



88th Legislative Wrap Up, by Sarah Kirkle

After a fast and furious 140 days, the 88th Legislature adjourned sine die. That lasted only a few hours before Governor Abbott called the Legislature back in the first of what is to be expected to be several special sessions over the interim. The Legislature headed into the 88th regular session with a nearly \$33 billion surplus, making the budget the biggest topic on the legislative docket, followed by various social issues. Issues that surrounded the budget included property tax reform and funding for retired teachers, state employees, higher education, parks, broadband, electric generation, and water.

Legislators filed 8,345 bills and joint resolutions, about 14% more than in the 87th session. Only 1,256 of those bills passed both chambers by sine die, providing for a 15% percent bill passage rate and resulting in the 88th session having the highest number of bills filed and lowest passage rate in recent memory. Governor Abbott vetoed 76 bills (9 of which TWCA tracked), second only to Rick Perry in 2001. In many cases, the Governor's veto proclamation noted the importance of the vetoed bill and invited it to be reconsidered after the passage of legislation addressing property tax and/or education reform.

On the water front, this session marked the formation of the first-ever House Water Caucus, chaired by Rep. Tracy O. King. Goals of the caucus include educating legislative members and staff on water issues, elevating water issues as a priority within the Legislature, and cultivating the next generation of water champions. Seventy-three of the 150 members of the Texas House joined the Water Caucus, demonstrating the importance of water issues across the state.

The Texas Water Conservation Association (TWCA) is a statewide water association promoting sound water policy for Texas whose members include river authorities, cities, all types of water districts (irrigation, utility, drainage, flood) and groundwater conservation districts, as well as legal and engineering firms that support their work. As in past sessions, TWCA closely followed bills that could impact its members, tracking 754 bills and designating 61 of those bills as high priority. One hundred nineteen, or about 16% of our tracked bills, made it to the finish line, with 16 of those being high priority. Summaries of the most significant bills that may be of interest to water professionals are provided below.

I. Water Infrastructure

After an interim filled with discussions about infrastructure woes such as line breaks and boil water notices due to extreme weather events, the Legislature passed **Senate Bill (S.B.) 28 and Senate Joint Resolution (S.J.R.) 75 (Perry/T. King)** to create the Texas Water Fund. The Fund is an umbrella fund that allows the Texas Water Development Board (TWDB) to disburse money to other funds and programs it administers, such as the State Water Implementation Fund for Texas and the Rural Water Assistance Fund. The bill creates another new fund, the New Water Supply

for Texas Fund, which sets a goal for TWDB to fund 7 million acre-feet of new water supplies by 2033 through eligible projects such as desalination, aquifer storage and recovery, and use of produced water outside the oil and gas arena. S.B. 28 requires a portion of the Texas Water Fund to be used for water infrastructure projects for rural political subdivisions and municipalities with a population under 150,000; projects for which all permitting is complete; a statewide water public awareness program; water conservation strategies; and water loss mitigation projects. The bill requires all recipients of financial assistance to submit a water conservation plan. TWDB must also establish a technical assistance program to assist retail public utilities with water loss audits and post certain water loss information on its website.

S.J.R. 75, which amends the Texas Constitution to create the Texas Water Fund, must be approved by Texas voters this November before funding may be accessed. The resolution provides that not less than 25% of the initial \$1 billion appropriation to the Texas Water Fund be used for eligible projects in the New Water Supply for Texas Fund.

Beyond S.B. 28/S.J.R. 75, the Legislature also funded other water infrastructure priorities through the state budget and supplemental appropriations bill (**H.B. 1 and S.B. 30 – Bonnen/Huffman**). Most significantly, this included \$625 million to the Flood Infrastructure Fund, \$550 million toward the coastal spine, and \$125 million in match funds for the State Revolving Funds. **S.B. 469 (Springer/T. King)** also created an updated definition of “rural political subdivision” for the purposes of accessing TWDB programs.

