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Commentary: 86th Texas State Legislature: Summaries of Water-related Legislative Action

Editor-in-Chief's Note: September 1 of every odd-numbered year is the date when new legislation from the most recent session of the Texas Legislature typically goes into effect. With this in mind, the Texas Water Journal invited five organizations that work closely with the Texas Legislature to provide their take on the changes to Texas water policy and law that were made during the 2019 session. The opinions expressed in these summaries are the opinions of the individual organizations and not the opinions of the Texas Water Journal or the Texas Water Resources Institute.

Organizations:

- Sierra Club, Lone Star Chapter and Save Our Springs Alliance
- Texas Water Conservation Association
- Texas Alliance of Groundwater Districts
- Texas Rural Water Association
- Texas Water Infrastructure Network

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Terms used in paper

Abbreviation	Name
ASR	aquifer storage and recovery
BGPZ(s)	brackish groundwater production zones
BRA	Brazos River Authority
CCN	Certificate of Convenience and Necessity
FIF	Flood Infrastructure Fund
GAM(s)	Groundwater Availability Models
GCD(s)	groundwater conservation district(s)
GCWA	Gulf Coast Water Authority
GLO	Texas General Land Office
GO	general obligation
HB	House Bill
HJR	House Joint Resolution
HUB	Historically Underutilized Business
JOC	job order contracting
MSA	metropolitan statistical area
NCTMA	North Central Texas Municipal Water Authority
NESC	National Electrical Safety Code
PUC	Public Utility Commission
RWPG(s)	regional water planning groups
SB	Senate Bill
SUD(s)	special utility districts
TAGD	Texas Alliance of Groundwater Districts
TCEQ	Texas Commission on Environmental Quality
TxDOT	Texas Department of Transportation
TDEM	Texas Division of Emergency Management
TIRF	Texas Infrastructure Resiliency Fund
TRWA	Texas Rural Water Association
TWCA	Texas Water Conservation Association
TWDB	Texas Water Development Board
TXWIN	Texas Water Infrastructure Network
WAM(s)	water availability models
WSC(s)	water supply corporations

WATER IN THE 86TH TEXAS LEGISLATURE: FLOODING DOMINATES BUT WATER MANAGEMENT ISSUES PERSIST

By Ken Kramer, Water Resources Chair for the Lone Star Chapter of the Sierra Club, and Christopher Mullins, Staff Attorney for Save Our Springs Alliance

Immediate crises or recent catastrophes have a remarkable way of focusing the attention of politicians and policy-makers. This phenomenon was apparent in how the regular session of the 86th Texas Legislature addressed water issues. Flooding and damages from Hurricane Harvey and floods elsewhere in Texas in 2017 and 2018 depleted the oxygen from most other water topics in the session.

Approximately one-fourth of the over 200 pieces of water-related legislation introduced in the Texas House and Senate in the spring of 2019 dealt with flood issues or related emergency and disaster response and preparedness. Along with the volume of such bills introduced, the scope of the flood-related legislation the Legislature passed emphasized the focus on flooding.

Drought—too little water—has usually been the driver of major new water legislation in Texas. The historic drought of record in the 1950s led to creation of the Texas Water Development Board (TWDB) and a round of dam building, the dry years of the mid-1990s produced the regional water (supply) planning process, and the drought of 2011 (and beyond 2011 for some) prompted creation of the State Water Implementation Fund for Texas (SWIFT).

This session: Action prompted by "Too much water!"

In 2019, however, it was concern about too much water in the wrong places that prompted fairly sweeping legislation on disaster management and recovery, flood project funding, and a new state and regional flood planning process, among other enactments. Of course, given the impact of Hurricane Harvey on the Texas coast and other recent flooding experiences—combined with the potential for more such extreme events as a result of climate change (yes, Texas Legislators, the climate is changing)—the question remains whether the 2019 legislative response to flooding will prove sufficient.

Even a $1.6+ billion withdrawal from the state's "rainy day fund," as was done by Legislators to provide new funding for flood projects and related flood work, may not be enough to meet the challenge, even combined (as it is intended to be) with local government funds and as a match for federal funding. The state flood assessment prepared by the TWDB in 2018 estimated statewide flood mitigation costs over the next ten years to be more than $31.5 billion, with $18 billion–$26.6 billion needing to come from state or federal sources. Moreover, the estimate did not include "projects associated with Hurricane Harvey recovery, other large federal projects such as the Coastal Spine, or rehabilitation of high hazard dams within the state."

In addition, moving forward with some projects will depend on voter approval of a proposed state constitutional amendment. Success will also depend, as it always does, on how efficiently and effectively the new flood project funding mechanisms and planning processes are implemented by state, regional, and local government entities.

Moreover, are Texas state and local officials willing at some point to impose real estate development measures to avoid the mistakes of the past that have exacerbated flooding in many areas? Legislators did not take that approach this session. Money and infrastructure alone, however, are not the answers to reducing and managing flooding. Finally, what happens if parts of the state are hit by major floods in the near term before new projects are completed or local measures enacted? Will that dramatically increase the price tag for flood control and recovery, and, if so, will future Legislatures be blessed with a robust state revenue scenario to allocate those additional dollars?

These uncertainties aside, the Legislature deserves credit for taking important steps this session to address flooding and related issues. Several bills had implications for flood control and response, but the most significant ones were three bills making numerous statutory changes, a supplemental appropriations bill, and a proposed state constitutional amendment.

Senate Bill (SB) 6

SB 6 requires the Texas Division of Emergency Management (TDEM) to undertake several tasks related to disaster response and recovery. SB 6 also establishes a "wet debris study group" to "study issues related to preventing the creation of wet debris and best practices for clearing wet debris following a disaster, including: … (1) the creation of maintenance programs for bodies of water in this state." The study group is required to submit a report with recommendations to the Legislature by November 1, 2020.

SB 7

SB 7 revises and adds to the state's mechanisms for funding flood mitigation and flood infrastructure projects. Article 1 defines eligible "flood control planning" activities. Article 2 creates a new Flood Infrastructure Fund, defines eligible projects to receive assistance from the fund, and sets out in detail how the TWDB is to administer the fund. However, Article 2 will only take effect if the voters of Texas approve the state constitutional amendment proposed in House Joint

Resolution (HJR) 4. That vote will come in November 2019. Once a state flood plan is adopted (see below), this fund may only be used to provide financing for projects recommended in that plan.

Article 3 establishes a separate fund called the Texas Infrastructure Resiliency Fund, with a Floodplain Management Account, a Hurricane Harvey Account, and a Federal Matching Account. These accounts are structured to apply to different types of projects. The TWDB is the primary administrative body for the resiliency fund, but the TDEM has a lead role in financing projects funded out of the Hurricane Harvey Account. This new fund and its separate accounts are in effect now—voter approval of a constitutional amendment was not required.

SB 8

SB 8 establishes a new state and regional flood planning process, similar to the water supply planning process created by SB 1 in 1997. Under the guidance of the TWDB, the state will be divided into flood planning regions, and planning groups with diverse representation will be created in each region. Their regional plans will be submitted to the TWDB for review and approval, and the TWDB will aggregate those regional plans into a state flood plan. The first state flood plan must be adopted no later than September 1, 2024 and must be revised every five years. SB 8 also requires the State Soil and Water Conservation Board to prepare a separate plan for repair, rehabilitation, and maintenance of dams under its jurisdiction and to revise that plan every decade.

Statutory changes are important, but implementation of statutes requires, with some exceptions, legislative appropriation of dollars. This time the supplemental appropriations bill, SB 500, was the primary vehicle for allocating funds to the TWDB to carry out most of its revised flood responsibilities. Almost $1.5 billion was taken out of the rainy day fund and appropriated to the TWDB for flood programs. Another $200 million out of that fund was given to the General Land Office to match federal funds for studies and projects of the U.S. Army Corps of Engineers, apparently to support a potential coastal barrier project touted as protecting vulnerable parts of the Texas coast from storm surge from tropical storms or hurricanes.

Some interesting aspects of the legislative action on flooding deserve special attention:

- "Nonstructural" flood projects (including "projects that use nature-based features to protect, mitigate, or reduce flood risk" or "natural flood control strategies"—the terms vary among the new funds) are expressly eligible for funding. This could be a boon for green infrastructure, including preservation of open space to reduce flooding.
- Some new funding mechanisms will provide grants as well as loans, somewhat of a departure from the usual legislative preference that financial assistance for water projects be paid back by political subdivisions over time.
- The Legislature is interested in flood projects that might also serve a water supply purpose.
- The Legislature intends to play an active role in shaping and overseeing implementation of the flood legislation, not only by the usual oversight but through legislative advisory committees providing input to rulemaking and perhaps ongoing administration.

How the flood legislation works out in practice remains to be seen. The bottom line, however, is that the 86th Legislature made flooding a high priority for the first time in decades, and that priority affected legislative attention to other water issues.

A biennial favorite water topic: Surface water and groundwater management

Despite the focus on flooding, some other water issues did get attention. The next most significant water policy issue was a biennial favorite: how to manage surface water and groundwater.

Most, if not all, Legislators and policy wonks agree that surface water and groundwater management should balance production with conservation and the long-term needs of all users, including the environment. However, this session's water bills exemplified two major trends that threaten achievement of this balance: (1) major policy decisions on water management are being made without careful consideration of critical, problematic details in the legislation and (2) the regulatory process is being "streamlined" via legislative dictates and procedural shortcuts.

Several bills were aimed at facilitating aquifer storage and recovery (ASR) and brackish groundwater development. ASR is absolutely a promising technology. However, policy questions about how and where the technology might be used raise numerous practical, technical, and ecological issues requiring consideration before Texas goes all in on ASR. One bill that passed—**House Bill (HB) 720**—failed to consider these crucial factors. HB 720 creates a system to incentivize and expedite ASR projects to capture "unappropriated [surface water] flows" during wet years for underground storage, allegedly for flood mitigation and for later retrieval for water supply.

HB 720 was enacted despite public testimony identifying potential ecological impacts and major legal, planning, and engineering challenges to the viability of such ASR projects. The bill was based on the questionable premise that there are unappropriated volumes of water in streams in excess of what is needed for the environment. In reality, most of the surface water rights in Texas were granted prior to any condi-

tions required for "environmental flows," environmental flow standards set by the Texas Commission on Environmental Quality are considered inadequate, and the state's surface water availability models (WAMs) in major river basins need to be updated (one bill passed this session, **HB 723**, requires WAMs to be updated for some basins: the Neches, Brazos, Red, and Rio Grande).

