

BILL ANALYSIS

Senate Research Center

S.B. 332
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Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1904, the Texas Supreme Court in *Houston & TC Railway Company v. East* established the rule of capture in Texas. The supreme court ruled that a landowner has an ownership interest in the groundwater beneath their property. This ownership gives the landowner the right to capture the groundwater without being held liable for damage to others. Groundwater Conservation Districts (GCDs) were created by the Texas Legislature to be the preferred method of groundwater management. They are charged with the task of protecting and conserving groundwater resources. Recently, landowners' interest in groundwater below the surface has come into question in the courts. The argument being made by some GCDs is that the landowner does not have an interest in the water below the surface until they capture it.

This bill clearly defines that a property owner has a vested ownership interest in, and the right to produce, the groundwater below the surface of their property.

S.B. 332 amends current law relating to the ownership of groundwater below the surface of land, the right to produce that groundwater, and the management of groundwater in this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state office, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.002, Water Code, as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) Provides that the legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

(b) Provides that the groundwater ownership and rights described by this section:

(1) entitle the landowner, including a landowner's lessees, heirs, or assigns, to drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence, but does not entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of that landowner's land; and

(2) do not affect the existence of common law defenses or other defenses to liability under the rule of capture.

(c) Creates this subsection from existing text. Requires that nothing in this code be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns of the groundwater ownership and rights described by this section. Deletes existing text providing that the ownership and rights of the owners of the land and their lessees and assigns in groundwater are

hereby recognized, and nothing in this code is to be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district.

(d) Provides that this section does not:

(1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;

(2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113 (Permits for Wells; Permit Amendments), 36.116 (Regulation of Spacing and Production), or 36.122 (Transfer of Groundwater Out of District) or otherwise under this chapter or a special law governing a district; or

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner. Deletes existing text prohibiting a rule promulgated by a district from discriminating between owners of land that is irrigated for production and owners of land or their losses and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

(e) Provides that this section does not affect the ability to regulate groundwater in any manner authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801 (Harris-Galveston Subsidence District), Special District Local Laws Code, for the Harris-Galveston Subsidence District; and

(3) Chapter 8834 (Fort Bend Subsidence District), Special District Local Laws Code, for the Fort Bend Subsidence District.

SECTION 2. Amends Section 36.101, Water Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a district, in adopting a rule under this chapter, rather than requiring the board during the rulemaking process, to:

(1) consider all groundwater uses and needs;

(2) develop rules that are fair and impartial;

(3) consider the groundwater ownership and rights described by Section 36.002;

(4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution;

(5) consider the goals developed as part of the district's management plan under Section 36.1071 (Management Plan); and

(6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participation in a federal conservation program.

Makes nonsubstantive changes.

(a-1) Creates this subsection from existing text. Makes no further changes.

SECTION 3. Effective date: September 1, 2011.