission;
- (4) the Parks and Wildlife Department;
- (5) the Department of Agriculture;
- (6) the Texas A&M AgriLife Extension Service;
- (7) the State Soil and Water Conservation Board;
- (8) the Texas Department of Housing and Community Affairs;
- (9) the Texas A&M Forest Service;
- (10) the Texas Department of Transportation;
- (11) the Texas Department of Economic Development;
- (12) the Public Utility Commission of Texas;
- (13) the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region; and
- (14) a representative of groundwater management interests who is appointed by the governor.

(c) The governor may designate any other person or a representative of any other entity to serve on the drought preparedness council.

(d) The state drought manager shall serve as chair of the drought preparedness council.

(e) The drought preparedness council shall be responsible for:

- (1) the assessment and public reporting of drought monitoring and water supply conditions;
- (2) advising the governor on significant drought conditions;
- (3) recommending specific provisions for a defined state response to drought-related disasters for inclusion in the state emergency management plan and the state water plan;
- (4) advising the regional water planning groups on drought-related issues in the regional water plans;
- (5) ensuring effective coordination among state,

local, and federal agencies in drought-response planning; and

(6) reporting to the legislature, not later than January 15 of each odd-numbered year, regarding significant drought conditions in the state.

(f) In performing its duties under this section, the drought preparedness council shall consider the following factors when determining whether a drought exists for the purposes of this section:

- (1) meteorological conditions and forecasts;
- (2) hydrological conditions and forecasts;
- (3) water use and demand forecasts;
- (4) water supply conditions and forecasts;
- (5) the potential impacts of the water shortage on:
 - (A) the public health, safety, and welfare;
 - (B) economic development; and
 - (C) agricultural and natural resources; and
- (6) other factors deemed appropriate by the council.

(g) Immediately upon the declaration under Section [418.014](#) or [418.108](#), Government Code, of a state of disaster in a county due to drought conditions, the county shall:

(1) publish notice of the declaration of the state of disaster in one or more newspapers having general circulation in the county; and

(2) give notice of the declaration of the state of disaster to:

(A) the chairman of the regional water planning group in which the county is located; and

(B) each person or entity located in the county that is required to develop a water conservation plan under Section [11.1271](#) or a drought contingency plan under Section [11.1272](#).

(h) On receipt of the notice under Subsection (g)(2)(B), the person or entity shall immediately implement the person's or entity's water conservation plan and drought contingency plan, as applicable.

(i) Nothing in this section prevents a political subdivision or a person or entity required to develop a water conservation plan under Section [11.1271](#) or a drought contingency

plan under Section 11.1272 from implementing water conservation measures.

(j) The board may notify the commission if the board determines that a person or entity has violated Subsection (h). Notwithstanding Section 7.051(b), a violation of Subsection (h) is enforceable in the manner provided by Chapter 7 for a violation of a provision of this code within the commission's jurisdiction or of a rule adopted by the commission under a provision of this code within the commission's jurisdiction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 979, Sec. 7, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1273, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 2B.10, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 557 (S.B. 662), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1094 (H.B. 3604), Sec. 1, eff. September 1, 2013.

Sec. 16.0551. STATE DROUGHT PREPAREDNESS PLAN. (a) The drought preparedness council shall develop and implement a comprehensive state drought preparedness plan for mitigating the effects of drought in the state and shall periodically update the plan. The plan shall be separate from the state water plan.

(b) The plan shall provide for:

(1) timely and systematic data collection, analysis, and dissemination of drought-related information;

(2) an organizational structure that:

(A) assures information flow between and within levels of government;

(B) defines the duties and responsibilities of all agencies with respect to drought; and

(C) assures coordination between the state and federal governments through integration with applicable national drought policies;

(3) maintenance of an inventory of state and federal programs for assessing and responding to drought emergencies, together with updated recommendations regarding appropriate action;

(4) a mechanism to improve the timely and accurate assessment of drought impact on agriculture, industry, municipalities, wildlife, and the health of the natural resource base;

(5) provision of accurate and timely information to the media to keep the public informed of current conditions; and

(6) procedures to evaluate and revise the plan on a continuous basis to keep the plan responsive to state needs.

(c) The state drought manager shall use existing resources to develop an information and communications network to forecast and inform interested parties and the public of the potential for drought, including programs and staff of state agencies and other political subdivisions and of state institutions of higher education.

Added by Acts 1999, 76th Leg., ch. 979, Sec. 8, eff. June 18, 1999.

Sec. 16.056. FEDERAL ASSISTANCE IN FINANCING REGIONAL WATER PLANS. The executive administrator may take all necessary action to qualify for federal assistance in financing the development and improvement of the regional water plans.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985. Renumbered from Water Code Sec. 16.057 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997.

Sec. 16.058. COLLECTION OF BAYS AND ESTUARIES DATA; CONDUCT OF STUDIES. (a) The Parks and Wildlife Department and the board shall have joint responsibility, in cooperation with other appropriate governmental agencies, to establish and maintain on a continuous basis a bay and estuary data collection and evaluation program and conduct studies and analyses to determine bay conditions necessary to support a sound ecological environment.

(b) The Parks and Wildlife Department and the board each

shall designate an employee to share equally in the oversight of the program studies. Other responsibilities shall be divided between the Parks and Wildlife Department and the board to maximize present in-house capabilities of personnel and equipment and to minimize costs to the state.

(c) The Parks and Wildlife Department and the board each shall have reasonable access to all data, studies, analyses, information, and reports produced by the other agency.

(d) The studies shall be completed not later than December 31, 1989. Publication of completed studies shall be submitted for comment to both the board and the Parks and Wildlife Department.

(e) The board may authorize the use of money from the research and planning fund established by Chapter 15 of this code to accomplish the purposes of this section. That money shall be used by the board in cooperation with the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 419, Sec. 2, eff. Sept. 1, 1987.

Sec. 16.059. COLLECTION OF INSTREAM FLOW DATA; CONDUCT OF STUDIES. (a) The Parks and Wildlife Department, the commission, and the board, in cooperation with other appropriate governmental agencies, shall jointly establish and continuously maintain an instream flow data collection and evaluation program and shall conduct studies and analyses to determine appropriate methodologies for determining flow conditions in the state's rivers and streams necessary to support a sound ecological environment. Any stream that consists only of floodwaters and is dry more than 75 percent of the year is exempt from this section.

(b) The Parks and Wildlife Department, the commission, and the board shall each designate an employee to share equally in the oversight of the program studies. Other responsibilities shall be divided between the Parks and Wildlife Department, the commission,

and the board to maximize present in-house capabilities of personnel and equipment and to minimize costs to the state.

(c) The Parks and Wildlife Department, the commission, and the board shall each have reasonable access to all data, studies, analyses, information, and reports produced by the other agencies.

(d) The priority studies shall be completed not later than December 31, 2016. The Parks and Wildlife Department, the commission, and the board shall establish a work plan that prioritizes the studies and that sets interim deadlines providing for publication of flow determinations for individual rivers and streams on a reasonably consistent basis throughout the prescribed study period. Before publication, completed studies shall be submitted for comment to the commission, the board, and the Parks and Wildlife Department.

(e) Results of studies completed under this section shall be considered by the commission in its review of any management plan, water right, or interbasin transfer.

(f) The board may authorize the use of money from the research and planning fund established under Chapter 15 to accomplish the purposes of this section. The money shall be used by the board in cooperation with the commission and the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.17, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.23, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.23, eff. September 1, 2007.

Sec. 16.060. DESALINATION STUDIES AND RESEARCH. (a) The board shall undertake or participate in research, feasibility and facility planning studies, investigations, and surveys as it considers necessary to further the development of cost-effective

water supplies from seawater or brackish groundwater desalination in the state.

(b) The board shall prepare a biennial progress report on the implementation of seawater or brackish groundwater desalination activities in the state and shall submit it to the governor, lieutenant governor, and speaker of the house of representatives not later than December 1 of each even-numbered year. The report shall include:

(1) results of the board's studies and activities relative to seawater or brackish groundwater desalination during the preceding biennium;

(2) identification and evaluation of research, regulatory, technical, and financial impediments to the implementation of seawater or brackish groundwater desalination projects;

(3) evaluation of the role the state should play in furthering the development of large-scale seawater or brackish groundwater desalination projects in the state;

(4) the anticipated appropriation from general revenues necessary to continue investigating water desalination activities in the state during the next biennium; and

(5) identification and designation of local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater and that:

(A) are separated by hydrogeologic barriers sufficient to prevent significant impacts to water availability or water quality in any area of the same or other aquifers, subdivisions of aquifers, or geologic strata that have an average total dissolved solids level of 1,000 milligrams per liter or less at the time of designation of the zones; and

(B) are not located in:

(i) an area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority;

(ii) the boundaries of the:

(a) Barton Springs-Edwards Aquifer

Conservation District;

(b) Harris-Galveston Subsidence

District; or

(c) Fort Bend Subsidence District;

(iii) an aquifer, subdivision of an aquifer, or geologic stratum that:

(a) has an average total dissolved solids level of more than 1,000 milligrams per liter; and

(b) is serving as a significant source of water supply for municipal, domestic, or agricultural purposes at the time of designation of the zones; or

(iv) an area of a geologic stratum that is designated or used for wastewater injection through the use of injection wells or disposal wells permitted under Chapter 27.