Similarly, a brackish groundwater bill, **HB 724**—which did not pass—ignored some critical issues. The bill would have automatically granted a bed and banks authorization to use surface streams to discharge, convey, and divert treated brackish groundwater. However, the bill had no provisions to limit withdrawal of brackish groundwater in situations where that underground resource contributes to surface flows. Surface water-groundwater interaction should be considered in any water management strategy. HB 724 exemplified both trends noted above: It failed to consider all relevant factors, and it would have required automatic approval of permit applications.

Numerous bills affecting groundwater conservation districts (GCDs)—the state's preferred method of groundwater management—were filed this session, and most exemplified the "streamlining" trend. Those wishing to profit from the groundwater gold rush continue to seek passage of bills undermining GCD regulation, seen as an impediment to moving groundwater around Texas. The result, if the state is not careful, will be a massive statewide system of water pipelines, nicknamed "Gridzilla"—a beast in the mold of the deeply flawed California water model.

Past efforts to bring "Gridzilla" to life with statewide legislation failed. However, state water grid supporters are seeking to assemble it piece by piece like a T-Rex in a museum. Several bills this session were the legislative equivalent of the glue needed to put the creature together. For example, **SB 1010** would have moved Texas towards a one-size-fits-all style of groundwater management, and **SB 851** would have incentivized parties to sue GCDs, effectively chilling districts' regulatory effectiveness (both bills failed). **HB 1066**, set to go into effect in September, requires almost automatic renewal of groundwater transport permits by GCDs and eliminates meaningful public participation.

Overall, this session's surface water and groundwater management bills, apart from those involving studies, were steps in the wrong direction. One notable exception: **SB 942**, which did pass, would have allowed the TWDB to provide state financial assistance for conservation easements and other strategies to reduce nonpoint source pollution (which affects both surface water and groundwater quality). By and large, however, the Legislature is failing to give adequate scrutiny to proposed changes in surface water and groundwater management and is undermining a healthy regulatory balance in managing water resources.

Conclusion

In addition to flooding and water management, the 86th Texas Legislature enacted about 20 other bills relating to water topics such as conservation and desalination, among others. The Legislature also proposed a state constitutional amendment to authorize additional bonds to finance water, wastewater, and (now) drainage projects in economically distressed areas. However, water topics ebb and flow from one session to another. This time flooding swept most of those other topics away, but the issue of managing surface water and groundwater continues to bubble and apparently will not decline soon, even though some aquifer water levels and environmental flows may.

TEXAS WATER CONSERVATION ASSOCIATION 86TH LEGISLATIVE SESSION WRAP-UP

By Dean Robbins and Stacey Allison Steinbach, Texas Water Conservation Association

After a fast and furious 140 days, the 86th Legislature has adjourned *sine die*. In 2019, Legislators filed 7,324 bills, the most in a decade. And 1,429 of those bills passed both chambers by *sine die*, providing for a relatively high 19.5% bill passage rate. Governor Abbott then vetoed 58 bills, the most of his tenure so far and the most of any governor since 2001.

Legislators spent the bulk of their time this session on school finance, tax and lobby reform, and flood response. As in past sessions, the Texas Water Conservation Association (TWCA) closely followed bills of possible interest to its members. Staff tracked 522 bills in 2019, up by nearly 15% from 2017, and designated 169 of those bills as high priority. Nearly 23% of our tracked bills made it to the finish line, and summaries for the most significant bills that may be of interest to water professionals are provided below.

Flood and emergency response

In advance of this session, the TWCA convened a Flood Response Committee to work toward educating lawmakers on flood-related policy issues and developing a set of guiding principles related to flood legislation. The committee was chaired by Bob Brandes, a water resources consultant, and Matt Phillips, of the Brazos River Authority, led a legislative subcommittee. The educational paper and guiding principles can be found on TWCA's website.

Though Legislators filed dozens of bills related to flooding during the 86th session, four bills made up the largest funding opportunities for flood response in the state:

- **Senate Bill (SB) 7: Funding of Flood Planning, Mitigation, and Infrastructure (Creighton/Phelan)**
- **SB 8: State and Regional Flood Planning (Perry/Larson)**
- **House Joint Resolution (HJR) 4: Flood Funding Constitutional Amendment (Phelan/Creighton)**
- **SB 500: Supplemental Appropriations (Nelson/Zerwas)**

Together, these bills provide for and direct the spending of more than $1.8 billion in flood-related dollars. SB 7 specifically creates two new funds at the Texas Water Development Board (TWDB): the Flood Infrastructure Fund (FIF) and the Texas Infrastructure Resiliency Fund (TIRF).

SB 500 appropriates $793 million to the FIF, dependent on passage of HJR 4, which will go before voters in November. The fund, if approved, will provide low-interest loans and grants to water districts or authorities, municipalities, or counties for flood projects, including planning, design, regulatory approvals, and construction. Grants are authorized only for projects serving an area outside of a federally designated metropolitan statistical area (MSA),[1] for projects where the eligible political subdivision does not have the ability to repay the loan or to provide matching funds to enable participation in a federal program for a flood project. Applications must include an analysis of whether the proposed flood project could use floodwater capture techniques for water supply purposes. Upon adoption of an initial state flood plan by the TWDB as required by SB 8, the initial provisions for use of the FIF expire, and the TWDB may use it only to finance projects in the state flood plan.

SB 500 also appropriates $685 million to the TIRF, which is not dependent on the passage of HJR 4 and consists of four accounts:

- the Floodplain Management Account to provide financing for flood planning, the collection and analysis of flood-related information, and other flood activities (this account already exists but is transferred here);
- the Hurricane Harvey Account to provide grant and loan financing through the Texas Division of Emergency Management (TDEM) to eligible political subdivisions for flood projects related to Hurricane Harvey;
- the Federal Matching Account to provide matching funds for federal money; and
- the Flood Plan Implementation Account to provide financing for projects in the state flood plan required by SB 8, once adopted.

SB 7 provides guidance to the TWDB to prioritize funding requests and creates an advisory committee to provide further guidance and oversight. As mentioned, SB 8 calls for a new state flood plan, which borrows from the state's regional water planning groups' model and requires TWDB to prepare and adopt the plan in conjunction with regional flood planning groups.

In SB 500, the Legislature also provided $200 million to the Texas General Land Office for matching funds for U.S. Army Corps of Engineers studies and projects and $150 million to the Texas State Soil and Water Conservation Board for dam repair and maintenance.

[1] An MSA is defined by the Office of Management and Budget as one or more adjacent counties that have at least one urban core area of at least 50,000 population, plus adjacent territory, that has a high degree of social and economic interaction with the core.

Other bills that address flood and emergency response include:

House Bill (HB) 5 (Phelan/Kolkhorst)

HB 5 requires the TDEM to develop a catastrophic debris management plan and model guide for use by political subdivisions in the event of a disaster as well as a model contract for debris removal services to be used by political subdivisions. The bill also requires the Texas A&M Engineering Extension Service to establish a training program on the use of trench burners in debris removal and creates groups to study wet debris and local restrictions that impede disaster recovery efforts.

HB 26 (Metcalf/Nichols)

HB 26 requires the owner or operator of a state-regulated dam that has a spillway with gates used to regulate flood waters to notify local emergency operation centers in downstream communities when spillway releases are made to regulate floodwaters, according to the Texas Commission on Environmental Quality (TCEQ) action plan guidelines. Emergency operation centers must then provide prescribed information to the public.

HB 137 (Hinojosa/Perry)

HB 137 requires the TCEQ to provide a biannual report of the condition of dams classified as high or significant hazard to designated city and county officials and councils of government in which the dam is located. The TCEQ must also report on a dam that has had a change of hazard classification within 30 days of the designation.

HB 1059 (Lucio III, Rodriguez)

HB 1059 requires the TCEQ to appoint a Green Stormwater Infrastructure and Low Impact Development Report Group to prepare biennial reports.

HB 2305 (Morrison/Kolkhorst)

HB 2305 requires the TDEM to study and develop a proposal for training and credentialing state and local emergency management personnel.

HB 2320 (Paul/Taylor)

HB 2320 requires the TDEM, in collaboration with other entities, to include private wireless communication, internet, and cable service providers in the disaster planning process and identify methods for hardening utility facilities and critical infrastructure to maintain essential services during disasters. The bill also requires the Public Utility Commission (PUC) to promote public awareness of bill payment assistance available during a disaster for electric, water, and wastewater services.

HB 2325 (Metcalf/Hancock)

HB 2325 requires the TDEM, in collaboration with other entities, to coordinate state and local government efforts to make 911 emergency service capable of receiving text messages, develop standards for the use of social media as a communication tool after a disaster, develop a mobile application for wireless communication during a disaster, use data analytics software to integrate data, and conduct a study on the use of a standard communication format by first responders.

HB 2345 (Walle/Hinojosa)

HB 2345 creates the Institute for a Disaster Resilient Texas at Texas A&M University, charged with a variety of analytical tools and information to support disaster planning, mitigation, response, and recovery.

HB 3815 (Morrison/Huffman) and SB 339 (Huffman/Morrison)

These bills require a seller's disclosure notice for residential property to include information about whether the property has flood insurance, has been previously flooded, is located within the 100 year or the 500 year flood plain or a floodway, as defined, or within a reservoir or flood pool of a reservoir operated by the U.S. Army Corps of Engineers.

SB 6 (Kolkhorst/Morrison)

SB 6 requires the TDEM to develop a disaster response guide for local officials and a catastrophic debris management plan. The Texas A&M AgriLife Extension Service is required to establish a training program on the use of trench burners for debris removal. A wet debris study group and an emergency management work group are created.

Groundwater

TWCA's longstanding Groundwater Committee, chaired by Hope Wells of the San Antonio Water System and Brian Sledge, an attorney in private practice, again worked during the interim to develop consensus-based legislative proposals in advance of the 86th Legislature. More than 80 TWCA members served on the committee, which took up issues ranging from groundwater conservation district (GCD) rules, attorneys' fees, groundwater mitigation, permits, and abandoned wells.