Advocacy for investment in water infrastructure also brought about unprecedented collaboration within and beyond the water community. TWCA partnered with the other key water associations to form a water infrastructure coalition to help advocate for investment in water, wastewater, and flood infrastructure. Despite very different water needs and priorities, the coalition of 24 associations and 47 individual districts, organizations, and firms share a common goal of ensuring our water future. The water community is thankful for the leadership of our chairmen – Sen. Charles Perry and Rep. Tracy O. King – in passing and securing an appropriation for S.B. 28/S.J.R. 75, and all realize the conversation around water infrastructure and funding needs is just beginning.

II. Sunset Review of Water Agencies

All of the key water-related agencies – Texas Commission on Environmental Quality (TCEQ), TWDB, and the Public Utility Commission of Texas (PUC) – underwent review by the Sunset Advisory Commission leading into this session. Sunset review is a comprehensive review process that identifies key management and statutory changes intended to make the agencies operate more efficiently and effectively. Full summaries of the Sunset bills and adopted management recommendations for each of these agencies is available on the Sunset website, and a synopsis of relevant water-related provisions in each Sunset bill is below.

- **TCEQ Sunset: S.B. 1397 (Schwertner/K. Bell)** requires periodic review of environmental flow standards by the Environmental Flows Advisory Group (EFAG), specifies the criteria for those reviews, and requires a biennial statewide workplan to prioritize and standardize review of environmental flow standards. The bill requires TCEQ to submit a biennial report to the EFAG and removes the abolishment date for EFAG & the Science Advisory Committee. The bill expands various public notice and outreach requirements related to permits, requires additional specificity in calculating compliance history, and increases

administrative penalty authority from \$25,000 to \$40,000 for certain violations. The bill requires an enforcement diversion program for small businesses and local governments and requires notice of proposed creation of a new water district to each representative and senator representing an area in the proposed district boundaries.

- **TWDB Sunset: H.B. 1565 (Canales/Perry)** requires each regional water planning group (RWPG) to include in its regional plan certain information (expenditures of sponsor money, status of permit applications, and status of phases of construction) for large projects including reservoirs, interstate water transfers, innovative technology projects, desalination, and other large projects as determined by TWDB. The bill allows an RWPG to plan for a drought worse than the drought of record and allows TWDB to adopt risk-based review of plans and specs if certain findings are made by a professional engineer.
- **PUC Sunset: H.B. 1500 (Holland/Schwertner)** clarifies that the term of a temporary manager of a water utility is one year and the term may be renewed for another year or a reasonable time if the utility is undergoing sale or transfer.

III. Surface and Groundwater

TWCA's Surface Water Committee and Groundwater Committee, which each have more than 150 members that represent all facets of the water community, met in advance of the 88th session and considered a wide range of issues, continuing to apply a 90% consensus requirement for all proposals. The committees ultimately recommended TWCA offer specific legislation related to surface water availability models (WAMs) and offer support for nine other initiatives, mostly in the groundwater space. **House Bill (H.B.) 2460 (T. King/Perry)** requires TCEQ to update WAMs for five river basins. TWCA has consistently supported WAM updates and hopes to eventually obtain funding to update all the WAMs, as some are more than 30 years out-of-date and do not reflect potential new droughts of record. Unfortunately, while the bill passed the Legislature, the budget did not include funding for updates, so TCEQ is not required to initiate updates.

Other notable water-related bills that passed include:

- **H.B. 692 (Rogers/Springer)** allows authorization by rule for land application of dairy waste and disposal of dairy waste from a concentrated animal feeding operation into a control or retention facility.
- **H.B. 1971 (Ashby/Springer)** provides that for a groundwater conservation district (GCD) board with 10 or more directors, a concurrence of a majority of directors eligible to vote is sufficient to take an action on a groundwater permit application or amendment. The bill prohibits a director who files a conflict-of-interest affidavit from voting on or attending a closed meeting on the matter unless a majority of the directors are also required to file an affidavit on the matter. H.B. 1971 provides that a GCD's final permit decision must be in writing and adopted within 180 days after receipt of a proposal for decision. If the GCD has not finalized its decision by then, the recommendations of the administrative law judge are deemed adopted by the GCD and are not appealable or subject to a motion for rehearing. The bill prohibits continuances from exceeding time limits for issuing a final decision and provides for timelines and consolidation of motions for rehearing as well as procedures for appealing a decision.