(c) The board shall actively pursue federal sources of funding for desalination projects in the state.

(d) The board shall work together with groundwater conservation districts and stakeholders and shall consider the Brackish Groundwater Manual for Texas Regional Water Planning Groups, and any updates to the manual, and other relevant scientific data or findings when identifying and designating brackish groundwater production zones under Subsection (b)(5).

(e) In designating a brackish groundwater production zone under this section, the board shall:

(1) determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality as described by Subsection (b)(5)(A); and

(2) include in the designation description:

(A) the amounts of brackish groundwater that the zone is capable of producing during the periods described by Subdivision (1); and

(B) recommendations regarding reasonable monitoring to observe the effects of brackish groundwater production within the zone.

Added by Acts 2003, 78th Leg., ch. 49, Sec. 2, eff. May 15, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 990 (H.B. 30), Sec. 3, eff. June 19, 2015.

Reenacted by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 19.002, eff. September 1, 2017.

SUBCHAPTER D. COOPERATION WITH FEDERAL GOVERNMENT

Sec. 16.091. DESIGNATION OF BOARD. The board is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985.

Sec. 16.092. LOCAL SPONSORS FOR PROJECTS. (a) When a project is proposed for planning or development by the board, the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the executive director for designation as the cooperating local sponsor of the project.

(b) In the application the applicant shall:

(1) describe the purposes of the project;

(2) state the reasons for the application, the contemplated use of water the applicant might derive from the project if a permit for the use is subsequently granted by the commission; and

(3) cite the contributions the applicant is prepared to make to the planning or development of the project.

(c) No application for designation as a local sponsor shall cover more than one proposed project.

(d) The commission shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the commission may require that the applicant complete the prescribed form.

(e) Before making any designation of local sponsorship, the

commission shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.

(f) More than one cooperating local sponsor may be designated for each project, but each applicant must comply with the provisions of this section.

(g) After a public hearing, the commission, by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

(h) In granting any future permit for use of water stored in a project for which it has designated a local sponsor, the commission shall fully recognize that sponsor's contributions to the planning and development of the project.

(i) To the extent that no local cooperator is prepared to undertake local sponsorship of a federal project in whole or part or to the extent that the board has an interest in the project, the board may be designated as sponsor of the project or as an additional cooperating sponsor.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.048, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 20, Sec. 2, eff. Sept. 1, 1987.

Sec. 16.093. PARTICIPATION IN FEDERAL PROGRAMS. (a) The board may execute agreements with the United States Environmental Protection Agency or its successor agency and any other federal agency that administers programs providing federal grants, loans, or other assistance to local or state governments or other persons for water supply projects, treatment works, or structural or nonstructural flood control measures, as those terms are defined by Section [17.001](#). The board may exercise all duties and responsibilities required for the administration by the board of a federal program described by this subsection.

(b) The executive administrator, with the approval of the board, may execute agreements with the United States Environmental Protection Agency or its successor agency and any other federal

agency for activities described by Subsection (a).

(c) The board may accept and use federal funds for the purposes provided by Subsection (a).

Added as Sec. 21.101 by Acts 1977, 65th Leg., p. 253, ch. 120, Sec. 1, eff. Aug. 29, 1977. Renumbered from Sec. 26.048 and amended by Acts 1987, 70th Leg., ch. 977, Sec. 25, eff. June 19, 1987.

Amended by:

Acts 2005, 79th Leg., Ch. 21 (H.B. 1657), Sec. 1, eff. May 9, 2005.

SUBCHAPTER E. ACQUISITION AND DEVELOPMENT OF FACILITIES

Sec. 16.131. AUTHORIZED PROJECTS. (a) The board may use the state participation account of the development fund to encourage optimum regional development of projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of:

(1) reservoirs and storm water retention basins for water supply, flood protection, and groundwater recharge;

(2) facilities for the transmission and treatment of water; and

(3) treatment works as defined by Section 17.001.

(b) The board may not use the state participation account of the development fund to finance a project recommended through the state and regional water planning processes under Sections 16.051 and 16.053 if the applicant has failed to satisfactorily complete a request by the executive administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Section 16.053(q).

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.15; Acts 1987, 70th Leg., ch. 1103, Sec. 10, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 891 (S.B. 370), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 983 (H.B. 1732), Sec. 3, eff. September 1, 2011.

Sec. 16.1311. PRIORITY FOR WATER CONSERVATION. The board shall give priority to applications for funds for implementation of water supply projects in the state water plan by entities that:

(1) have already demonstrated significant water conservation savings; or

(2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.16, eff. September 1, 2007.

Sec. 16.132. JOINT VENTURES. The board may act singly or in a joint venture in partnership with any person or entity, including any agency or political subdivision of this state, or with another state or its political subdivisions, or with the United States, or with a foreign nation, to the extent permitted by law.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.133. PERMITS REQUIRED. Except as provided by Section 16.1331 of this code, the board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 4.04.

Sec. 16.1331. RESERVATION AND APPROPRIATION FOR BAYS AND ESTUARIES AND INSTREAM USES. (a) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation under this chapter within 200 river miles from the coast, to commence from the mouth of the river thence inland, is appropriated to the Parks and Wildlife Department for use to make releases to bays and estuaries and for instream uses, and the commission shall issue permits for this water to the Parks and Wildlife Department under procedures adopted by the

commission.

(b) The Parks and Wildlife Department in cooperation with the commission shall manage this water for the purposes stated in this section.

(c) The Parks and Wildlife Department shall adopt necessary rules and shall enter into necessary memoranda of understanding with the commission to provide necessary rules and procedures for managing the water and for release of the water for the purposes stated in this section.

(d) This section applies only to reservoirs and associated works on which construction begins on or after September 1, 1985.

(e) This section does not limit or repeal any other authority of or law relating to the commission.

(f) Operating and maintenance costs for the percentage of annual firm yield appropriated to the Parks and Wildlife Department shall be paid by local political subdivisions that are the project owners.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 4.04. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.288, eff. Sept. 1, 1995.

Sec. 16.134. STORING WATER. The board may use any reservoir acquired, leased, constructed, reconstructed, developed, or enlarged by it under this chapter to store unappropriated state water and other water acquired by the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.1341. PAYMENT FOR RELEASES AND PASS-THROUGHS FROM STATE RESERVOIRS. (a) If the commission orders, for the purpose of maintaining the ecological health of any bay and estuary system, a release or pass-through of appropriated water from an existing reservoir owned in part by the board on September 1, 1985, the board shall pay the amount necessary to pay all maintenance and operating costs associated with the storage and release of the water.

(b) If the order under Subsection (a) of this section results in a dedication that reduces the reservoir's firm yield water supply capability, the board is responsible for repayment of

that portion of the construction cost indebtedness associated with that dedication.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 4.001, eff. Sept. 1, 1985.

Sec. 16.135. BOARD FINDINGS. Before the board may acquire a facility or interest in a facility, the board shall find affirmatively that:

(1) it is reasonable to expect that the state will recover its investment in the facility;

(2) the cost of the facility exceeds the current financing capabilities of the area involved, and the optimum regional development of the facility cannot be reasonably financed by local interests without state participation;

(3) the public interest will be served by acquisition of the facility; and

(4) the facility to be constructed or reconstructed contemplates the optimum regional development which is reasonably required under all existing circumstances of the site.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.15.

Sec. 16.1351. RECREATIONAL ACCESS. If the board is acquiring an interest in a storage facility, it must also find affirmatively that the applicant has a plan to provide adequate public recreational access areas to suitable recreational resources.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.22.

Sec. 16.136. FACILITIES WANTED BY POLITICAL SUBDIVISION. The board may acquire all or part of any authorized facility to the extent that the board finds that the political subdivision:

(1) is willing and reasonably able to finance that portion of the cost of the facility that the board does not acquire;

(2) has obtained all necessary permits;

(3) has proposals that are consistent with the objectives of the state water plan; and

(4) has a program of water conservation for the more efficient use of water as required by Section 15.106 of this code. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 10, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 1234, Sec. 26, eff. Sept. 1, 2001.