The TWCA supported **HB 722 (Larson/Perry)**, related to brackish groundwater, and **HB 1066 (Ashby/Perry)**, related to renewal of export permits, both of which will be effective on September 1. HB 722 is intended to provide greater access

to brackish groundwater by simplifying procedures, expediting processing, reducing expenses, and providing flexibility to certain applicants within a GCD. The bill authorizes (and in the case of a petition from a groundwater owner, requires) a GCD to adopt and implement special permitting rules relating to the completion and operation of electric generation or municipal wells for the withdrawal of brackish groundwater within brackish groundwater production zones designated by the TWDB. The legislation contains comprehensive requirements for the content of rules and the processing of applications, which includes a technical review by the TWDB.

HB 2378 was a TWCA-initiated bill that aimed to clarify legislation from 2015. That session, the 84th Texas Legislature passed SB 854, allowing for automatic renewals of certain groundwater operating permits when conditions have not changed. However, many GCDs also require export permits to accompany an operating permit when groundwater will be exported out of the GCD. This bill clarifies that any export permit issued by a GCD in conjunction with an operating permit must be renewed consistent with the corresponding operating permit, effectively marrying the two permits so that they run concurrently once the original export permit period has expired.

Other bills that address groundwater management include:

- **HB 720 (Larson/Perry)** authorizes the appropriation of water for aquifer recharge. It also authorizes the holder of a water right authorizing storage that has not been constructed or that has lost storage to sedimentation to amend the right to include aquifer storage and recovery (ASR), taking into account evaporation credits. The bill prescribes procedures for consideration of an application for an aquifer recharge project and requires the TCEQ to adopt rules to implement the legislation.
- **HB 721 (Larson/Perry)** adds aquifer recharge projects to TWDB's study and survey requirements related to ASR and provides more specificity about how a report is to be prepared.
- **HB 1311: Geoscientist Sunset Bill (Thompson/Watson)** continues the existence of the Texas Board of Professional Geoscientists until September 1, 2025.

Water planning and surface water rights

TWCA's Surface Water Committee, chaired by Lyn Clancy of the Lower Colorado River Authority and Bob Brandes, was not active in advance of the 86th session but continued to support updated funding for water availability models (WAMs) at TCEQ. **SB 723 (Perry/Larson)** requires TCEQ to obtain or develop updated water availability models for the Brazos River, Neches River, Red River, and Rio Grande basins by December 1, 2022. The Legislature appropriated just over $2 million to obtain or develop the models.

Other bills that address water planning and surface water rights include:

HB 807 (Larson/Buckingham)

HB 807 requires the TWDB to create an Interregional Planning Council consisting of members of each regional water planning group to improve coordination, facilitate dialogue, and share best practices among regions. The bill also requires plans to identify drought response strategies, assess ASR opportunities, and set goals for water use per capita in certain instances.

HB 1052 (Larson/Perry)

HB 1052 requires at least 50% of the money from the State Participation Account to be used for interregional water projects and authorizes the TWDB to use the account to provide financial assistance for a desalination or ASR projects, including state ownership in such a facility, limited to $200 million in bonds.

HB 1964: (Ashby/Creighton)

HB 1964 expressly exempts certain applications for a minor amendment to a surface water permit from requirements for a notice and hearing or technical review.

HB 2846 (Larson/Huffman)

HB 2846 requires the City of Houston to enter into a contractual agreement with the Brazos River Authority (BRA) on or before January 1, 2020 to transfer the city's ownership interests in the Allen's Creek Reservoir project to the BRA, including the associated water right permits. The contractual agreement must include provisions for the transfer of not to exceed $23 million from the BRA to the city.

HB 3339 (Dominquez/Creighton)

HB 3339 establishes minimum requirements for a water conservation plan that an applicant must meet to be eligible for financial assistance under various provisions of Chapters 15, 16, and 17 of the Texas Water Code. The plan must include specific, quantified five-year and ten-year targets for water savings, including goals for water loss programs and municipal use measured in gallons per capita per day. Data submitted to the TWDB may not be the only factor considered by the TCEQ in determining the highest practicable level of water conservation for an application for an interbasin transfer. Certain exemptions are provided, including for financial assistance for not greater than $500,000. The TWDB is required to establish a program to assist political subdivisions in developing water conservation plans.

SB 2272 (Nichols/Metcalf)

SB 2272 clarifies decertification provisions and prohibits a holder of a Certificate of Convenience and Necessity (CCN) that is the subject of an expedited release petition from borrowing money under a federal loan program until the PUC issues a decision on the petition. The bill also establishes a process for an independent appraiser to make a binding determination of compensation for decertification, and requires that the PUC ensure that the landowner pay the required compensation to the certificate holder.

Other bills of interest

The TWCA also saw some additional bills that may impact its members.

HB 305 (Paul/Nelson)

HB 305 requires a political subdivision with the authority to impose a tax that at any time on or after January 1, 2019 maintained a publicly accessible Internet website to post prescribed information on the website. The legislation contains exceptions for certain counties, cities, and school districts.

HB 1999 (Leach/Creighton)

HB 1999 prescribes actions a governmental entity must take before bringing a claim against a contractor or design professional for an alleged deficiency in the design or construction of certain improvements to real property.

HB 2202 (Miller/Kolkhorst)

HB 2202 authorizes a commissioners' court that created a levee improvement district with three appointed directors and a population of 2,000 or more to increase the total number of directors to five.

HB 2849 (Canales/Hughes)

HB 2849 requires local governments to allow any member of the public who desires to address the body on an agenda item to do so. The governmental body may adopt rules to limit the total amount of time that a member of the public may speak. A governmental body may not prohibit public criticism of the governmental body.

HB 3001 (Morrison/Birdwell)

HB 3001 addresses how special purpose districts may satisfy requirements to make financial information available to the public, including financial information addressed in Chapter 49 of the Texas Water Code.

HB 3834 (Capriglione/Paxton)

HB 3834 requires the establishment of state certified cybersecurity training programs. State agencies must identify employees who use a computer at least 25% of the time and require those employees and each elected or appointed officer of the agency to complete a certified cybersecurity training program at least once each year. Local government employees who have access to a local government computer system or database, elected officials of the local government, and contractors who have access to a state computer system or database must also complete a certified cybersecurity training program.

SB 2 (Bettencourt/Burrows)

This is an omnibus 147-page tax reform bill that establishes revenue caps for taxing entities. Sections 87, 88, and 89 include changes to the Texas Water Code. Rollback rate limitations for water districts vary from 3.5% to 8% depending on whether a district levies a tax of 2.5 cents or less per $100 valuation and whether a district meets the definition of "developed district." An unused increment rate provision may allow tax levies to exceed the 3.5% threshold if a district has not levied at the full 3.5% rate in any of the previous three years.

SB 65 (Nelson/Geren)

This comprehensive bill amends various sections of the Texas Government Code related to state agency contracting procedures. Significantly for local governments, the bill requires a political subdivision that contracts with a state agency for consulting services to post certain information on its website regarding contracts for lobbying activities.

SB 239 (Nelson/Button)

SB 239 requires a district with a population of 500 or more and subject to Chapter 51, 53, 54, or 55 of the Texas Water Code, upon written request by a district resident, to make an audio recording of a public hearing to consider the adoption of an ad valorem tax rate and to provide the recording to the resident in an electronic format after the hearing. The district is then required to maintain a copy of the recording for at least one year and post minutes of the meeting on the district's website if the district maintains a website. The bill also amends Chapter 49 of the Texas Water Code, relating to the procedures for holding meetings outside of a district and to require a district providing potable water or sewer service to include certain language on a customer's water bill about information available on the Comptroller's Special Purpose District Public Information Database or the district's website.

SB 530 (Birdwell/Wray)

SB 530 increases the maximum penalty per day for violations of laws protecting drinking water from $1,000 to $5,000.

SB 700 (Nichols/Geren)

SB 700 changes the definition of a Class B Utility and a Class C Utility and creates a new Class D Utility. The bill also addresses provisions for issuing emergency orders, temporary rates, ratemaking methodologies, a statement of intent for a rate increase, and rate application requirements.

SB 943 (Watson/Capriglione)

SB 943 adds a definition for "contracting information" to the Public Information Act and requires governmental bodies to release contracting information to the public except where excepted by law.

SB 944 (Watson/Capriglione)

SB 944 amends the Public Information Act to include protected health information not subject to disclosure and to address the maintenance and ownership of public information by an officer or employee of a governmental body. The bill also authorizes a governmental body to designate one email address and one mailing address for receiving public information requests.

Looking ahead

Due to the focus on flooding, popular policy topics such as groundwater took a back seat this session, even though numerous groundwater bills were filed and discussed. We expect a renewed focus on these issues in 2021, especially with respect to GCDs over the same aquifer adopting similar rules, attorneys' fees, permit moratoriums, consideration of a water provider's service area in groundwater permitting, and the standard of review for an appeal of GCD's decision on a groundwater permit. TWCA also hopes to continue working with stakeholders and policy-makers on funding and policies related to abandoned wells.

TEXAS ALLIANCE OF GROUNDWATER DISTRICTS 86TH LEGISLATIVE WRAP-UP

By Leah Martinsson, Executive Director, Texas Alliance of Groundwater Districts

The overarching themes of property tax and school finance reform dominated the 86th Texas Legislature, while the legislative response to Hurricane Harvey in the form of flood and disaster planning was the primary focus of discussions on water. Ultimately, significant legislation was passed in these areas. This resulted in a somewhat decreased focus on groundwater management during the 86th Legislative Session.

There were 15 bills filed that sought to make substantive changes to the provisions of Chapter 36 of the Texas Water Code. This represented fewer bills than in prior sessions. Nevertheless, the changes sought by many of the bills would have been significant. There were also a number of other bills filed that implicated groundwater policy and groundwater management districts (GCDs). In total, the Texas Alliance of Groundwater Districts (TAGD) identified 20 statewide priority groundwater bills for tracking during the session. Of those 20 bills, only five crossed the finish line.

Throughout the 86th Legislative Session, TAGD tracked over 130 bills of interest to groundwater conservation districts. In addition to the 20 statewide priority groundwater bills, TAGD tracked selected bills affecting individual GCDs, general water, study/planning, and administrative law/governance of political subdivisions for its membership. Those that passed and have or will become law are listed at the end of this article.

The substance of many of the 86th Legislative Session's groundwater bills reflected various themes that emerged during a busy legislative interim. And as is frequently the case, the session's groundwater policy dialogue was as affected by what didn't pass as by what did. This article briefly describes key groundwater bills that passed by topic area. It then discusses selected pieces of ultimately unsuccessful groundwater-related legislation that were the subject of significant attention this session.