- **H.B. 2443 (Harris/Perry)** allows a person with a real property interest in groundwater to petition a GCD where the property interest is located to adopt or modify a rule. The bill requires a GCD to prescribe the form for a petition and procedures for submission, consideration, and disposition and provides a 90-day timeline for denying the petition or engaging in rulemaking. (TWCA-supported bill)
- **H.B. 2815 (Jetton/Creighton)** makes changes to TCEQ approval, petition processes, and confirmation elections for district creation and initial directors. The bill changes authorization thresholds for assessments, taxes, fees, or bonds and changes the per diem of directors from \$150 per day to not exceed the legislative per diem (\$221). H.B. 2815 provides that a special law authority may not set the annual limit on fees for a director at an amount greater than would be produced by 60 days of service per year at the maximum daily rate. The bill allows use of a county website for online meeting notices and excludes the personal email of a director from public information. The bill makes various changes to bond election requirements and TCEQ review of the economic feasibility of bonds. H.B. 2815 provides guidance for dividing or consolidating a district and adds notice requirements for property sold or conveyed within a district. The bill adds requirements to allocation agreements, amends qualifications of directors, and repeals certain provisions regarding conversion of a municipal utility district, vacancies, and solid waste.
- **H.B. 3059 (T. King/Perry)** increases the export fee cap for tax- and fee-based GCDs to 20 cents per thousand gallons exported and provides that the cap on the export fee or existing 50% surcharge increases at 3% per year. The bill allows a special law district to charge an export fee or surcharge in accordance with either special law or Ch. 36, Water Code. The bill requires any new export fee or increase in an existing export fee or surcharge to be approved by a GCD board after a public hearing. H.B. 3059 authorizes a GCD to use fees to maintain the operability of wells significantly affected by groundwater development, among other purposes. The bill provides that funds obtained from the increase in an export fee on or after January 1, 2024 may only be used to maintain the operability of wells significantly affected by groundwater development, to develop and distribute alternative water supplies, or to conduct aquifer monitoring, data collection, or science.
- **H.B. 3232 (Rogers/Perry)** provides that if a service operated by a retail public utility is being integrated into a regional service, TCEQ may enter into a compliance agreement with the regional provider and not initiate an enforcement action for existing or anticipated violations resulting from the operation due to service integration.
- **H.B. 3278 (Price/Blanco)** requires GCDs to submit supporting materials, including new or revised model run results, to the GCD representatives in the groundwater management area (GMA) and be made publicly available on a website on behalf of the GMA. The bill requires information to be posted for at least 30 days before GCDs may reconvene for a joint planning meeting to receive comment and adopt a final desired future condition (DFC). The bill requires that the explanatory report include reasons why comments offered during the public comment period or joint planning meeting were not incorporated into the DFC. (TWCA-supported bill)
- **H.B. 3810 (Landgraf/Perry)** requires a nonindustrial public water supply system providing water for public or private use to notify TCEQ of an unplanned condition that has caused an outage or issuance of a do-not-use, do-not-consume, or boil water notice. The bill allows TCEQ to partner with the Texas Department of Emergency Management in administering

the notification requirement but does not require a person in charge of a nonindustrial public water supply system to provide notice of a weather or emergency alert, warning, or watch issued by certain state or federal agencies.