Sec. 16.137. CONTRACTS: GENERAL AUTHORITY. (a) The board may execute contracts to the full extent that contracts are constitutionally authorized and not limited for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, operation, or maintenance, singularly or in any combination, of any existing or proposed project.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.138. SPECIFIC CONTRACTS AUTHORIZED. Contracts authorized by Section 16.137 of this code shall include but are not limited to the following:

(1) contracts secured by the general credit of the state which shall constitute general obligations of the state in the same manner and with the same effect as water development bonds, and principal and interest on these contracts shall be paid in the manner provided for payment of principal and interest on state bonds by the constitution;

(2) federal grants or grants from other sources;

(3) contracts which may be fully or partially secured by water purchase or repayment contracts executed by political subdivisions of the state for purchase of water and facilities necessary to supply present and future regional and local water requirements;

(4) contracts with any person, including but not limited to the United States, local public agencies, power cooperatives, and investor-owned utilities, for financing,

constructing, and operating facilities to operate and deliver pumping energy required for projects; and

(5) contracts for goods and services necessary for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, implementation, operation, or maintenance of any existing or proposed project or portion of the project.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.139. CONTRACTS: FACILITIES ACQUIRED FOR A TERM OF YEARS. If facilities are acquired for a term of years, the board may include in the contract provisions for renewal that will protect the state's investment.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.140. MAINTENANCE CONTRACTS. The board may execute contracts for the operation and maintenance of the state's interest in any project and may agree to pay reasonable operation and maintenance charges allocable to the state interest.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.141. RECREATIONAL FACILITIES. The board may execute contracts with the United States and with state agencies and political subdivisions and with others to the extent authorized for the development and operation of recreational facilities at any project in which the state has acquired an interest. Income received by the board under these contracts may be used for the same purposes as income from the sale of water. The legislature may appropriate money for the development and operation of recreational facilities at projects in which the state has acquired an interest.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.142. RECOVERY OF ADMINISTRATIVE COSTS. (a) The

board may charge an administrative fee to a political subdivision with which the board agrees to participate in a project under this subchapter.

(b) The board by rule shall set the fee at an amount it considers necessary to recover the costs incurred or to be incurred by the board in administering the project over its life, including the costs of processing an application, monitoring construction, and auditing and monitoring the project. The state auditor may review fees charged by the board to determine whether the fees are set consistent with this subsection, based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval of including the review in the audit plan under Section [321.013](#), Government Code.

(c) The board may require the payment of the fee in one or more payments.

(d) Fees shall be deposited as directed by the board for use in administering the program.

Added by Acts 1999, 76th Leg., ch. 1323, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 785, Sec. 49, eff. Sept. 1, 2003.

Sec. 16.143. OPTION TO LEASE. (a) A former owner of real property used for agricultural purposes that was acquired, voluntarily or through the exercise of the power of eminent domain, for a reservoir whose site has been designated as unique for the construction of a reservoir under Section [16.051](#)(g) is entitled to lease the property from the person who acquired the property under terms that allow the former owner to continue to use the property for agricultural purposes until the person who acquired the property determines that such use must be terminated to allow for the physical construction of the reservoir. Consistent with Subsection (b), the lease is subject to the terms and conditions set forth by the person who has acquired the property that are related to the use of the property by the former owner, including the term of the lease, the rent the former owner is required to pay under the lease, and the uses that may be allowed on the property during the term of the lease.

(b) A former owner of real property used for agricultural purposes is entitled to lease the property for the property's agricultural rental value until the person who acquired the property determines that the lease must be terminated to allow for the physical construction of the reservoir.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 3.02, eff. September 1, 2007.

Sec. 16.144. ENVIRONMENTAL MITIGATION. (a) If a person proposing to construct a reservoir whose site has been designated as unique for the construction of a reservoir under Section 16.051(g) is required to mitigate future adverse environmental effects arising from the construction or operation of the reservoir or its related facilities, the person shall, if authorized by the applicable regulatory authority, attempt to mitigate those effects by offering to contract with and pay an amount of money to an owner of real property located outside of the reservoir site to maintain the property through an easement instead of acquiring the fee simple title to the property for that purpose.

(b) An owner of real property may reject an offer made under Subsection (a). If agreement on the terms of an easement under Subsection (a) cannot be reached by the parties after a good faith attempt and offer is made, then the party constructing the reservoir may obtain fee title to the property through voluntary or involuntary means.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 3.02, eff. September 1, 2007.

SUBCHAPTER F. SALE OR LEASE OF FACILITIES

Sec. 16.181. BOARD MAY SELL OR LEASE PROJECTS. (a) The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the state participation account.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870 Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.16.

Sec. 16.182. PERMIT REQUIRED. Before the board grants the application to buy, receive, or lease the facilities, the applicant shall first secure a permit for water use from the commission. If the facilities are to be leased, the permit may be for a term of years.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.183. PERMIT: PARAMOUNT CONSIDERATION OF COMMISSION. In passing on an application for a permit under this subchapter whether it proposes a use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.184. CONTRACT MUST BE NEGOTIATED. The commission shall not issue the permit until the applicant has executed a contract with the board for acquisition of the facilities.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.185. RESERVOIR LAND. The board may lease acquired reservoir land until construction of the dam is completed without the necessity of a permit issued by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.186. PRICE OF SALE. (a) The price of the sale or transfer of a state facility acquired prior to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated when one-half of one percent is added

to the weighted average effective interest rate in effect at the date of sale or transfer of the state facility times the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it. The board may negotiate with a purchaser a different interest rate for calculation of the price of sale if the board determines that establishment of a different interest rate would benefit the state and would expedite the sale of the board's interest in the facility.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the date of acquisition by the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of the purchase or acquisition to the date or dates of the sale or transfer of the state facility, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) The purchaser of the board's interest in a state facility shall also assume, to the extent disclosed by the board at or prior to the sale, any and all direct, conditional, or contingent liabilities of the board attributed to the project in direct relation to the percentage of the project acquired by the purchaser.

Amended by Acts 1977, 65th Leg., p. 671, ch. 254, Sec. 2, eff. May 25, 1977. Renumbered from 11.356 by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 307, Sec. 1, eff. June 14, 1989.

Sec. 16.187. PRICE OF SALE: FACILITIES ACQUIRED UNDER CONTRACTS WITH THE UNITED STATES. (a) The price of the sale or transfer of a facility acquired prior to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by adding one-half of one percent to the weighted average effective interest rate in effect at the date of the sale or transfer of the state facility times the amount of board money disbursed for the acquisition times the number of years and fraction of a year for which the board paid interest to the other party to the contract, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the time of acquisition by the amount of board money disbursed for the acquisition of the facility times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) If, in transferring any contract, the board remains in any way directly, conditionally, or contingently liable for the performance of any part of the contract, then the transferee, in addition to the payments prescribed by Subsection (a) or (b) of this section, as applicable, shall pay to the board annually one-half of one percent of the remaining amount owed to the other party to the contract, and shall continue these payments until the board is fully released from the contract.

Amended by Acts 1977, 65th Leg., p. 671, ch. 254, Sec. 2, eff. May 25, 1977. Renumbered from 11.357 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.1871. ACQUISITION DATE. (a) If the board has made an initial payment prior to September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 16.186 of this code. If the board makes its initial payment on or after September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 16.186 of this code.

(b) If the board has executed a contract with the United States prior to September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 16.187 of this code. If the board executes a contract with the United States on or after September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 16.187 of this code.

Added by Acts 1977, 65th Leg., p. 673, ch. 254, Sec. 3, eff. May 25, 1977. Renumbered from Sec. 11.3571 and amended by Acts 1987, 70th Leg., ch. 977, Sec. 7, eff. June 19, 1987.

Sec. 16.188. COSTS DEFINED. With reference to the sale of a state facility, "direct cost of acquisition" means the principal amount the board has paid or agreed to pay for a facility up to the date of sale, but does not include the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility.

Amended by Acts 1977, 65th Leg., p. 671, ch. 254, Sec. 2, eff. May 25, 1977. Renumbered from 11.358 by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.189. LEASE PAYMENTS. In leasing a state facility for a term of years, the board shall require payments that will recover over the lease period not less than the total of:

- (1) all principal and interest requirements

applicable to the debt incurred by the state in acquiring the facility; and

(2) the state's cost for operation, maintenance, and rehabilitation of the facility.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 5.02, eff. Sept. 1, 1997.