Groundwater bills that passed

Brackish groundwater

Two of the groundwater bills that passed during the 86th Legislative Session address development of brackish groundwater resources. **Senate Bill (SB) 1041** extends the time by which the Texas Water Development Board (TWDB) must identify and designate brackish groundwater production zones (BGPZs) until December 1, 2032. This was necessary because the TWDB may otherwise have not been able to meet the prior 2022 deadline to identify and designate those BGPZs due to inadequate funding and limited availability of qualified contractors. In addition to this extension, the Legislature approved $2 million and two FTEs for the TWDB Brackish Resources Aquifer Characterization System, aimed at accelerating the mapping and characterization of brackish aquifers.

Once such BGPZs are identified, the passage of Chairman Larson's **House Bill (HB) 722** creates a separate GCD permitting system for the production of brackish groundwater in BGPZs. This may be the most notable change to Chapter 36 and GCD permitting as a result of the 86th Legislative Session and reflects a continuation of Chairman Larson's prior efforts to encourage further development and utilization of brackish groundwater.

Specifically, HB 722 provides that a GCD located over any part of a TWDB-designated BGPZ may adopt separate rules to govern the issuance of permits for wells to produce brackish groundwater from that BGPZ. If such GCD receives a petition from a person with a legally defined interest in groundwater in the district, that GCD must adopt such rules governing the issuance of permits for the withdrawal of brackish groundwater within 180 days.

HB 722 details certain requirements for applications for BGPZ operating permits. This includes a requirement that the TWDB investigate each such application and issue a report on potential adverse impacts from operation under the proposed BGPZ permit. Permits shall be for 30-year permit terms and shall include requirements for monitoring of water levels and water quality on the permit as may be recommended by the TWDB.

These BGPZ rules must provide for production in addition to the amount of managed available groundwater under Section 36.108 of the Texas Water Code. HB 722 further provides that permits shall be issued, to the extent possible, up to the point that the total exempt and permitted brackish production equals the amount that may be produced annually under the TWDB's BGPZ designation. While providing for separate BGPZ rules, HB 722 also requires that GDCs provide greater access to brackish groundwater by simplifying procedure, avoiding delay, and providing greater flexibility in permitting.

Export permits

Another noteworthy change to Chapter 36 resulted from the passage of Representative Ashby's **HB 1066**. This bill was initiated by the Texas Water Conservation Association (TWCA) groundwater committee and was a re-file of the 85th Legislative Session's HB 2378, which was vetoed by the Governor. This bill was described as essentially cleaning up a piece

that had been overlooked in the passage of SB 854 by the 84th Legislature in order to align the timing of renewals of transfer permits and operating permits in those districts where both are issued separately.

Aquifer storage and recovery

The 86th Legislative Session saw passage of a handful bills to encourage further development and use of aquifer storage and recovery (ASR) and managed aquifer recharge projects.

HB 720 amends portions of Chapters 11 and 27 of the Texas Water Code to allow appropriations of state water for recharge into aquifers through ASR or an aquifer recharge project if certain conditions are met and the Texas Commission on Environmental Quality (TCEQ) determines that the water is not needed to meet instream flow needs. HB 720 also allows for amendments to convert certain qualifying appropriations for storage in a reservoir to storage in an ASR project. The bill also contains provisions for the TCEQ to adopt rules to protect groundwater quality through requirements for recharge injection wells and injection water quality.

Also intended to encourage the development of ASR projects, **HB 721** directs the TWDB to conduct studies on ASR projects in the state water plan and to conduct a survey to identify the relative suitability of various aquifers for use in ASR projects by December 15, 2020. The Legislature appropriated $500,000 in funding and three FTEs for the TWDB to complete this work.

Rounding out the bills designed to encourage further development of ASR projects, **HB 1052** authorizes the TWDB's State Participation Fund account to be used for interregional projects and for desalination and ASR projects that are not in the state water plan.

State and regional water planning

HB 807 makes changes to the regional water planning process aimed at encouraging greater cooperation between regional water planning groups (RWPGs), which include representation from groundwater management areas. HB 807 directs the TWDB to appoint an interregional planning council of representatives from every RWPG. The purposes of the council include improving coordination among the state's 16 RWPGs and the TWDB, as well as helping facilitate dialogue on water management strategies and best practices that could affect multiple planning areas. The bill also expands the requirements for information that RWPGs must provide in their regional water plans. This includes a requirement that regional water plans include opportunities for large-scale desalination projects for brackish groundwater and for regional water plans to include any legislative recommendations to facilitate voluntary water transfers.

Also, of significant interest in the groundwater community was the Legislature's approval of $1 million in funding and four FTEs for the TWDB to update the Groundwater Availability Models from outdated, unsupported software and code to current best practice standards. This allows the TWDB to develop and refine essential tools and information to address evolving water planning needs and provide critical inputs for the state water planning process and groundwater management.

Groundwater bills that did not pass

Many of the bills that would have most affected GCD powers and duties under Chapter 36 and attracted the most attention during the 86th Legislative Session ultimately failed to make it to *sine die*. The topics of many of these bills were subject to charges and hearings over the interim.

GCD rules and uniformity

Increasing uniformity between GCDs was a topic that received attention over the interim and had grown out of the dialogue that started with the failed SB 1392 from the 85th Legislative Session. Over the interim, a number of groundwater management areas (GMAs) undertook efforts to look at the rules of the GCDs within that GMA to compare their rules for similarities and differences. The TWCA groundwater committee proposed an amended SB 1392 for the 86th Legislative Session, which included language aimed at increasing GCD coordination of their rules through the GMA planning process. In filing **SB 1010**, however, Chairman Perry proposed a different approach.

SB 1010 sought to prohibit GCDs overlying a "common aquifer" and located within the same GMA from making or enforcing rules that are not similar to another GCD "that… regulate levels of groundwater production similar to the level the district regulates," with certain exceptions. A GCD could have rules that are not similar if it was specifically authorized to do so by its enabling legislation or if it provides an explanation of the district's reasoning to support its rule in its management plan. While SB 1010 passed the Senate, it was not voted out of the House Natural Resources Committee in the face of significant concerns.

Another bill, Representative Harris' **HB 2123**, sought to codify a petition process whereby a person with groundwater ownership and rights could petition a GCD to adopt a rule or modify a rule. HB 2123 included notice and hearing requirements that would need to be followed by the petitioner and the GCD and would have required the GCD to issue an explanation of its reasoning if it did not grant the petition. While it was voted favorably from the House Natural Resources Committee, this bill did not receive a vote on the floor of the House.

Retail public utility service area

Two bills both sought to modify Section 36.116(c) of the Texas Water Code. This section grants GCDs the permissive authority to consider the service needs or service area of a retail public utility when regulating groundwater production by tract size or acreage. While nearly identical in their captions, **HB 2122** and **HB 2249** sought to replace a GCD's discretion with opposing mandates. HB 2122 (Representative Harris), along with its companion **SB 800**, would have prohibited consideration of service needs or service area unless the retail public utility had obtained rights through purchase or lease to groundwater or otherwise obtained permission from the landowner. Conversely, HB 2249 (Representative Lucio III) would have required GCDs to consider the service area in granting permits to retail public utilities, subject to reductions for operating permits within the service area. While **SB 800** was favorably voted on in the Senate, none of these bills were voted out of the House Natural Resources Committee.

Attorney's fees

The subject of attorney's fees awards to GCDs was again at issue during the 86th Legislative Session. There were two bills filed that would have altered the provisions that award attorney's fees to a prevailing GCD when lawsuits are filed against a GCD. Representative Burns' **HB 2125** sought to modify the mandatory nature of the award of attorney's fees to prevailing GCDs and instead make that award of attorney's fees permissive.

Chairman Perry filed a more aggressive bill on the same subject, **SB 851**, which would have made the award of attorney's fees permissively available to the prevailing party in lawsuits. It went one step further and would have also removed the mandatory award of attorney's fees to GCDs in enforcement actions and allowed for recovery in those enforcement actions to the prevailing party.

There was no appetite in the House for any changes to the attorney's fees provisions of Chapter 36, however. While SB 851 was voted favorably by the Senate, neither bill went further than the House Natural Resources Committee.

Surface water and groundwater interaction

The interaction between groundwater and surface water has been and will likely continue to be the subject of conversations in the water community. Chairman Larson's **HB 4570** sought to create a nine-person advisory board charged with studying the extent of surface water and groundwater interaction, challenges arising therefrom, and potential approaches to mitigating those challenges and delivering a report prior to the 87th Legislative Session. While ultimately this bill suffered at the hands of the clock and did not come up for a vote in the House, one can reasonably expect to see this subject discussed in the interim and beyond.

De novo review

While not the subject of any interim discussion, Chairman Perry's **SB 2027** proposed to make a dramatic change to the standard of review applied by reviewing courts to GCD decisions. SB 2027 would have changed the deferential "substantial evidence" standard of review that is applied by reviewing courts to GCD—and essentially all administrative agency—decisions to a *de novo* standard of review. Amid significant concerns, Senator Perry did not call for a vote on SB 2027 in the Senate Water and Rural Affairs Committee. Instead, he promised to hold a hearing on this issue during the interim.

Omnibus

Chairman Larson filed **HB 726** with an omnibus caption to address a number of proposed changes to Chapter 36. HB 726 had four primary elements: (1) clarifying GCD considerations in granting or denying permits, including consideration of registered exempt wells; (2) clarifying that the rules in place at the time of a permit application govern consideration of the permit; (3) authorizing GCDs to issue 90-day moratoriums under certain circumstances only after a notice and hearing process has occurred; and (4) prohibiting a district from issuing a separate export permit from an operating permit.

A number of these proposed changes to Chapter 36 were re-files of bills that were met with the Governor's veto pen in the 85th Legislative Session. It would be unsurprising if one or more bills are filed again next session to make some, if not all, of these proposed changes.

Summary

TAGD's positions on the 20 statewide priority groundwater bills ultimately resulted in its support for nine bills, a neutral position on four bills, and opposition to seven bills. Broadly speaking, these numbers are representative of the GCD community's willingness to engage in productive dialogue and work toward solutions to identified concerns.

Looking ahead, one can anticipate more discussion both inside and outside the Texas Legislature on the topics of bills that did not pass into law during the 86th Legislative Session, particularly on the areas of surface water and groundwater interaction, GCD uniformity, attorney's fees, and judicial review.

List of TAGD-tracked bills passed into law

The following is a summary list of those bills of possible interest to GCDs that were tracked by the TAGD for its members and ultimately have been or will become effective. It is not intended to represent an exhaustive list and should not be relied upon as such.