- **H.B. 4256 (Murr/Blanco)** requires TCEQ to administer a grant program for plugging certain wells in Pecos County. The bill sets out program eligibility and requires funds to be awarded to a contractor or subcontractor on a list of approved well pluggers maintained by the Railroad Commission.
- **S.B. 1289 (Perry/T. King)** provides that a wastewater treatment facility that treats domestic wastewater for reuse may dispose of treated wastewater without a permit if the facility disposes through a collection system and has the consent of the operator of the system and treatment facility. The bill clarifies that the owner of a reclaimed water production facility may not be required to own a wastewater treatment facility permitted by TCEQ and requires TCEQ to adopt rules. (TWCA-supported bill)
- **S.B. 2440 (Perry/Burrows)** requires a plat application to attach a statement certifying adequate groundwater availability for a proposed subdivision. The bill allows a municipality or county to waive this requirement if the authority determines there is sufficient groundwater in the vicinity of the proposed subdivision and the entire tract is supplied by groundwater from certain aquifers or the proposed subdivision divides the tract into not more than 10 parts. A municipality or county can require the certification of groundwater if it determines the proposed subdivision is part of a series of subdivisions from an original tract that collectively includes more than 10 parts.

IV. Transparency and Government Operations

The Legislature passed several bills related to public information and transparency:

- **H.B. 3033 (Landgraf/Zaffirini)** defines business day for purposes of the public information law. Allows the Attorney General (AG) to require training of a public official if the governmental body has failed to comply with legal requirements. The bill provides that certain exceptions to public disclosure do not apply if related to certain elections and adds an exception for attorney general settlement negotiations. H.B. 3033 provides limitations on a requestor of public information who has exceeded certain limitations and allows a governmental body to request photoidentification from a requestor. The bill requires requests to the AG to be submitted electronically and lists exceptions. The bill adds requirements for notifying a requestor of the status of a request and requires the AG to make available on its website a searchable database of each request and decision on public information law.
- **H.B. 3440 (Canales/Hinojosa)** requires municipalities, counties, and various special districts - including conservation districts - to post the agenda for an open meeting on their website and in the location where notice is posted.
- **S.B. 943 (Kolkhorst/Hunter)** requires that a newspaper that publishes a notice shall, at no additional cost to a government entity, place the notice on the newspaper's website (if it has a website) in an area clearly designed for notices at no cost to the public. The bill also requires the Texas Press Association to publish notices on its website if it has a statewide repository of notices and provides details on such a repository.

Other key bills that impact the operations of government entities include:

- **H.B. 1845 (Metcalf/Perry)** requires TCEQ to establish a provisional certification program for a Class D water/wastewater operator for people who do not hold a high school diploma or equivalency if the operator has satisfied certain training and exams and acts under the direct supervision of a license holder.
- **H.B. 3437 (Holland/Nichols)** increases the cap for change order approvals that can be delegated from a board to staff from \$50,000 to \$150,000.
- **H.B. 3507 (Holland/Nichols)** increases from \$75,000 to \$150,000 the minimum dollar amount of contracts requiring advertisement in newspapers. Requires competitive bidding for contracts between \$25,000 and \$150,000, up from a \$75,000 cap.
- **S.B. 29 (Birdwell/Lozano)** prohibits a governmental entity from mandating face coverings, vaccines, or business or school closures due to COVID-19.
- **S.B. 1893 (Birdwell/Anderson)** requires governmental entities to adopt a policy prohibiting installation or use of TikTok on a device owned or leased by the entity, requires removal of TikTok, and lists exceptions to the prohibition. The bill allows the Governor to identify other social media apps that pose similar risk to the security of governmental entity information and requires the Department of Information Resources and the Department of Public Safety to develop a model policy.

V. Looking Ahead

The next important event in the water space will be the November election to see if voters approve creation of the Texas Water Fund proposed in S.J.R. 75. Voter approval of this measure will trigger appropriation of \$1 billion to the Fund for distribution in the form of loans and grants to local water and wastewater providers to improve and expand their infrastructure. The full Legislature has a lot of activity on its horizon. Given the Governor's promises for special sessions and the impeachment trial of the Attorney General, there may not be much of an interim before the 89th Legislature convenes in January 2025.