Sec. 16.190. SALE OR LEASE: CONDITION PRECEDENT. (a) No sale, transfer, or lease of a state facility is valid unless the board first makes the following affirmative findings:

(1) that the applicant has a permit granted by the commission;

(2) that the sale, transfer, or lease will contribute to the conservation and development of the water resources of the state; and

(3) that the consideration for the sale, transfer, or lease is fair, just, and reasonable and in full compliance with the law.

(b) The consideration for any such sale or transfer may be either money or revenue bonds, which revenue bonds for the purposes hereof shall be deemed the same as money.

(c) The amount of money shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, or if revenue bonds constitute the consideration, the principal amount of revenue bonds shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, and such revenue bonds shall bear interest at the rate prescribed in Section 17.128 of this code with regard to bonds purchased with the proceeds of the Texas Water Development Fund.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.191. DISPOSITION OF PROCEEDS. (a) The money received from any sale, transfer, or lease of facilities as cash, or in the case of a sale or transfer involving revenue bonds, the money

received as matured interest or principal on the bonds shall be used to pay the principal of and interest on water development bonds or to meet contractual obligations incurred by the board. The money shall be collected and credited to the proper special fund as is money received in payment of principal and interest on loans to political subdivisions under this code, taking into consideration the manner in which the facilities were acquired.

(b) When enough money has been collected to pay all outstanding indebtedness, including the principal of all state bonds and contractual obligations and the full amount of interest to accrue on these debts, the board may use any further amounts received from the sale, transfer, or lease of facilities to acquire additional facilities or to provide assistance to political subdivisions for water supply projects.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.192. SALE OF STORED WATER. The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price will be determined by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.193. PERMIT. (a) The board may not sell the water stored in a facility to any person who has not obtained a permit from the commission. The rights of the applicant in the water are governed by the terms and conditions of the permit. The permit may be for a term of years.

(b) Whether the application for a permit involves a proposed use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

(c) The permit shall be conditioned on continued payment of the obligations assumed under the contract with the board and may provide for cancellation at any time on breach of the contract.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.194. SALE CONTRACT: PROVISIONS, LIMITATIONS. (a) The board may determine the consideration and other provisions to be included in water sale contracts, but the consideration and other provisions shall be fair, reasonable, and nondiscriminatory. The board may include charges for standby service, which means holding water and conservation storage space for use and for actual delivery of water.

(b) The board shall make the same determinations with respect to the sale of water as are required in Section 16.190 of this code with respect to the sale or lease of facilities.

(c) The board shall not compete with any political subdivision in the sale of water when this competition jeopardizes the ability of the political subdivision to meet obligations incurred to finance its own water supply projects.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.195. EMERGENCY RELEASES OF WATER. Unappropriated water and other water of the state stored in any facility acquired by and under the control of the board may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or public calamity, if the commission first determines the existence of the emergency and requests the board to release water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.196. PREFERENCES. The board shall give political subdivisions a preferential right, but not an exclusive right, to purchase, acquire, or lease facilities and to purchase water from facilities. Preferences shall be given in these respects in accord with the provisions of Section 11.123 of this code relating to preferences in the appropriation and use of state water. The board and the commission shall coordinate their efforts to meet these

objectives and to assure that the public water of this state, which is held in trust for the use and benefit of the public, will be conserved, developed, and utilized in the greatest practicable measure for the public welfare.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.197. LEASE OF LAND PRIOR TO PROJECT CONSTRUCTION. The board may lease tracts of land acquired for project purposes for a term of years for any purpose not inconsistent with ultimate project construction. The lease shall be scheduled to expire before initiation of project construction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.198. LEASE CONTRIBUTIONS EQUIVALENT TO TAXES. The lease may provide for contribution by the lessee to units of local government of amounts equivalent to ad valorem taxes or special assessments.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. IMPROVEMENTS

Sec. 16.231. DESIGN OF IMPROVEMENTS OR SYSTEM OF IMPROVEMENTS. Insofar as possible, improvements necessary to reclaim overflowed land, swampland, and other land in this state that is not suitable for use because of temporary or permanent excessive accumulation of water on or contiguous to the land for agricultural or other use shall be designed with primary consideration to the topographic and hydrographic conditions and in such a manner that each division of a project shall be a complete, united project forming a coordinate part of an ultimately finished series of projects so constituted that the successful operation of each united project shall coordinate with the successful operation of other projects within the same hydraulic influence.

Formerly Sec. 16.233, amended by Acts 1977, 65th Leg., p. 2207, ch.

870, Sec. 1, eff. Sept. 1, 1977. Renumbered and amended by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981.

Sec. 16.232. LOCATION OF PROJECTS; REPORTS. The executive director shall maintain files reflecting engineering reports, studies, drawings, and staff findings and recommendations pertaining to the location and effect of reclamation projects.

Formerly Sec. 16.234, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered and amended by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.049, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 16, eff. June 19, 1987.

Sec. 16.233. COOPERATION WITH OTHER AGENCIES. In performing functions that are a part of duties assigned to the commission or board by this code or other law, the executive director, with the approval of the commission, or the executive administrator, with the approval of the board, may confer with federal and state agencies and with political subdivisions and may execute cooperative agreements with them. The executive director or executive administrator may cancel any such agreement on 10 days notice to the other party.

Formerly Sec. 16.235, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.049, eff. Sept. 1, 1985.

Sec. 16.234. ADVICE TO DISTRICTS. The executive director shall confer with districts requesting technical advice on the adequate execution of proposed levee and drainage improvements.

Formerly Sec. 16.236, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981.

Sec. 16.235. DISTRICTS TO FILE INFORMATION WITH COMMISSION. Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district

shall file with the commission, on forms furnished by the commission, a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

Formerly Sec. 16.237, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.049, eff. Sept. 1, 1985.

Sec. 16.236. CONSTRUCTION OF LEVEE WITHOUT APPROVAL OF PLANS; LEVEE SAFETY. (a) No person may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows so as to control, regulate, or otherwise change the floodwater of the stream without first obtaining approval of the plans by the commission.

(b) The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of levees located in this state.

(c) If the owner of a levee that is required to be constructed, reconstructed, repaired, or removed to comply with the rules and orders promulgated under this section wilfully fails or refuses to comply within the 30-day period following the date of an order of the commission requiring such action or compliance or if a person wilfully fails to comply with any rule or order issued by the commission under this section within the 30-day period following the effective date of the order, the person is liable for a penalty of not more than \$1,000 a day for each day the person continues to violate this section. The state may recover the penalty by suit brought for that purpose in a district court of Travis County.

(d) If the commission determines that the existing condition of a levee is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate

and serious threat to human life or health and that other procedures available to the commission to remedy or prevent such property damage or economic loss will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of the levee to repair, modify, maintain, dewater, or remove the levee which the commission determines is unsafe. The emergency order may be issued without notice to the levee owner or with notice the commission considers practicable under the circumstances.

(e) If the commission issues an emergency order under authority of this section without notice to the levee owner, the commission shall fix a time and place for a hearing, to be held as soon as practicable but not later than 20 days after the emergency order is authorized, to affirm, modify, or set aside the emergency order. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted, as appropriate, under Chapter 2001, Government Code.

(f) Nothing in this section or in rules or orders adopted by the commission shall be construed to relieve an owner or operator of a levee of the legal duties, obligations, or liabilities incident to ownership or operation.

(g) Any person who violates any provision of Subsection (a) of this section is guilty of a Class C misdemeanor and upon conviction is punishable by a fine of not more than \$1,000. A separate offense is committed each day a structure constructed in violation of this section is maintained.

(h) Subsection (a) of this section does not apply to:

(1) any dam, reservoir, or canal system associated with a water right issued or recognized by the commission;

(2) dams authorized by Section 11.142 of this code;

(3) a levee or other improvement within the corporate limits of a city or town provided: (a) plans for the construction or maintenance or both must be approved by the city or town as a condition precedent to starting the project and (b) the city or town requires that such plans be in substantial compliance with rules and standards adopted by the commission;

(4) a levee or other improvement within the boundaries

of any political subdivision which has qualified for the National Flood Insurance Program as authorized by the National Flood Insurance Act of 1968 (Title 42, U.S.C., Sections 4001-4127) provided: (a) plans for the construction or maintenance or both must be approved by the political subdivision which is participating in the national flood insurance program as a condition precedent to starting the project and (b) the political subdivision requires that such plans be in substantial compliance with rules and standards adopted by the commission;

(5) projects implementing soil and water conservation practices set forth in a conservation plan with a landowner or operator and approved by the governing board of a soil and water conservation district organized under the State Soil Conservation Law, as amended (Article 165a-4, Vernon's Texas Civil Statutes), provided that the governing board finds the practices do not significantly affect stream flooding conditions on, along, or near a state stream; or

(6) any levee or other improvement constructed outside of the 100-year floodway. For the purposes of this section, "100-year floodway" is defined as the channel of a stream and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation prior to encroachment.