HB 720

Relating to appropriations of water for use in aquifer storage and recovery projects. Effective 6-10-19.

HB 721

Relating to the duty of the TWDB to conduct studies of and prepare and submit reports on aquifer storage and recovery. Effective 6-14-19.

HB 722

Relating to the development of brackish groundwater. Effective 9- 1-19.

HB 723

Relating to a requirement that the TCEQ obtain or develop updated water availability models for certain river basins. Effective 9- 1-19.

HB 807

Relating to the state and regional water planning process. Effective 6-10-19.

HB 1052

Relating to the authority of the TWDB to use the State Participation Account of the Water Development Fund to provide financial assistance for the development of certain facilities. Effective 9- 1-19.

HB 1066

Relating to extensions of an expired permit for the transfer of groundwater from a groundwater conservation district. Effective 9- 1-19.

HB 1311

Relating to the continuation and functions of the Texas Board of Professional Geoscientists. Effective 9- 1-19.

HB 1495

Relating to authorization for the creation of a county ethics commission in certain counties. Effective 6-14-19.

HB 2018

Relating to required notice for municipal management districts that annex or exclude territory. Effective 9- 1-19.

HB 2729

Relating to the administration, duties, and operation of the Edwards Aquifer Authority. Effective 9- 1-19.

HB 2771

Relating to the authority of the TCEQ to issue permits for the discharge into water of this state of produced water, hydrostatic test water. Effective 9- 1-19.

HB 2840

Relating to the right of a member of the public to address the governing body of a political subdivision at an open meeting of the body. Effective 9- 1-19.

HB 3001

Relating to the fiscal transparency of special purpose districts and other political subdivisions. Effective 9-1-19.

HB 3339

Relating to requirements for programs of water conservation and water conservation plans. Effective 9-1-19.

HB 3656

Relating to the transfer of certain permitted irrigation water rights related to a certain portion of the Edwards Aquifer. Effective 9- 1-19.

HB 4172

Relating to the nonsubstantive revision of certain local laws concerning water and wastewater special districts, including conforming amendments. Effective 4-1-21.

HB 4705

Relating to the territory of the Sutton County Groundwater Conservation District. Effective 9-1-19.

SB 2

Relating to ad valorem taxation. Effective 1-1-2020 (certain sections with separate effective dates).

SB 27

Relating to recovery of damages, attorney's fees, and costs related to frivolous claims and regulatory actions by state agencies. Effective 9-1-19.

SB 65

Relating to state contracting and procurement. Effective 9-1-19.

SB 239

Relating to the requirements for meetings of certain special districts. Effective 9-1-19.

SB 241

Relating to certain required reports received or prepared by state agencies and other governmental entities. Effective 9-1-19.

SB 483

Relating to permits for certain injection wells that transect a portion of the Edwards Aquifer. Effective 6-10-19.

SB 520

Relating to the storage and recovery of water in a portion of the Edwards Aquifer. Effective 9-1-19.

SB 669

Relating to the date for the confirmation election for the Southwestern Travis County Groundwater Conservation District. Effective 5-20-19.

SB 872

Relating to the composition of the board of directors of the Gateway Groundwater Conservation District. Effective 5-7-19.

SB 911

Relating to the supervision of water districts by the TCEQ. Effective 9-1-19.

SB 943

Relating to the disclosure of certain contracting information under the public information law. Effective 1-1-20.

SB 944

Relating to the public information law. Effective 9-1-19.

SB 1041

Relating to the deadline by which the TWDB is required to identify and designate brackish groundwater production zones for certain areas of the state. Effective 9-1-19.

SB 1574

Relating to the duties of the TWDB. Effective 9-1-19.

TEXAS RURAL WATER ASSOCIATION SUMMARY OF THE 86TH LEGISLATIVE SESSION

By Trent Hightower, Assistant General Counsel, Texas Rural Water Association

Water issues are always a hot topic at the capitol when the Texas Legislature convenes every other year, and the 86th Legislative Session was no exception. As a statewide trade association serving the interests of more than 750 rural water and wastewater utilities, the Texas Rural Water Association (TRWA) tracked more than 400 bills this session with the potential for affecting the quality and affordability of water for more than 3 million Texans. The TRWA's membership consists of nonprofit water supply corporations (WSCs), special utility districts (SUDs), various other types of districts, small cities, and investor-owned utilities, each with their own unique challenges and regulatory frameworks. While other organizations in this journal will be covering bills with broader impacts on water law and policy in Texas, the TRWA has identified the following bills as having the most impact on the rural water industry in Texas.

Water utility issues

Compensation to utilities after Certificate of Convenience and Necessity (CCN) decertification

As Texas continues to grow, conflicts have arisen between urbanizing areas and areas traditionally served by rural water systems. In response, the Legislature passed Senate Bill (SB) 573 in 2011, which effectively allows landowners to automatically decertify land from a utility's CCN area. Since that time, many water utilities have seen high-growth areas of their service area decertified, but due to the current language in the Texas Water Code, the Public Utility Commission of Texas (PUC) has not awarded these utilities any compensation for their stranded investment. After several legislative cycles of the TRWA working to amend this legislation, the issue was included as an interim charge by the House Natural Resources Committee. Through this process, stakeholders were able to agree that systems should be fairly compensated for investments made to support future growth in areas that are subsequently removed from their service area.

Compromise legislation, **SB 2272** by Senator Robert Nichols, was passed into law with the support of stakeholders on both sides of the issue. The bill removes the requirement in current law that systems only receive compensation for property that has been rendered "useless and valueless" by decertification, language that has long been a barrier to utilities receiving compensation. All stakeholders agreed that their intent was to ensure a fair compensation process after decertification, and they pledged to work cooperatively on a letter to that effect to assist the PUC in the forthcoming rulemaking process.

Groundwater permitting for water utilities

Groundwater conservation districts (GCDs) are responsible for managing production from aquifers within their geographic boundaries by requiring permits for the production. The law currently allows, but does not require, GCDs to take into account a utility's service area when deciding how much water the utility is authorized to produce. While many GCDs have rules taking a utility's service area into account, others base permit allocations on the acreage owned by the utility or the contiguous acreage owned by the utility at its well site. For utilities in this type of GCD, these ownership requirements can be burdensome, as systems typically do not own or need large tracts of land to serve their customers.

This session, two bills were filed with opposite approaches for groundwater permitting for water utilities. The first, supported by the TRWA, was **House Bill (HB) 2249** by Representative Eddie Lucio, III. This bill would have mandated that all GCDs consider a utility's service area, with an exclusion for land within that area that is served by another permitted well. The opposition bill, **SB 2026** by Senator Charles Perry and **HB 2122** by Representative Cody Harris, would have removed the provision in Chapter 36 of the Texas Water Code that currently allows GCDs to consider a utility's service area if they so choose. The House Natural Resources Committee heard HB 2249 and HB 2122 concurrently in March, but neither bill was voted out of the committee. Senator Perry's bill passed the Senate by a vote of 19-12, but did not receive a hearing in the House.

Rate increases for investor-owned utilities

Since jurisdiction over water rates was transferred to the PUC, both the agency and stakeholders have expressed concern that current law imposes burdensome requirements on small investor-owned utilities when seeking rate increases. The Legislature sought to alleviate those difficulties this session with **SB 700**, which restructures rate classes for investor-owned utilities. Currently, the Class B Utility designation is quite broad, encompassing utilities with 500 to 10,000 connections. The new law would raise the lower threshold for a Class B utility to 2,300 connections while maintaining that 10,000-connection upper threshold. Utilities with 500 to 2,300 connections will now be classified as Class C utilities, and the bill creates a new category of Class D utilities for those

with fewer than 500 connections. The law goes on to require the PUC to implement rules that are less burdensome for each class of utilities compared to the next-higher category. The bill also amends current law by requiring the PUC to determine the duration of temporary rates when a nonfunctioning utility is acquired by another utility.

Nonfunctioning investor-owned utilities

HB 3542 requires investor-owned utilities with fewer than 10,000 connections to provide additional financial, managerial and technical reports to the PUC if they violate a Texas Commission on Environmental Quality (TCEQ) order relating to capacity, minimum pressure, and accurate water quality testing. The law also provides a model for placing a valuation on an investor-owned utility during the process of its acquisition by a Class A or Class B utility.

Increase in maximum penalty for violation of TCEQ rules

Under current law, the TCEQ may assess penalties against a person who causes, suffers, allows, or permits a violation of drinking water health standards in Chapter 341 of the Health and Safety Code in an amount ranging from $50 to $1,000 per violation. **SB 530** by Senator Brian Birdwell raises the upper limit for such penalties to a maximum of $5,000 per violation.

Public notification of defluoridation of water supply

HB 3552 by Representative J.D. Sheffield amends the Health and Safety Code to require public water systems who furnish fluoridated water to provide customers with at least 60 days written notice before permanently terminating the fluoridation of the water supply.

Effect of criminal background on operator licensing

SB 1217 by Senator Carol Alvarado removes a barrier many Texans have found to inhibit their ability to obtain a variety of professional licenses. Currently, the TCEQ requires applicants for a new or renewal water or wastewater operator's license to attest that they have no arrests, convictions, deferred adjudications, or dismissals for any charges above a Class C misdemeanor. Under the new law, licensing authorities such as the TCEQ can no longer consider arrests not leading to a conviction or placement on deferred adjudication in determining an applicant's fitness to receive a license.

Open government

Nonprofit WSCs and water districts of all types are subject to the Texas Open Meetings Act and the Texas Public Information Act. The Legislature was active in this area in the 2019 session, and the following new laws will change the way water utilities operate in Texas:

Meeting notice and minutes (districts)

SB 239 by Senator Jane Nelson requires all districts to include in their meeting notices justification for the meeting's location if it will be held at a location more than 10 miles outside the district's boundaries. It also requires all districts to include the following mandated language with their water bills as part of their normal billing process: "For more information about the district, including information about the district's board and board meetings, please go to the Comptroller's Special Purpose District Public Information Database (or district's Internet website if the district maintains an Internet website)." The statement may be altered to provide the current website address of either the Comptroller's database or that of the district.

The new law also requires water control improvement districts, fresh water supply districts, municipal utility districts, and water improvement districts with a population of more than 500 people to post their meeting minutes on their website if the district maintains a website. The law also allows any district resident to request a recording be made of any hearing to consider the adoption of an ad valorem tax rate. The request must be made at least three days before the hearing, and the recording must be made available within five days after the hearing. Further, the district must maintain the recording for a period of one year after the hearing.

