

1-1 By: Fraser S.B. No. 332  
1-2 (In the Senate - Filed January 12, 2011; February 2, 2011,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 March 28, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 28, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 332 By: Fraser

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the vested ownership interest in groundwater beneath  
1-11 the surface of land, the right to produce that groundwater, and the  
1-12 management of groundwater in this state.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 36.001, Water Code, is amended by adding  
1-15 Subdivision (6-a) to read as follows:

1-16 (6-a) "Landowner" means:

1-17 (A) an owner of a possessory interest in the  
1-18 surface estate of real property;

1-19 (B) any lessee or other person to whom a person  
1-20 described by Paragraph (A) has leased, granted, or conveyed either  
1-21 an ownership interest in or a groundwater production right to the  
1-22 groundwater below the surface of the real property, but only to the  
1-23 extent of the lease, grant, or conveyance; or

1-24 (C) a successor in interest to a person described  
1-25 by Paragraph (A) or (B).

1-26 SECTION 2. Subchapter A, Chapter 36, Water Code, is amended  
1-27 by adding Section 36.0011 to read as follows:

1-28 Sec. 36.0011. FINDINGS. The legislature finds that the  
1-29 conservation, preservation, use, and development of groundwater  
1-30 resources in this state are compelling public interests vital to  
1-31 public safety, welfare, and economic progress. In this chapter,  
1-32 the legislature has recognized that the implementation of long-term  
1-33 aquifer management strategies developed by local groundwater  
1-34 conservation districts and subsidence districts to address the  
1-35 diverse characteristics that distinguish the many groundwater  
1-36 aquifers in this state is essential to implement Section 59,  
1-37 Article XVI, Texas Constitution, and to protect the landowner's  
1-38 ownership interest in the groundwater below the surface.

1-39 SECTION 3. Section 36.002, Water Code, is amended to read as  
1-40 follows:

1-41 Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The  
1-42 legislature recognizes that a landowner has a vested ownership  
1-43 interest in groundwater below the surface as an interest in the  
1-44 landowner's real property.

1-45 (b) The vested ownership interest described by this  
1-46 section:

1-47 (1) entitles the landowner to a fair chance to produce  
1-48 the groundwater below the surface of real property, subject to  
1-49 Subsection (d), without causing waste or malicious drainage of  
1-50 other properties or negligently causing subsidence, but does not  
1-51 entitle a landowner to the right to capture a specific amount of  
1-52 groundwater below the surface; and

1-53 (2) does not affect the existence of common law  
1-54 defenses or other defenses to liability under the rule of capture.

1-55 (c) Nothing [The ownership and rights of the owners of the  
1-56 land and their lessees and assigns in groundwater are hereby  
1-57 recognized, and nothing] in this code shall be construed as  
1-58 depriving or divesting a landowner [the owners or their lessees and  
1-59 assigns] of the ownership interest [or rights, except as those  
1-60 rights may be limited or altered by rules promulgated by a  
1-61 district].

1-62 (d) Nothing in this section shall be construed to:

1-63 (1) prohibit a district from promulgating a rule to

2-1 limit the exercise of the right of the landowner to produce  
2-2 groundwater;  
2-3 (2) prohibit a district from limiting or prohibiting  
2-4 the drilling of a well by a landowner for failure or inability to  
2-5 comply with minimum well spacing or tract size requirements adopted  
2-6 by the district;  
2-7 (3) affect the ability of a district to regulate  
2-8 groundwater production as authorized under Section 36.113, 36.116,  
2-9 or 36.122 or otherwise under this chapter or a special law governing  
2-10 a district; or  
2-11 (4) require that rules or regulations adopted by a  
2-12 district must allocate to each landowner a proportionate share of  
2-13 available groundwater for production from the aquifer based on the  
2-14 number of acres owned by the landowner.  
2-15 (e) A rule promulgated by a district may not discriminate  
2-16 between owners of land that is irrigated for production and  
2-17 landowners [~~owners of land or their lessees and assigns~~] whose land  
2-18 that was irrigated for production is enrolled or participating in a  
2-19 federal conservation program.  
2-20 SECTION 4. Section 36.101, Water Code, is amended by  
2-21 amending Subsection (a) and adding Subsection (a-1) to read as  
2-22 follows:  
2-23 (a) A district may make and enforce rules, including rules  
2-24 limiting groundwater production based on tract size or the spacing  
2-25 of wells, to provide for conserving, preserving, protecting, and  
2-26 recharging of the groundwater or of a groundwater reservoir or its  
2-27 subdivisions in order to control subsidence, prevent degradation of  
2-28 water quality, or prevent waste of groundwater and to carry out the  
2-29 powers and duties provided by this chapter. In adopting a rule  
2-30 under this chapter, a district [~~During the rulemaking process the~~  
2-31 ~~board~~] shall:  
2-32 (1) consider all groundwater uses and needs;  
2-33 (2) [~~and shall~~] develop rules that [~~which~~] are fair  
2-34 and impartial;  
2-35 (3) consider the vested ownership interest described  
2-36 by Section 36.002;  
2-37 (4) consider the public interest in conservation,  
2-38 preservation, protection, recharging, and prevention of waste of  
2-39 groundwater, and of groundwater reservoirs or their subdivisions,  
2-40 and in controlling subsidence caused by withdrawal of water from  
2-41 those groundwater reservoirs or their subdivisions, consistent  
2-42 with the objectives of Section 59, Article XVI, Texas Constitution;  
2-43 (5) consider the goals developed as part of the  
2-44 district's comprehensive management plan under Section 36.1071;  
2-45 and  
2-46 (6) [~~and that do~~] not discriminate between land that  
2-47 is irrigated for production and land that was irrigated for  
2-48 production and enrolled or participating in a federal conservation  
2-49 program.  
2-50 (a-1) Any rule of a district that discriminates between land  
2-51 that is irrigated for production and land that was irrigated for  
2-52 production and enrolled or participating in a federal conservation  
2-53 program is void.  
2-54 SECTION 5. Subsection (c), Section 36.108, Water Code, is  
2-55 amended to read as follows:  
2-56 (c) The presiding officer, or the presiding officer's  
2-57 designee, of each district located in whole or in part in the  
2-58 management area shall meet at least annually to conduct joint  
2-59 planning with the other districts in the management area and to  
2-60 review the management plans and accomplishments for the management  
2-61 area. In reviewing the management plans, the districts shall  
2-62 consider:  
2-63 (1) the goals of each management plan and its impact on  
2-64 planning throughout the management area;  
2-65 (2) the effectiveness of the measures established by  
2-66 each management plan for conserving and protecting groundwater,  
2-67 [~~and~~] preventing waste, and considering the vested ownership  
2-68 interest described by Section 36.002, and the effectiveness of  
2-69 these measures in the management area generally;

3-1 (3) any other matters that the boards consider  
3-2 relevant to the protection and conservation of groundwater and the  
3-3 prevention of waste in the management area; and

3-4 (4) the degree to which each management plan achieves  
3-5 the desired future conditions established during the joint planning  
3-6 process.

3-7 SECTION 6. This Act takes effect September 1, 2011.

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