(i) On projects located within the corporate limits of a city or town or within the boundaries of any political subdivision which are exempt from the provisions of Subsection (a) of this section by Subdivision (3) or (4) of Subsection (h) of this section, any person whose property is located outside of the corporate limits of such city or town or of the boundaries of such a political subdivision and whose property is affected or potentially affected by the effect of the project on the floodwaters of the stream may appeal the decision of such political subdivision. The appeal shall be in writing and shall specify the grounds therefor and a copy shall be sent by certified mail to the project applicant and to the city or town or such political subdivision. The timely filing of such an appeal with the executive director suspends the decision

of the city or town or political subdivision until a final decision is rendered by the commission. The executive director shall review the complaint and investigate the facts surrounding the nature of the complaint. If the executive director finds that the complaint is frivolous or nonmeritorious or made solely for purposes of harassment or delay, then he shall dismiss the appeal. Otherwise, the executive director shall refer the appeal to the commission which shall after due notice hold a hearing to determine whether the project should be approved using the standards established by the commission and shall hear such appeal de novo under the procedural rules established by the commission for other reclamation projects. Formerly Sec. 16.238, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1375, ch. 615, Sec. 1, eff. Aug. 27, 1979. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.050, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 3.05, eff. Sept. 1, 1997.

Sec. 16.237. ADMINISTRATIVE PENALTY; CIVIL REMEDY. (a) If a person violates a commission rule or order adopted under Section 16.236 of this code, the commission may assess an administrative penalty against that person as provided by Section 11.0842 of this code.

(b) Nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.06, eff. Sept. 1, 1997.

SUBCHAPTER H. NAVIGATION FACILITIES

Sec. 16.271. IMPROVEMENT OF STREAMS AND CANALS AND CONSTRUCTION OF FACILITIES WITHIN CYPRESS CREEK DRAINAGE BASIN. The board may improve streams and canals and construct all waterways and other facilities necessary to provide for navigation

within the Cypress Creek drainage basin which is located in the northeast portion of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.272. LONG-TERM CONTRACTS WITH THE UNITED STATES. The board may execute long-term contracts with the United States or any of its agencies for the acquisition and development of improvements and facilities under Section 16.271 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.273. TEMPORARY AUTHORITY TO ACT FOR DISTRICT. The board may act in behalf of a local district or districts until they can take over the project or projects in accordance with the board's agreement with the district or districts in acting as the sponsor.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. FLOOD INSURANCE

Sec. 16.311. SHORT TITLE. This subchapter may be cited as the Flood Control and Insurance Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.312. PURPOSE. The State of Texas recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions. Recognizing the burden of the nation's resources, congress enacted the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), whereby flood insurance can be made available through coordinated efforts of the federal government and the private insurance industry, by pooling risks, and the positive cooperation of state and local government. The purpose of this

subchapter is to evidence a positive interest in securing flood insurance coverage under this federal program and to so procure for those citizens of Texas desiring to participate and in promoting the public interest by providing appropriate protection against the perils of flood losses and in encouraging sound land use by minimizing exposure of property to flood losses.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.313. DEFINITIONS. In this subchapter:

(1) "Political subdivision" means any political subdivision or body politic and corporate of the State of Texas and includes any county, river authority, conservation and reclamation district, water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, irrigation district, and any type of district heretofore or hereafter created or organized or authorized to be created or organized pursuant to the provisions of Article XVI, Section 59 or Article III, Section 52 of the Constitution of the State of Texas; "political subdivision" also means any interstate compact commission to which the State of Texas is a party, municipal corporation, or city whether operating under the Home Rule Amendment of the Constitution or under the General Law.

(2) "National Flood Insurance Act" means the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), and the implementation and administration of the Act by the director of the Federal Emergency Management Agency.

(3) "Director" means the director of the Federal Emergency Management Agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 258, Sec. 1, eff. Sept. 1, 2001.

Sec. 16.314. COOPERATION OF BOARD. In recognition of the necessity for a coordinated effort at all levels of government, the board shall cooperate with the Federal Emergency Management Agency in the planning and carrying out of state participation in the

National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. [1436](#)), Sec. 4, eff. September 1, 2007.

Sec. 16.3145. NATIONAL FLOOD INSURANCE PROGRAM ORDERS OR ORDINANCES. The governing body of each city and county shall adopt ordinances or orders, as appropriate, necessary for the city or county to be eligible to participate in the National Flood Insurance Program.

Added by Acts 1999, 76th Leg., ch. 1360, Sec. 1, eff. Aug. 30, 1999.

Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS. All political subdivisions are hereby authorized to take all necessary and reasonable actions that are not less stringent than the requirements and criteria of the National Flood Insurance Program, including but not limited to:

(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

(2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;

(3) assisting in minimizing damage caused by floods;

(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

(5) engaging in floodplain management, adopting and enforcing permanent land use and control measures that are not less stringent than those established under the National Flood Insurance

Act, and providing for the imposition of penalties on landowners who violate this subchapter or rules adopted or orders issued under this subchapter;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the board;

(12) satisfying criteria adopted and promulgated by the board pursuant to the National Flood Insurance Program;

(13) adopting permanent land use and control measures with enforcement provisions that are not less stringent than the criteria for land management and use adopted by the director;

(14) adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;

(15) participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and

(16) collecting reasonable fees to cover the cost of administering a local floodplain management program.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.17, eff. September 1, 2007.

Sec. 16.316. COORDINATION OF LOCAL, STATE, AND FEDERAL PROGRAMS BY BOARD. (a) The board shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the board shall aid, advise, and cooperate with political subdivisions, the Texas Department of Insurance, and the Federal Emergency Management Agency when aid, advice, and cooperation are requested or deemed advisable by the board.

(c) The aforementioned aid may include but is not necessarily limited to:

(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or

adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas;

(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones;

(6) encouraging the Federal Emergency Management Agency to evaluate flood-prone areas by river basin and river system;

(7) coordinating the use of federal, state, and local grant money;

(8) making floodplain maps and floodplain information accessible to the public, including in an electronic format through the board's Internet website; and

(9) maintaining at least one staff member in each of the board's field offices to encourage participation in the National Flood Insurance Program by performing education and outreach and coordinating the efforts of political subdivisions.

(d) On the basis of such studies and evaluations, the board, to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. [1436](#)), Sec. 6, eff. September 1, 2007.

Sec. 16.3161. FLOODPLAIN MANAGEMENT ACCOUNT. (a) The floodplain management account is a special fund in the state treasury outside the general revenue fund. The fund is composed of:

- (1) money deposited to the credit of the account under Section 251.004, Insurance Code;
- (2) money directly appropriated to the board; and
- (3) money from gifts or grants from the United States government, local or regional governments, private sources, or other sources.

(b) The account shall be administered by the board in accordance with this section.

(c) The board may use the account to fund the performance of:

- (1) the board's functions under Section 16.316; or
- (2) any other activities related to:
 - (A) the collection and analysis of flood-related information;
 - (B) flood planning, protection, mitigation, or adaptation;
 - (C) the provision of flood-related information to the public through educational or outreach programs; or
 - (D) evaluating the response to and mitigation of flood incidents affecting residential property, including multi-family units, located in floodplains.

(d) The board may invest, reinvest, and direct the investment of any available money in the account as provided by law for the investment of money under Section 404.024, Government Code. Added by Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 7, eff. September 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 923 (S.B. 1538), Sec. 1, eff. September 1, 2017.

Sec. 16.317. COOPERATION OF TEXAS DEPARTMENT OF INSURANCE. Pursuant to the National Flood Insurance Program, the Texas

Department of Insurance shall aid, advise, and cooperate with political subdivisions, the board, and the Federal Emergency Management Agency when such aid, advice, and cooperation are requested or deemed advisable by the Texas Department of Insurance. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. [1436](#)), Sec. 8, eff. September 1, 2007.

Sec. 16.318. RULES. Political subdivisions which qualify for the National Flood Insurance Program, the Texas Department of Insurance, and the board may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. [1436](#)), Sec. 9, eff. September 1, 2007.