Meetings notice and response to Public Information Act requests during emergency

SB 494 by Senator Joan Huffman, which applies to all entities subject to the Open Meetings and Public Information Acts, reduces the notice requirement for an emergency meeting from the current two hours to one hour. It also provides examples of "reasonably unforeseeable situations" that would authorize an emergency meeting, bringing clarity to a term that is currently undefined in statute. Under the new law, "reasonably unforeseeable situations" include:

- fire, flood, earthquake, hurricane, tornado or wind, rain or snowstorm;
- power failure, transportation failure or interruption of communication facilities;
- epidemic; or
- riot, civil disturbance, enemy attack or other actual or threatened act of lawlessness or violence.

The new law also allows the attorney general to bring a mandamus or injunction action to stop, prevent or reverse a violation or threatened violation of the Open Meetings Act's emergency provisions.

Finally, the bill temporarily suspends requirements under the Public Information Act for requests during a period of "catastrophe," which is defined the same as "reasonably unforeseeable situation" above. When utilizing this provision, governmental entities must provide notice to the attorney general and the public that it is currently being impacted by a catastrophe and has elected to suspend the applicability of the Public Information Act. The initial suspension period may not be longer than seven consecutive days but may be extended one time for no more than seven more days if the governing body determines that the organization is still impacted by the same catastrophe. Public Information Act requests received during the suspension period are deemed to have been received on the first day the suspension is lifted, and they must be timely addressed at that time in the usual manner.

Disclosure of contracting or bidding information

The Public Information Act generally requires governmental bodies to disclose information to the public upon request, unless that information is excepted from disclosure. **SB 943** by Senator Kirk Watson creates such an exception for information that, if released, would give an advantage to a competitor or bidder. The law also imposes recordkeeping and disclosure requirements on nongovernmental entities that contract with governmental entities and forbids governmental entities from accepting a bid for a contract with entities that have failed to comply with those requirements in past bids. The governmental body may also terminate a contract if it becomes aware of such failures by a nongovernmental entity after it has contracted with the entity.

Information maintained by a temporary custodian

SB 944 by Senator Kirk Watson provides a process for a governmental body to retrieve public information held by a temporary custodian, which is defined as an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that they have not turned over to the organization's public information officer. Notably, the term specifically includes a former officer or employee of the organization who made or received information during their affiliation with the organization. The law imposes a duty on temporary custodians to preserve information and turn it over on request and makes clear that the individual has no private ownership interest in the information, even if it is maintained on their personally owned device.

Public Participation at Open Meetings

Prior to this session, the board of an entity subject to the Open Meetings Act was not required to allow the public to speak at an open meeting but had the discretion to allow public comment if they elected to do so. **HB 2840** by Representative Terry Canales amends the law by requiring all organizations subject to the Act to allow members of the public to speak on any properly noticed agenda item at their meetings. The law requires this comment period to occur before or during the board's consideration of the item, and it allows the board to adopt reasonable rules regarding the public's right to comment, including rules that limit the total amount of time that a member may speak.

"Walking quorums" under the Texas Open Meetings Act

In February, the Texas Court of Criminal Appeals struck down the provision of the Open Meetings Act that provides for criminal penalties for public officials who conspire to circumvent the Act. The court held that the statute was unconstitutionally vague as written, because it was unclear as to the specific conduct that would subject an individual to prosecution. The Legislature responded by passing **SB 1640** by Senator Kirk Watson, which more clearly describes the concept of a "walking quorum" as the prohibited action. Under the revised statute, a quorum of board members may not engage in a series of communications in numbers that are less than a quorum to discuss matters within the body's jurisdiction. Any member who engages in any such communication with knowledge that it is part of a series that would or could constitute a quorum is subject to criminal liability under the Act.

TEXAS WATER INFRASTRUCTURE NETWORK THE 86TH REGULAR SESSION OF THE TEXAS LEGISLATURE

By Perry L. Fowler, Executive Director, Texas Water Infrastructure Network

Perhaps the most meaningful achievements of the session with respect to the water infrastructure market and the Texas economy reside in key bills providing for new planning and funding for flood control and disaster recovery. In the post-Harvey era, what was accomplished by the Legislature to address these issues will have profound impacts on our state taking a more comprehensive view and approach to policy, planning, and the provision of funding for billions of dollars in immediate and long-term infrastructure planning needs. The Texas Water Infrastructure Network (TXWIN) actively supported many if not all of these efforts.

Two key bills supported by the TXWIN, **House Bill (HB) 2585** by Chairman Jeff Leach (R- Plano) and **HB 2135** by Representative Hugh Shine (R-Temple), did make significant progress this session and succeeded in garnering significant support as they made their way through the House. Both bills represented significant changes to public works policy related to contracting and administration of retainage for public works construction. Both bills passed unanimously out of the House State Affairs Committee and were scheduled for consideration by the full House. HB 2585 specifically was voted out of the House (139-8) and received a hearing in the Senate Business and Commerce Committee.

The progress of both bills represented significant steps forward in raising awareness in industry and the owner community on key issues that impact the water infrastructure market in Texas. It is also noteworthy that both of these bills contain sound and fair practices that public owners should be encouraged to adopt in the interim as permitted under current law.

It should also be noted that approximately 80 bills impacting operations of individual utilities and water utilities also passed this session. Approximately 50 bills authorized new municipal utility or other special districts that will create additional infrastructure and water supply needs in Texas.

Key statistics to consider:

- Of the 7,324 House Bills and Senate Bills (SB) introduced, only 1,429 (19% including companions) passed.
- The Governor vetoed 56 bills before the June 16, 2019 deadline.
- 20% of House Bills passed. 25% of Senate Bills passed.
- 3,335 bills never received a hearing in the house of origin.
- 1,192 bills had hearings and did not pass out of committee.
- 725 House Bills referred to calendars were not scheduled for consideration for a vote on the House Calendar.
- 108 bills died as a result of deadlines on the House Calendar.
- 78 bills were scheduled on the Senate Intent Calendar and were not heard or died as a result of deadlines.

Selected notable and priority legislation that passed

Contracts and procurement

HB 985 (Parker/Hancock)

HB 985 relates to the effect of certain agreements with a collective bargaining organization on certain state-funded public work contracts. The bill prohibits project labor agreements on state-funded construction projects, including issuance of debt guaranteed by the state from entities such as the Texas Water Development Board (TWDB). TXWIN SUPPORTED.

HB 1542 (Martinez/Hinojosa)

HB 1542 relates to changes made by certain design-build contractors to the design-build team for transportation projects. The bill prohibits changes to design-build teams for transportation projects with certain exceptions reflecting industry best practices. TXWIN SUPPORTED.

The 86th by the numbers:

86th Regular Session - 2019										
Status	**HB**	**HCR**	**HJR**	**HR**	**SB**	**SCR**	**SJR**	**SR**	**Total HB & SB**	**Total**
Introduced	4765	186	147	2217	2559	68	70	865	7324	10877
Passed	969	102	7	2155	460	23	3	862	1429	4581
Vetoed	41	2	N/A	N/A	15	0	N/A	N/A	56	58

SB 124 (West/Sherman, Sr.)

SB 124 relates to the authority of a county to require electronic bids or proposals for competitive bidding. The bill allows counties to require electronic bidding. VETOED.

SB 943 (Watson/Capriglione)

SB 943 relates to the disclosure of certain contracting information under the public information law. SB 943 is an omnibus bill regarding provision of contracting information under public information law. The bill does not materially affect construction contracting information but adds protections for confidential and proprietary information. The bill also enhances document retention requirements for governmental entities and may result in need to sign affidavits declaring compliance with the law. TXWIN IMPACTED.

SB 1510 (Schwertner/Muñoz, Jr.)

SB 1510 relates to the apportionment of infrastructure costs in regard to certain property development projects. The bill amends appeals process for developer reimbursables for infrastructure.

SB 1512 (Flores/Martinez)

SB 1512 relates to payment of costs related to the relocation of certain political subdivision utility facilities for state highway projects. The bill clarifies financial responsibility and availability of funding for relocation of utilities in connection with state highway construction.

Disaster planning, response, and recovery

SB 6 (Kolkhorst/Morrison)

SB 6 relates to emergency and disaster management, response, and recovery. SB 6 is an omnibus disaster recovery bill. The bill provides for disaster response training for political subdivisions, development of a "disaster response guide" in concert with the Texas A&M Engineering Extension Service, development of a catastrophic debris management plan and model guide for use by political subdivisions including contracting and debris removal standards, and various study and work groups with reports due by November 2020. The bill creates a "disaster recovery loan account" and fund with various capitalization options. The bill also instructs a rulemaking. TXWIN SUPPORTED.

HB 5 (Phelan/Kolkhorst)

HB 5 relates to debris management and other disaster recovery efforts. The bill requires the Texas Division of Emergency Management (TDEM), in consultation with any other state agencies, to develop a catastrophic debris management plan and model guide for use by political subdivisions in the event of a disaster. The bill sets out the required components of the plan and requires the Texas A&M Engineering Extension Service to establish a training program for state agencies and political subdivisions on the use of trench burners in debris removal. The bill requires the TDEM, in consultation with the Federal Emergency Management Agency, to develop and publish a model contract for debris removal services to be used by political subdivisions following a disaster. The bill also requires the TDEM to consult with the Comptroller of Public Accounts to establish appropriate contracting standards and contractor requirements for the model contract and include a contract for debris removal services on the schedule of multiple award contracts or in another cooperative purchasing program administered by the Comptroller. The bill establishes that the wet debris study group is required to submit a report containing recommendations on those issues to each member of the Legislature not later than November 1, 2020. TXWIN SUPPORTED.

HB 6 (Morrison/Kolkhorst)

HB 6 relates to developing a disaster recovery task force to assist with long-term disaster recovery. The bill amends the Texas Government Code to require the TDEM to develop a disaster recovery task force to operate throughout the long-term recovery period following natural and man-made disasters by providing specialized assistance for communities and individuals to address financial issues, available federal assistance programs, and recovery and resiliency planning to speed local-level recovery efforts. The bill also authorizes the task force to include and use the resources of any appropriate state agencies, including institutions of higher education and organized volunteer groups. The bill requires the task force to develop procedures for preparing and issuing a report listing each project related to a disaster that qualifies for federal assistance and requires a report to be submitted to the appropriate federal agencies as soon as practicable after any disaster. The bill requires the task force to provide a quarterly briefing to members of the Legislature, legislative staff, and state agency personnel on the response and recovery efforts for previous disasters and on any preparation or planning for potential future hazards, threats, or disasters. TXWIN SUPPORTED.