Sec. 16.319. QUALIFICATION. Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority to do so by complying with the directions of the Federal Emergency Management Agency and by:

(1) evidencing to the director a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and

(2) giving to the director satisfactory assurance that measures will have been adopted for the political subdivision that will be not less stringent than the comprehensive criteria for land management and use developed by the Federal Emergency Management Agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., 1st C.S., p. 58, ch. 4, Sec. 3, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 9A, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.17, eff. September 1, 2007.

Sec. 16.320. COASTAL EROSION. The Commissioner of the General Land Office is authorized to perform all acts necessary to develop and implement a program for certification of structures subject to imminent collapse due to erosion under the National Flood Insurance Act. This program shall include administrative rules adequate to meet all erosion-related requirements of the National Flood Insurance Act, including the establishment of required erosion zones in order for the state to receive approval to administer the program. This section shall apply to any amendment of or law replacing Section 4013(c) of the National Flood Insurance Act. Except as otherwise provided by this section, all actions taken by political subdivisions under Section 16.315 of this code with respect to structures in imminent danger of collapse from coastal erosion must comply with rules and regulations adopted by the commissioner under this section. A political subdivision may adopt rules that are more stringent than those adopted by the commissioner under this section, provided the stricter provisions are intended to ensure compliance with the National Flood Insurance Program's rules, regulations, and policies.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 38, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.

Sec. 16.321. COASTAL FLOODING. The Commissioner of the General Land Office shall adopt and enforce reasonable rules and regulations necessary for protection from flooding on barrier islands, peninsulas, and mainland areas fronting on the Gulf of

Mexico. Rules and regulations adopted pursuant to this section shall be limited to those matters that political subdivisions are authorized to address under Section 16.315 of this code. Except as otherwise provided by this section, all actions taken by political subdivisions under Section 16.315 of this code with respect to flooding on barrier islands, peninsulas, and mainland areas fronting on the Gulf of Mexico must comply with rules and regulations adopted by the commissioner under this section. A political subdivision may adopt rules that are more stringent than those adopted by the commissioner under this section, provided the stricter provisions are intended to ensure compliance with the National Flood Insurance Program's rules, regulations, and policies.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 39, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 460, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.

Sec. 16.322. CIVIL PENALTY. A person who violates this subchapter or a rule adopted or order issued under this subchapter is subject to a civil penalty of not more than \$100 for each act of violation and for each day of violation.

Added by Acts 1997, 75th Leg., ch. 1346, Sec. 1, eff. Sept. 1, 1997.

Sec. 16.3221. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a Class C misdemeanor.

(c) Each violation of this subchapter and each day of a continuing violation is a separate offense.

Added by Acts 2001, 77th Leg., ch. 258, Sec. 5, eff. Sept. 1, 2001.

Sec. 16.323. ENFORCEMENT BY POLITICAL SUBDIVISION. (a) If it appears that a person has violated, is violating, or is threatening to violate this subchapter or a rule adopted or order issued under this subchapter, a political subdivision may institute a civil suit in the appropriate court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation, including an order

directing the person to remove illegal improvements and restore preexisting conditions;

(2) the assessment and recovery of the civil penalty provided by Section 16.322; or

(3) both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated, is violating, or is threatening to violate this subchapter or a rule adopted or order issued under this subchapter, the court shall grant the injunctive relief that the facts warrant.

Added by Acts 1997, 75th Leg., ch. 1346, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 124, Sec. 1, eff. May 20, 1999;

Acts 2001, 77th Leg., ch. 258, Sec. 6, eff. Sept. 1, 2001.

Sec. 16.324. COUNTY AUTHORITY TO SET FEE. The commissioners court of a county may set a reasonable fee for the county's issuance of a permit authorized by this subchapter for which a fee is not specifically prescribed. The fee must be set and itemized in the county's budget as part of the budget preparation process.

Added by Acts 2001, 77th Leg., ch. 951, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER J. ECONOMICALLY DISTRESSED AREAS

Sec. 16.341. DEFINITIONS. In this subchapter:

Text of subdivision as amended by Acts 2005, 79th Leg., R.S., Ch.

708 (S.B. 425), Sec. 15

(1) "Affected county" means a county:

(A) that has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available;

(B) that is adjacent to an international border;

or

(C) that is located in whole or in part within 100 miles of an international border and contains the majority of the area of a municipality with a population of more than 250,000.

Text of subdivision as amended by Acts 2005, 79th Leg., R.S., Ch. 927 (H.B. 467), Sec. 2

(1) "Affected county" means a county that has an economically distressed area which has a median household income that is not greater than 75 percent of the median state household income.

(2) "Economically distressed area" has the meaning assigned by Section 17.921.

(3) "Political subdivision" means an affected county, a municipality located in an affected county, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, located in an affected county, or a nonprofit water supply corporation created and operating under Chapter 67, located in an affected county, that receives funds for facility engineering under Section 15.407 or financial assistance under Subchapter K, Chapter 17, or an economically distressed area in an affected county for which financial assistance is received under Subchapter C, Chapter 15.

(4) "Sewer services" or "sewer facilities" means treatment works as defined by Section 17.001 of this code or individual, on-site, or cluster treatment systems such as septic tanks and includes drainage facilities and other improvements for proper functioning of septic tank systems.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.59, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 33, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 15, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 2, eff. September 1, 2005.

Sec. 16.342. RULES. (a) The board shall adopt rules that are necessary to carry out the program provided by Subchapter K, Chapter 17, of this code and rules:

(1) incorporating existing minimum state standards and rules for water supply and sewer services established by the commission; and

(2) requiring compliance with existing rules of any state agency relating to septic tanks and other waste disposal systems.

(b) In developing rules under this section, the board shall examine other existing laws relating to counties and municipalities.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.289, eff. Sept. 1, 1995.

Sec. 16.343. MINIMUM STATE STANDARDS AND MODEL POLITICAL SUBDIVISION RULES. (a) The board shall, after consultation with the attorney general and the commission, prepare and adopt model rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions, including rules of any state agency relating to septic tanks and other waste disposal systems, are met.

(b) The model rules must:

(1) assure that adequate drinking water is available to the residential areas in accordance with Chapter 341, Health and Safety Code, and the Rules and Regulations for Public Water Systems and the Drinking Water Standards Governing Water Quality and Reporting Requirements for Public Water Supply Systems adopted by the commission and other law and rules applicable to drinking water; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005.

(c) The model rules must:

(1) assure that adequate sewer facilities are available to the residential areas through either septic tanks or

an organized sewage disposal system that is a publicly or privately owned system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a valid waste discharge permit issued by the commission or private sewage facilities in accordance with Chapter 366, Health and Safety Code, and the Construction Standards for On-Site Sewerage Facilities adopted by the commission and other law and rules applicable to sewage facilities; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005.

(d) The model rules must prohibit the establishment of residential developments with lots of five acres or less in the political subdivision without adequate water supply and sewer services. Also, the model rules must prohibit more than one single-family, detached dwelling to be located on each lot.

(e) The model rules must provide criteria governing the distance that structures must be set back from roads or property lines to ensure proper operation of water supply and sewer services and to reduce the risk of fire hazards.

(f) The model rules may impose a platting or replatting requirement pursuant to Subsection (b)(2), (c)(2), or (d). Except as may be required by an agreement developed under Chapter 242, Local Government Code, a municipality that has adopted the model rules may impose the applicable platting requirements of Chapter 212, Local Government Code, and a county that has adopted the model rules may impose the applicable platting requirements of Chapter 232, Local Government Code, to real property that is required to be platted or replatted by the model rules under this section.

(g) Before an application for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be considered by the board, if the applicant is located:

(1) in a municipality, the municipality must adopt and enforce the model rules in accordance with this section;

(2) in the extraterritorial jurisdiction of a municipality, the applicant must demonstrate that the model rules have been adopted and are enforced in the extraterritorial

jurisdiction by the municipality or the county; or

(3) outside the extraterritorial jurisdiction of a municipality, the county must adopt and enforce the model rules in accordance with this section.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(71), (78), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 422, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 648, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.290, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 15, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, Sec. 34, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1234, Sec. 27, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 15, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1364 (S.B. 1599), Sec. 5, eff. September 1, 2013.

Sec. 16.344. OVERSIGHT. (a) The board shall monitor the performance of a political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code to ensure that the project approved in the application and plans is constructed in the manner described in the application and plans and that the terms and conditions that govern the financial assistance are satisfied.

(b) A political subdivision that receives financial assistance shall submit to the board monthly or as often as otherwise required by board rules an account of expenditures for the project during the preceding month or other required period.

(c) A political subdivision that receives financial assistance shall furnish at the board's request additional information necessary for the board to monitor compliance with the approved application and plan for financial assistance and the terms and conditions of the financial assistance.