HB 7 (Morrison/Huffman)

HB 7 relates to disaster preparation for state agencies and political subdivisions. The bill requires the Office of the Governor to compile a list of statutes and rules that may require suspension during a disaster. The bill also requires the TDEM to develop a plan to assist political subdivisions with executing contracts for services commonly needed after a disaster. The plan must include training on the benefits of these contracts, recommendations on what services are likely to be needed after

a disaster, and assistance in finding capable persons to provide such services. The bill requires the TDEM to consult with the Comptroller of Public Accounts regarding contracts for debris management and infrastructure repair on the schedule of multiple award contracts developed under Subchapter I, Texas Government Code Chapter 2155. TXWIN SUPPORTED.

HB 2320 (Paul/Taylor)

HB 2320 relates to services provided during and following a disaster. The bill requires telecommunications providers to establish temporary facilities for provision of services after natural disasters. The bill also requires that utilities investigate ways to improve the hardening of utilities and facilities; improve oversight, accountability, and availability of individuals in the building trades offering services to disaster survivors; and increase utility customers' awareness of utility payment relief programs.

HB 2340 (Dominguez/Johnson)

HB 2340 relates to developing a disaster recovery task force to assist with long-term disaster recovery. The bill encourages federal-state partnerships to reduce red tape and streamline federal policies to be better prepared for future disasters and makes recommendations to improve federal laws and policies related to responding to a disaster, housing assistance, information sharing, and federal disaster assistance programs. The bill also creates an information sharing work group to develop recommendations for improving the way electronic information is stored and shared among state agencies to improve response to a disaster. The bill creates an unmanned aircraft study group to recommend changes to state law that would allow a more effective use of unmanned aircraft during response and recovery of a disaster. TXWIN SUPPORTED.

HB 2345 (Walle/Hinojosa)

HB 2345 relates to resources to facilitate disaster mitigation, response, and recovery. The bill establishes the Institute for a Disaster Resilient Texas at Texas A&M University. TXWIN SUPPORTED.

SB 300 (Miles/Thompson)

SB 300 relates to indefinite quantity contracts for the provision of certain services to declared disaster areas following a natural disaster. The bill requires the Texas General Land Office (GLO) to enter into indefinite quantity contracts with vendors to provide information management services, construction services, including engineering services, and other services the GLO determines may be necessary to construct, repair, or rebuild property or infrastructure in the event of a natural disaster. The bill requires compliance with Texas Government Code 2254. It does not exempt indefinite delivery, indefinite quantity contracts from requirements under Texas Government Code 2269. TXWIN IMPACTED.

Liability

HB 1999 (Leach/Creighton)

HB 1999 relates to certain construction liability claims concerning public buildings and public works. HB 1999 is a construction defect/statute of repose bill for public works projects. The bill exempts transportation, residential, and civil works projects as defined in Texas Government Code 2269.351. The bill requires an inspection of the affected improvement, and for a period during which the potentially liable parties may correct any alleged defects, before a suit may be filed. The bill does not prevent a public owner from filing a construction defect suit, nor does it prevent an owner from hiring someone else to fix the alleged defect. The bill requires that the original parties who had a hand in the design and construction of the building project be given the opportunity for an inspection and a chance to address the defect prior to the suit being filed. TXWIN SUPPORTED.

HB 2826 (Bonnen/Huffman)

HB 2826 relates to procurement of a contingent fee contract for legal services by a state agency or political subdivision. HB 2826 would require political subdivisions entering into contingency fee agreements for legal services to approve the contract in an open meeting that discusses the need for obtaining the service, the terms of the contract, the qualifications of the attorney or firm, and the reasons the contract is in the best interests of the residents of the political subdivision. The bill also subjects a political subdivision's written findings in approving the contract and the contract itself to public disclosure laws, and the bill requires that the contract be submitted to the Office of the Attorney General for approval. If the political subdivision fails to comply with the bill's public notice and hearing requirements, the Attorney General may refuse to approve the contract.

HB 2899 (Leach/Hinojosa)

HB 2899 relates to civil liability and responsibility for defects in the plans, specifications, or other documents for the construction or repair of roads, highways, and related improvements. The bill provides that a contractor is not civilly liable or responsible for design defects in a design prepared by certain government entities or their designers. This legislation does not apply to a private owner or any governmental entity not specifically listed in the proposed legislation. This legislation also does not eliminate a contractor's liability or responsibility for design defects in a design prepared by the contractor or a designer working for the contractor. This legislation is

applicable only to public, governmental entities authorized to construct road or highway projects under the Texas Transportation Code.

SB 1928 (Fallon/Krause)

SB 1928 relates to a certificate of merit in certain actions against certain licensed or registered professionals. The bill amends current law relating to a certificate of merit in certain actions against architects and engineers.

Water

SB 7 (Creighton/Phelan)

SB 7 relates to flood control planning and the funding of flood planning, mitigation, and infrastructure projects. SB 7 is an omnibus flood planning and mitigation bill. The bill defines "food control planning contracts" and establishes a flood infrastructure fund to be administered by the TWDB. The bill defines applicable purposes and capitalization sources in the form of loans and grants with subsidized and deferred interest. It requires that political subdivisions have conducted appropriate planning and regional planning activities, meet technical requirements, and conduct public meetings. The bill establishes an advisory committee with reporting and rulemaking instruction authority. The bill also establishes the Texas Infrastructure Resiliency Fund (TIRF), which includes the Hurricane Harvey Account, to provide funds to the TDEM flood plain management account. The bill also contains Historically Underutilized Business (HUB) utilization reporting requirements and additional reporting and transparency requirements for funding recipients. The TWDB is required to adopt application, award, and prioritization standards and initial rule proposal within 90 days of effective date. The bill establishes a "flood plan implementation account." House Joint Resolution (HJR) 4, the associated constitutional amendment, will capitalize with $1.7 billion from the "rainy day fund." TXWIN SUPPORTED.

SB 8 (Perry/Larson)

SB 8 relates to state and regional flood planning. The bill establishes new state flood plan process. Key features include a 5-year planning cycle that addresses flooding preparation and response measures, a guide for state and local flood control policy, a required evaluation of flood control infrastructure, ranking of projects and strategies, an analysis of projects undertaken, a 100-year floodplain analysis, and development of legislative recommendations. The TWDB will coordinate and develop guidance principles with the Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife Department, GLO, TDEM, and the Texas State Soil and Water Conservation Board. TWDB will develop planning parameters, financial assistance to planning groups, and guidance for adopting and amending regional plans. The TWDB will designate representatives to regional groups. The bill contains public meeting requirements and elements that regional plans must contain. The bill also requires that interregional strategies are not in conflict and the TWDB must approve the final plan. The bill establishes a 10-year dam repair and maintenance plan with annual progress reports. The bill also establishes a "State Flood Plan Implementation Advisory Committee" with rulemaking instruction authority. The TWDB must adopt guidance principles for regional planning by September 2021, and regional groups must submit their first plan by January 2023. TXWIN SUPPORTED.

HB 720 (Larson/Perry)

HB 720 relates to appropriations of water for use in aquifer storage and recovery (ASR) projects. The bill allows unallocated state water to be used to recharged aquifers or in ASR projects including storm water and flood water. The bill includes special provisions for water in the border region subject to international law. Water rights may be amended with conditions surrounding ASR projects. The bill defines ASR projects in Chapter 27 of the Texas Water Code and grants jurisdictional authority to the TCEQ for permitting. TXWIN SUPPORTED.

HB 721 (Larson/Perry)

HB 721 relates to the duty of the TWDB to conduct studies of and prepare and submit reports on ASR. The bill directs TWDB to study the suitability of Texas' major and minor aquifers for use in ASR and aquifer recharge projects. TXWIN SUPPORTED.

HB 722 (Larson/Perry)

HB 722 relates to the development of brackish groundwater. The bill amends the Texas Water Code to authorize a groundwater conservation district located over any part of a designated brackish groundwater production zone to adopt rules to govern the issuance of permits under the bill's provisions for the completion and operation of a well for the withdrawal of brackish groundwater from a designated brackish groundwater production zone. The bill authorizes a person to obtain a permit under the rules for projects, including a municipal project designed to treat brackish groundwater to drinking water standards for the purpose of providing a public source of drinking water and an electric generation project to treat brackish groundwater to water quality standards sufficient for the project needs. The bill also prohibits a district from adopting rules limiting access to the production of groundwater within a designated brackish groundwater production zone to only such a municipal project or electric generation project. TXWIN SUPPORTED.

HB 807 (Larson/Buckingham)

HB 807 relates to the state and regional water planning process. The bill creates interregional councils to address issues between water planning regions to decrease conflicts and promote regional water planning approaches in the state water plan. The bill also adds ASR to water planning strategies.

HB 1052 (Larson/Perry)

HB 1052 relates to the authority of the TWDB to use the state participation account of the Texas Water Development Fund to provide financial assistance for the development of certain facilities. The bill adds ASR and desalination projects to those that may receive funding from the TWDB State Participation Program, which the state provides funding to in exchange for ownership and revenues until projects have been completed and the state has been reimbursed. The bill encourages private investment in conjunction with the State Participation Program and caps annual bond sales to $200 million. TXWIN SUPPORTED.

SB 2452 (Lucio/González)

SB 2452 relates to the provision by the TWDB of financial assistance for the development of certain projects in economically distressed areas. The bill amends the Texas Water Code to authorize the TWDB, with respect to provisions relating to assistance to economically distressed areas for water supply and sewer service projects, to maximize the effectiveness of certain authorized additional general obligation (GO) bonds by using the additional bonds in conjunction with other sources of financial assistance, including nonpublic funds, to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services. The additional bonds can also be used to promote and support public-private partnerships that the TWDB determines are financially viable. The bill will diversify the methods of financing available for water supply and sewer services and will reduce reliance on the issuance of bonds supported with general revenue. The bill requires the TWDB to rank and prioritize projects and post project information on the Internet. There is an accompanying constitutional amendment on the ballot in November 2019 authorizing issuance of up to $200 million in GO bonds. TXWIN SUPPORTED.