(d) Expired.

- (e) Expired.
- (f) Expired.
- (g) Expired.
- (h) Expired.
- (i) Expired.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 6.01, eff. September 1, 2007.

Sec. 16.345. AUTHORITY TO PARTICIPATE IN PROGRAM. (a) A political subdivision may exercise any authority necessary to participate in a program under Section 15.407 of this code or Subchapter K, Chapter 17, of this code and carry out the terms and conditions under which the funds or the financial assistance is provided.

(b) In addition to any other authority to issue bonds or other obligations or incur any debt, an affected county or another political subdivision, other than a nonprofit water supply corporation, eligible for financial assistance under Subchapter K, Chapter 17, of this code may issue bonds payable from and secured by a pledge of the revenues derived or to be derived from the operation of water supply or sewer service systems for the purpose of acquiring, constructing, improving, extending, or repairing water supply or sewer facilities. The bonds shall be issued in accordance with and an affected county or another political subdivision may exercise the powers granted by:

- (1) Subchapter B, Chapter 1502, Government Code;
- (2) Chapter 1201, Government Code;
- (3) Chapter 1371, Government Code; and
- (4) other laws of the state.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 35, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1064, Sec. 44, eff. Sept. 1, 1999.

Sec. 16.346. EXAMINATION OF ABILITY OF A DISTRICT TO PROVIDE SERVICES AND FINANCING. (a) In connection with an

application under Subchapter K, Chapter 17, of this code, the board may consider and make any necessary investigations and inquiries as to the feasibility of creating a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution to provide, in lieu of financial assistance under the application, water supply and sewer services in the area covered by the application through issuance of district bonds to be sold on the regular bond market.

(b) In carrying out its authority under this section, the board may require the applicant to provide necessary information to assist the board in making a determination as to the feasibility of creating a district to provide the services and financing covered by the application.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.347. REQUIREMENT OF IMPOSITION OF DISTRESSED AREAS WATER FINANCING FEE. (a) In this section:

(1) "Distressed areas water financing fee" means a fee imposed by a political subdivision on undeveloped property.

(2) "Undeveloped property" means a tract, lot, or reserve in an area in a political subdivision to be served by water supply or sewer services financed in whole or in part with financial assistance from the board under Subchapter K, Chapter 17, of this code for which a plat has been filed under Subchapter A, Chapter 212, or Chapter 232, Local Government Code.

(b) The board may require, as a condition for granting an application for financial assistance under Subchapter K, Chapter 17, of this code to a political subdivision in which a plat is required to be filed under Subchapter A, Chapter 212, or Chapter 232, Local Government Code, that the applicant impose a distressed areas water financing fee on undeveloped property in the political subdivision if the board determines that imposition of the fee would:

(1) reduce the amount of any financial assistance that the board may provide to accomplish the purposes of the political subdivision under the application; or

(2) assist the political subdivision to more

effectively retire any debt undertaken by the political subdivision in connection with financial assistance made available by the board to the political subdivision.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.348. SETTING OF FEE BY POLITICAL SUBDIVISION; LIEN; DELINQUENT FEES. (a) Before a political subdivision may set the amount of or impose a fee under Section 16.347 of this code, the political subdivision shall hold a hearing on the matter.

(b) Notice of the hearing shall be published in a newspaper of general circulation in the political subdivision once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing. The political subdivision shall send, not later than the 30th day before the date of the hearing, notice of the hearing by certified mail, return receipt requested, to each owner of undeveloped property in the political subdivision. The tax assessor and collector of the political subdivision shall certify to the political subdivision the names of the persons owning undeveloped land in the political subdivision as reflected by the most recent certified tax roll of the political subdivision. Notice of the hearing also must be provided by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any hearings. To be effective, the written request must be received by the political subdivision not later than the 60th day before the date of the hearing. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the political subdivision, and a brief property description.

(c) The amount of a distressed areas water financing fee imposed by a political subdivision pursuant to this section must be reasonably related to that portion of the total amount required to be paid annually in repayment of financial assistance that can be attributed to undeveloped property in the area to be served by water supply and sewer services provided with that financial assistance.

(d) The distressed areas water financing fee or the lien securing the fee is not effective or enforceable until the

governing body of the political subdivision has filed for recordation with the county clerk in each county in which any part of the political subdivision is located and the county clerk has recorded and indexed a duly affirmed and acknowledged notice of imposition of the distressed areas water financing fee containing the following information:

- (1) the name of the political subdivision;
- (2) the date of imposition by the political subdivision of the distressed areas water financing fee;
- (3) the year or years to which the distressed areas water financing fee applies; and
- (4) a complete and accurate legal description of the boundaries of the political subdivision.

(e) On January 1 of each year, a lien attaches to undeveloped property to secure payment of any fee imposed under this section and the interest, if any, on the fee. The lien shall be treated as if it were a tax lien and has the same priority as a lien for taxes of the political subdivision.

(f) If a distressed areas water financing fee imposed under Section 16.347 of this code is not paid in a timely manner, the political subdivision may file suit to foreclose the lien securing payment of the fee and interest. The political subdivision may recover, in addition to the fee and interest, reasonable costs, including attorney's fees, incurred by the political subdivision in enforcing the lien not to exceed 15 percent of the delinquent fee and interest. A suit authorized by this subsection must be filed not later than the fourth anniversary of the date the fee became due. A fee delinquent for more than four years and interest on the fee are considered paid unless a suit is filed before the expiration of the four-year period.

(g) A person owning undeveloped property for which a distressed areas water financing fee is assessed under this section may not construct or add improvements to the property if the fee is delinquent.

(h) A political subdivision shall, on the written request of any person and within five days after the date of the request, issue a certificate stating the amount of any unpaid distressed areas

water financing fees, including interest on the fees, that have been imposed or assessed against a tract of property located in the political subdivision. The political subdivision may charge a fee not to exceed \$10 for each certificate. A certificate issued through fraud or collusion is void.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.349. FEES. (a) A political subdivision that receives financial assistance may charge persons in an economically distressed area in which water supply and sewer services are furnished an amount for those services that is not less than the amount provided in the application for financial assistance.

(b) Except as provided by Subsection (c), the amount charged under Subsection (a) of this section may be equal to or less than the rates paid for water supply and sewer services by residents of the political subdivision.

(c) A political subdivision holding a certificate of convenience and necessity described by Section 13.242, that extends service to an economically distressed area outside the boundaries of the political subdivision, may not charge the residents of the area rates that exceed the lesser of:

(1) the cost of providing service to the area; or

(2) the rates charged other residents of the political subdivision plus 15 percent.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1995, 74th Leg., ch. 979, Sec. 16, eff. June 16, 1995.

Sec. 16.350. ELIGIBLE COUNTIES AND MUNICIPALITIES TO ADOPT RULES. (a) A county or municipality that applies for or receives funds or financial assistance under Section 15.407 of this code or Subchapter K, Chapter 17, of this code must adopt and enforce the model rules developed under Section 16.343 of this code to be eligible to participate in this program. The county or municipality by order or ordinance shall adopt and enter the model rules in the minutes of a meeting of its governing body and shall publish notice of that action in a newspaper with general circulation in the county or municipality. A municipality is

eligible to participate in this program only if the county in which the project is located adopts and enforces the model rules.

(b) Rules adopted by the commissioners court under this section must apply to all the unincorporated area of the county.

(c) A municipality may adopt rules relating to water supply and sewer services within its corporate boundaries and extraterritorial jurisdiction that are more strict than those prepared under Section 16.343 of this code.

(d) A county or municipality that receives funds or financial assistance under Section 15.407 of this code or Subchapter K, Chapter 17, of this code may grant an exemption for a subdivision from the requirements of the model rules only if the county or municipality supplies the subdivision with water supply and sewer services that meet the standards of the model rules.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1991, 72nd Leg., ch. 422, Sec. 6, eff. Sept. 1, 1991.

Sec. 16.351. CONTRACT PREFERENCE. A political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code shall give preference in the award of political subdivision contracts to acquire, construct, extend, or provide water supply and sewer services or facilities to a bidder that agrees to use labor from inside the political subdivision to the extent possible.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.352. ENFORCEMENT OF RULES. A person who violates a rule adopted by a municipality or county under this subchapter or under Subchapter B or C, Chapter 232, Local Government Code, is liable to the municipality or county for a civil penalty of not less than \$500 and not more than \$1,000 for each violation and for each day of a violation. The maximum civil penalty that may accrue each day is \$5,000. The appropriate attorney representing the municipality or county may sue to collect the penalty. The recovered penalty shall be deposited in the general fund of the municipality or county.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.353. INJUNCTION. (a) In addition to any other remedy, the attorney general, the municipal attorney of the municipality in which a violation under Section 16.352 occurs, or the county or district attorney of the county in which a violation under Section 16.352 occurs may apply to a district court for, and the district court may grant, the state or the political subdivision an appropriate prohibitory or mandatory order, including a temporary restraining order or a temporary or permanent injunction, enjoining a violation of this subchapter, the rules described by Section 16.352, or Subchapter B or C, Chapter 232, Local Government Code.