HB 4690 (Thompson/Taylor)

HB 4690 relates to the territory, powers, and administration of the Gulf Coast Water Authority (GCWA). The bill expands the geographic territory and authority of the GCWA to develop projects. The bill contains exemptions to public bidding and procurement requirements if industrial facilities paid for with private funds require infrastructure on their premises to connect the GCWA infrastructure.

HB 1806 (King/Campbell)

HB 1806 relates to the use of water withdrawn from the Edwards Aquifer by certain entities. The bill expands the ability of Edwards Aquifer (via the San Antonio Water System) to sell at least 1,500 but not to exceed 5,000 acre-feet of wholesale water to Kendall County. VETOED.

HB 1964 (Ashby/Creighton)

HB 1964 relates to the procedure for action on certain applications for an amendment to a water right. The bill streamlines the water rights permitting process of the TCEQ by eliminating notice and the possibility of a hearing for a specific category of water rights applications that have no impact on the environment or other water rights.

HB 3542 (Phelan/Lucio)

HB 3542 relates to the provision of water and sewer services by certain retail public utilities. The bill changes the water utility valuation process by the Public Utility Commission (PUC) and establishes a process by which a Class A public utility providing retail water or sewer service could acquire a retail public utility, or the facilities of a utility, and recover investments made to acquire a water or wastewater system. This legislation may enhance the ability to regionalize water utilities through the acquisition of other utilities.

HB 3663 (Frank/Perry)

HB 3663 relates to the powers and duties of the North Central Texas Municipal Water Authority (NCTMA). The bill amends authority of the NCTMA to develop groundwater projects.

SB 520 (Campbell/Kuempel)

SB 520 relates to the storage and recovery of water in a portion of the Edwards Aquifer. The bill allows the City of New Braunfels to withdraw the measured amount of water actually injected or artificially recharged via ASR. The bill adds a set of conditions under which the Edwards Aquifer Authority may contract with a political subdivision for injection or artificial recharge of the aquifer for subsequent retrieval, if provision is made for protecting and maintaining the quality of groundwater.

HB 2846 (Larson/Huffman)

HB 2846 relates to the sale of the Allens Creek Reservoir project. The bill requires the City of Houston, notwithstanding any other provision of this article (relating to the creation of the Allens Creek Reservoir project), to enter into a contractual agreement with the Brazos River Authority (BRA) not later than January 1, 2020, to transfer to the BRA all of the city's ownership interests in the Allens Creek Reservoir proj-

ect, including all required water right permits, along with the responsibility to construct the project in accordance with all associated statutory requirements and deadlines.

Safety

HB 864 (Anchia/Birdwell)

HB 864 relates to pipeline incident reporting requirements for gas pipeline operators. The bill details information operators must provide to the railroad commission after an incident. The required information includes the operator's name and telephone number, the location of the incident, the time of the incident, and any other significant facts relevant to the incident. Other details may include facts related to ignition, explosion, rerouting of traffic, evacuation of a building, and media interest. The bill also requires operators to notify the railroad commission of any incident within one hour of incident discovery and for the railroad commission to keep incident investigation records perpetually. The bill will require a rulemaking for implementation.

HB 865 (Anchia)

HB 865 relates to the replacement of certain gas pipelines with plastic pipelines. The bill requires natural gas operators to replace all cast iron pipelines by December 31, 2021. In addition, operators would be prohibited from installing new lines made from cast iron, wrought iron, or bare steel. The bill also requires pipeline operators to replace 8% of their highest risk pipelines every year.

Utility other

HB 2422 (Anderson/Perry)

HB 2422 relates to the coordination of certain broadband projects by the Texas PUC. The bill requires the Texas Department of Transportation (TxDOT) to provide notice of ongoing and planned highway construction projects for which the TxDOT will provide voluntary joint trenching opportunities in the state's right-of-way for broadband providers. A broadband provider may collaborate with the TxDOT to deploy broadband conduit or other broadband facilities in those rights-of-way and assist political subdivisions in taking advantage of voluntary joint trenching opportunities.

HB 4150 (Paddie/Hughes)

HB 4150 relates to safety and inspection reporting requirements for certain utilities. The bill requires an electric utility, municipally owned utility, or electric cooperative to meet the minimum clearance requirements specified in Rule 232 of the National Electrical Safety Code (NESC) Standard ANSI (c) (2) in the construction of any transmission or distribution line over certain lakes. The bill requires each electric utility, municipally owned utility, and electric cooperative that owns or operates overhead transmission or distribution assets to submit to the PUC a report that includes a summary description of hazard recognition training documents provided by the utility or electric cooperative to its employees related to overhead transmission and distribution facilities. The report must also include a summary description of training programs provided to employees by the utility or electric cooperative related to the NESC for the construction of electric transmission and distribution lines.

Constitutional amendments

The following joint resolutions will appear on the November 5, 2019 Ballot

House Joint Resolution (HJR) 4 (Phelan/Creighton)

HJR 4 proposes a constitutional amendment providing for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects. The resolution works in conjunction with SB 7 and provides that the flood infrastructure fund is created as a special fund in the state treasury outside the general revenue fund. The resolution authorizes money in the flood infrastructure fund, as provided by general law, to be administered and used, without further appropriation, by the TWDB or that board's successor in function to provide financing for a drainage, flood mitigation, or flood control project, including: planning and design activities, work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage, and construction of structural flood mitigation and drainage infrastructure. The resolution authorizes separate accounts to be established in the flood infrastructure fund as necessary to administer the fund or authorized projects. TXWIN SUPPORTED.

Senate Joint Resolution (SJR) 79 (Lucio/González)

SJR 79 proposes a constitutional amendment providing for the issuance of additional GO bonds by the TWDB to provide financial assistance. The resolution allows the TWDB to issue GO bonds to fund the Economically Distressed Area Program not to exceed $200 million at any time. TXWIN SUPPORTED.

Notable and priority legislation that did not pass

HB 2135 (Shine)

HB 2135 related to retainage requirements for certain public works construction projects. The bill passed unanimously out of committee and was scheduled for consideration by the Texas House. The bill was set on the last House HB Calendar and did not receive a vote before the midnight deadline. The intent of the bill was to ensure excessive retainage was not withheld on public works projects and to promote the fair and reasonable administration of retainage to promote project completion and conflict resolution. Key features of the bill included provisions which limited the amount of retainage that could be withheld, establishment of contract language describing circumstances under which partial retainage could be released, and "right to cure" language. A committee substitute for consideration on the floor was negotiated with the Texas Municipal League and water utility owners. TXWIN SUPPORTED.

HB 2585 (Leach/Zaffirini)

HB 2585 related to civil works projects and other construction projects of governmental entities. The bill passed unanimously out of committee and passed Texas House by vote of 139-8. The bill was referred and heard in Senate Business and Commerce Committee. The bill established guidelines for contractor prequalification for competitive bidding, created a debrief process for unsuccessful offerors, established minimum price weighing requirements for competitive sealed proposal procurements, and increased the time period to file for injunctive relief and bid protests. The bill was left pending in committee. TXWIN SUPPORTED.

HB 1752 (Clardy)

HB 1752 related to the construction manager-at-risk method of contracting for governmental construction projects. The HB and its Senate companion both passed out of committee. The HB was postponed with point of order on the final House HB Calendar and was killed by clock. The SB passed, was referred to a house committee and did not make final calendar. TXWIN SUPPORTED.

HB 2579 (Thompson)

HB 2579 related to the authority of the TxDOT to use the construction manager-at-risk project delivery method for state highway improvement projects. The bill was not scheduled for hearing in committee.

HB 2752 (Martinez)

HB 2752 was a job order contracting (JOC) bill removing limits on JOCs. The bill was heard in committee and left pending.

HB 2795 (Capriglione)

HB 2795 related to the use of JOC method by certain joint airport boards. The bill passed out of committee and was placed on the House local calendar. The bill was killed on local calendar.

HB 2882 (White)

HB 2882 related to recovery in a civil action of damages attributable to excavation activities. The bill would have allowed enhanced penalties for knowingly violating excavation safety law. The bill was referred from the House Judiciary Committee and died in the Calendars Committee.

HB 2901 (Leach)

HB 2901 related to civil liability and responsibility for the consequences of defects in the plans, specifications, or related documents for the construction or repair of an improvement to real property. The bill was referred from the House Judiciary Committee and died in the Calendars Committee. TXWIN SUPPORTED.

HB 3439 (Patterson)

HB 3439 related to the authority of a municipality or county to require a labor peace agreement as a condition of engaging in a commercial transaction with the municipality or county. The bill was dead by procedural action on the House floor. HB 3439 would have amended the Local Government Code to prohibit a municipality or county from adopting or enforcing a measure that requires a person to enter into an agreement with the person's employees or an entity that represents or seeks to represent those employees that limits or otherwise interferes with the person's rights under federal labor law or to waive or limit any of the person's rights under that law as a condition of being considered for or awarded a contract or otherwise engaging in a commercial transaction with the municipality or county. TXWIN SUPPORTED.

HB 3673 (Capriglione)

HB 3673 related to the application of the Underground Facility Damage Prevention and Safety Act to Class B underground facilities. It would have mandated water utilities (Class B underground facilities) participate in 811 "Call Before You Dig" system. The bill was heard in committee and left pending. TXWIN SUPPORTED.

HB 3674 (Capriglione)

HB 3674 related to an opportunity to cure a bid, proposal, or offer that does not include a required HUB subcontracting plan when HUB goals not met. The bill was heard and left pending in committee. TXWIN SUPPORTED.

HB 4288 (Morrison)

HB 4288 related to the use of a program manager for certain public works projects. The bill created a "Program Manager" procurement/project delivery method in Texas Government Code 2269. The bill was heard and left pending in committee.

HB 4432 (Perez)

HB 4432 related to a prohibition on certain contracts for construction projects by governmental entities. The bill was a broad expansion of JOC method for public works. The bill was referred to committee but not heard.

SB 621 (Nichols/Lambert)

SB 621 related to the transfer of the regulation of plumbing to the Texas Department of Licensing and Regulation, following recommendations of the Sunset Advisory Commission. The bill passed both chambers and died in conference committee. Governor Abbot issued an Executive Order extending the operation of the Plumber's Licensing Board.

SB 771 (Hughes)

SB 771 related to certain agreements by architects and engineers in or in connection with certain construction contracts. The bill limited designer liability for defects. The bill was referred to committee and was not heard.

SB 1137 (Watson)

SB 1137 related to the applicability of certain public works contracting requirements to a metropolitan rapid transit authority. The bill expanded the capability to utilize design-build for rapid transit projects. The bill was not heard.