(b) An injunction issued under this section may be issued without the requirement of a bond or other undertaking.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.3535. DAMAGES. In addition to any other remedy, the attorney general, the municipal attorney of the municipality in which a violation under Section 16.352 occurs, or the county or district attorney of the county in which a violation under Section 16.352 occurs may apply to a district court for, and the district court may grant, monetary damages to cover the cost of enforcing this subchapter, rules adopted under this subchapter, or Subchapter B or C, Chapter 232, Local Government Code.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.354. ATTORNEY GENERAL ENFORCEMENT. In addition to the ability of any political subdivision to enforce this subchapter, the attorney general may file suit to:

- (1) enforce a rule adopted under Section 16.350;
 - (2) recover a civil penalty under Section 16.352;
 - (3) obtain injunctive relief under Section 16.353;
 - (4) recover damages under Section 16.3535;
 - (5) enforce a political subdivision's rules, recover any penalty, recover any damages, and obtain any injunctive relief;
- or
- (6) recover attorney's fees, investigative costs, and

court costs.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.3545. VENUE. A suit brought under this subchapter for injunctive relief or the recovery of a civil penalty or damages may be brought in a district court in:

- (1) the county in which the defendant resides;
- (2) the county in which the alleged violation or threat of violation occurs; or
- (3) Travis County.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.355. AUTHORITY OVER FACILITIES. A political subdivision may construct, contract for construction, operate, or contract with any person for operation of any water supply or sewer services or facilities provided by the political subdivision with financial assistance obtained under Subchapter K, Chapter 17, of this code.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.356. USE OF REVENUE FROM OPERATION OF WATER SUPPLY OR SEWER SERVICE PROJECTS. (a) A political subdivision that receives financial assistance from the economically distressed areas program under Subchapter K, Chapter 17, may not use any revenue received from fees collected from a water supply or sewer service constructed in whole or in part from funds from the economically distressed areas program account for purposes other than utility purposes. The annual financial statement prepared by a municipality under Section 103.001, Local Government Code, must include a specific report on compliance with this section.

(b) At the request of the board or on the attorney general's own initiative, the attorney general may file suit to enjoin an actual or threatened violation of this section.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 37, eff. Sept. 1, 1999.

SUBCHAPTER K. WATER CONSERVATION

Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS PROGRAM. (a) The executive administrator shall develop and implement a statewide water conservation public awareness program to educate residents of this state about water conservation. The program shall take into account the differences in water conservation needs of various geographic regions of the state and shall be designed to complement and support existing local and regional water conservation programs.

(b) The executive administrator is required to develop and implement the program required by Subsection (a) in a state fiscal biennium only if the legislature appropriates sufficient money in that biennium specifically for that purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 8, eff. June 15, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.18, eff. September 1, 2007.

Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Each entity that is required to submit a water conservation plan to the commission under this code shall submit a copy of the plan to the executive administrator.

(b) Each entity that is required to submit a water conservation plan to the executive administrator, board, or commission under this code shall report annually to the executive administrator on the entity's progress in implementing the plan.

(c) The executive administrator shall review each water conservation plan and annual report to determine compliance with the minimum requirements established by Section 11.1271 and the submission deadlines developed under Subsection (e) of this section.

(d) The board may notify the commission if the board determines that an entity has violated this section or a rule adopted under this section. Notwithstanding Section 7.051(b), a violation of this section or of a rule adopted under this section is enforceable in the manner provided by Chapter 7 for a violation of a provision of this code within the commission's jurisdiction or of a rule adopted by the commission under a provision of this code within

the commission's jurisdiction.

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b);

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the reports required by Subsection (b); and

(3) providing for the enforcement of this section and rules adopted under this section.

(f) At a minimum, rules adopted under Subsection (e)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The board and commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 8, eff. June 15, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.18, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 10, eff. September 1, 2011.

Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 595

(S.B. 181), Sec. 2

For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1233

(S.B. 660), Sec. 11, see other Sec. 16.403.

Sec. 16.403. WATER USE REPORTING. (a) The legislature finds that:

(1) tracking water use over time and evaluating the effects of water conservation programs or strategies are vital components of planning for and managing the state's water resources to estimate and meet future water demand requirements;

(2) gallons per capita per day, the common metric used by municipalities and water utilities for water supply planning and the calculation of water use, is not an accurate measure of water

use or water conservation because a uniform, consistent methodology for the calculation of gallons per capita per day has not been established;

(3) using a single gallons per capita per day metric to compare the water use of municipalities and water utilities does not produce a reliable comparison because water use is dependent on several variables, including differences in the amount of water used for commercial and industrial sector activities, power production, permanent versus temporary service populations, and agricultural sector production;

(4) if valid water use comparisons and evaluations of a municipality's or water utility's water conservation programs are to be made over time for statewide resource management and water supply planning and permitting purposes, the methodology used to calculate gallons per capita per day must be uniform for all water suppliers;

(5) a municipality's or water utility's industrial and agricultural sector's gallons per capita per day figures are not an accurate measure of actual water use and conservation by entities within those sectors because water use in the industrial and agricultural sectors is not population-dependent and therefore not accurately calculated using a population-based metric; and

(6) a sector-based water use metric, adjusted for variables in water use by municipalities and water utilities, is necessary in order to provide an accurate comparison of water use and water conservation among municipalities and water utilities.

(b) The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1) a method of calculating total water use by a municipality or water utility, including water billed and nonrevenue water used, and a method of calculating water use for each sector of water users served by a municipality or water

utility;

(2) a method of calculating total water use by a municipality or water utility in gallons per capita per day;

(3) a method of classifying water users within sectors;

(4) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(5) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(6) guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(c) The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (b) in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

- (1) Section [11.1271](#);
- (2) Section [13.146](#);
- (3) Section [15.106](#);
- (4) Section [15.607](#);
- (5) Section [15.975](#);
- (6) Section [15.995](#);
- (7) Section [16.012\(m\)](#);
- (8) Section [16.402](#);
- (9) Section [17.125](#);
- (10) Section [17.277](#);
- (11) Section [17.857](#); or
- (12) Section [17.927](#).

(d) The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(e) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

(1) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and

(2) the data collection and reporting program developed under Subsection (d).

Added by Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. 181), Sec. 2, eff. June 17, 2011.

Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1233
(S.B. 660), Sec. 11

For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 595
(S.B. 181), Sec. 2, see other Sec. 16.403.

Sec. 16.403. WATER USE REPORTING. (a) The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1) a method of calculating water use for each sector of water users served by a municipality or water utility;

(2) a method of classifying water users within sectors;

(3) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(4) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(5) guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(b) The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (a) in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

- (1) Section [11.1271](#);
- (2) Section [13.146](#);
- (3) Section [15.106](#);
- (4) Section [15.607](#);
- (5) Section [15.975](#);
- (6) Section [15.995](#);
- (7) Section [16.012\(m\)](#);
- (8) Section [16.402](#);
- (9) Section [17.125](#);
- (10) Section [17.277](#);
- (11) Section [17.857](#); or
- (12) Section [17.927](#).

(c) The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(d) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

(1) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and

(2) the data collection and reporting program developed under Subsection (c).

(e) Data included in a water conservation plan or report required under this code and submitted to the board or commission must be interpreted in the context of variations in local water use. The data may not be the only factor considered by the commission in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section [11.085\(1\)](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. [660](#)), Sec. 11,

eff. September 1, 2011.

Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 595

(S.B. 181), Sec. 2

For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1233

(S.B. 660), Sec. 11, see other Sec. 16.404.

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter. At a minimum, the rules adopted under this subchapter must require an entity to report the most detailed level of water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report water use data that is more detailed than the entity's billing system is capable of producing. The rules may require that billing systems purchased after September 1, 2011, be capable of reporting detailed water use data described in this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. 181), Sec. 2, eff. June 17, 2011.

Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1233

(S.B. 660), Sec. 11

For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 595

(S.B. 181), Sec. 2, see other Sec. 16.404.

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 11, eff. September 1, 2011.