

By: Keffer

H.B. No. 200

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of groundwater.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.0015, Water Code, is amended to read as follows:

Sec. 36.0015. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the development and conservation of groundwater to meet the needs of this state, and use the best available science in the development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

SECTION 2. The heading to Section 36.1083, Water Code, is amended to read as follows:

Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS: CONTESTED CASE.

1 SECTION 3. Section 36.1083, Water Code, is amended by
2 amending Subsections (a) and (b) and adding Subsections (e) through
3 (m) to read as follows:

4 (a) In this section:

5 (1) "Affected person" has the meaning assigned by
6 Section 36.1082.

7 (2) "Development [,"development] board" means the
8 Texas Water Development Board.

9 (3) "Office" means the State Office of Administrative
10 Hearings.

11 (b) Not later than the 120th day after the date on which a
12 district adopts a desired future condition under Section
13 36.108(d-4), an affected [A] person [with a legally defined
14 interest in the groundwater in the management area, a district in or
15 adjacent to the management area, or a regional water planning group
16 for a region in the management area] may file a petition with the
17 development board requesting that the development board contract
18 with the office to conduct a contested case hearing on the matter of
19 appealing the approval of the desired future condition. The matter
20 referred for hearing may include as an issue the reasonableness of
21 the desired future condition, but may not include as an issue a
22 reason for an inquiry described by Section 36.1082(b) [conditions
23 of the groundwater resources established under this section. The
24 petition must provide evidence that the districts did not establish
25 a reasonable desired future condition of the groundwater resources
26 in the management area].

27 (e) Not later than the 45th day after the date of the

1 deadline for filing a petition under Subsection (b), the
2 development board shall:

3 (1) contract with the office to conduct the contested
4 case hearing requested under Subsection (b); and

5 (2) submit to the office a copy of any petitions
6 related to the hearing requested under Subsection (b) and received
7 by the development board.

8 (f) During the period between the filing of the petition and
9 the actions described by Subsection (e), the development board may
10 facilitate coordination between the petitioner and the district to
11 resolve the issues raised in the petition. If the petitioner and
12 the district cannot resolve the issues raised in the petition, a
13 hearing must be conducted in accordance with Chapter 2001,
14 Government Code, and rules of the development board and the office.

15 (g) The development board may adopt rules for notice and
16 procedures for hearings conducted under this section. Rules
17 adopted under this section must provide for the development board
18 to provide general notice of the hearing to the public and
19 individual notice of the hearing to the participants, including the
20 district, the petitioner, a party to the hearing identified under
21 Subsection (h)(3), the commission, and each nonparty district and
22 regional planning group in the same management area as the district
23 that is a party to the hearing.

24 (h) Before a hearing conducted under this section, the
25 office shall hold a prehearing conference to determine preliminary
26 matters, including:

27 (1) whether the petition should be dismissed for

1 failure to state a claim on which relief can be granted;

2 (2) whether a person seeking to participate in the
3 hearing is an affected person who is eligible to participate; and

4 (3) which persons shall be named as parties to the
5 hearing.

6 (i) The petitioner shall pay the costs of the contract with
7 the office to conduct the hearing under this section. The
8 petitioner shall pay to the development board an amount sufficient
9 to pay the contract amount before the hearing begins. After the
10 hearing, the development board shall assess costs to one or more of
11 the parties participating in the hearing and shall refund any
12 excess money to the petitioner. The development board shall adopt
13 rules for the manner of payment. The development board shall
14 consider the following in apportioning costs of the hearing:

15 (1) the party who requested the hearing;

16 (2) the party who prevailed in the hearing;

17 (3) the financial ability of the party to pay the
18 costs;

19 (4) the extent to which the party participated in the
20 hearing; and

21 (5) any other factor relevant to a just and reasonable
22 assessment of costs.

23 (j) On receipt of the administrative law judge's findings of
24 fact and conclusions of law in a proposal for decision, including a
25 dismissal of a petition under Subsection (h), the development board
26 shall issue a final order stating the development board's decision
27 on the contested matter and the development board's findings of

1 fact and conclusions of law. The development board may change a
2 finding of fact or conclusion of law made by the administrative law
3 judge, or may vacate or modify an order issued by the administrative
4 law judge, as provided by Section 2001.058(e), Government Code.

5 (k) If the development board in its final order finds that a
6 desired future condition is unreasonable, the districts in the same
7 management area as the district that participated in the hearing
8 shall reconvene in a joint planning meeting not later than the 30th
9 day after the date of the final order for the purpose of revising
10 the desired future condition.

11 (l) A final order by the development board described by
12 Subsection (k) does not automatically invalidate the adoption of a
13 desired future condition by a district that was not a party to the
14 hearing conducted under this section.

15 (m) The administrative law judge may consolidate hearings
16 requested under this section that affect two or more districts. The
17 administrative law judge shall prepare separate findings of fact
18 and conclusions of law for each district included as a party in a
19 multidistrict hearing.

20 SECTION 4. Subchapter D, Chapter 36, Water Code, is amended
21 by adding Section 36.10835 to read as follows:

22 Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE
23 CONDITIONS. (a) A final order issued under Section 36.1083 may be
24 appealed to the district court in Travis County under the
25 substantial evidence standard of review as provided by Section
26 2001.174, Government Code. If the court finds that a desired future
27 condition is unreasonable, the court shall strike the desired

1 future condition and order the districts in the same management
2 area as the district that participated in the hearing to reconvene
3 in a joint planning meeting not later than the 30th day after the
4 date of the court order for the purpose of revising the desired
5 future condition.

6 (b) A court's finding under this section does not apply to a
7 desired future condition that is not a matter before the court.

8 SECTION 5. Subchapter D, Chapter 36, Water Code, is amended
9 by adding Section 36.1145 to read as follows:

10 Sec. 36.1145. APPEAL OF PERMIT OR PERMIT AMENDMENT DENIAL.

11 (a) In this section, "development board" means the Texas Water
12 Development Board.

13 (b) An applicant for a permit or permit amendment or a
14 person who participated as a party in a permit or permit amendment
15 hearing before the district may file a petition with the
16 development board to request an appeal of an action by a district on
17 an application for a permit or permit amendment submitted under
18 Section 36.113 or 36.114. The petitioner must state the basis for
19 the appeal.

20 (c) In response to a petition under this section, the
21 development board shall hold at least one hearing at a central
22 location in the district to take testimony on the petition. The
23 development board may delegate responsibility for a hearing to the
24 executive administrator or to a person designated by the executive
25 administrator.

26 (d) The development board shall review the petition,
27 testimony at the hearing, and evidence presented by the parties and

1 shall consider:

2 (1) only issues raised before the district during the
3 permit or permit amendment process; and

4 (2) whether the district's actions in regard to the
5 permit or permit amendment are consistent with Section 36.1132.

6 (e) After review under Subsection (d), the development
7 board shall issue its findings and recommendations regarding the
8 permit or permit amendment.

9 (f) On receipt of the development board's findings and
10 recommendations, the district shall reconsider action on the permit
11 or permit amendment, giving consideration to the development
12 board's findings and recommendations and district rules, and issue
13 a final decision on the permit or permit amendment.

14 (g) An applicant may appeal a final decision issued under
15 Subsection (f) by filing suit against the district as provided by
16 Section 36.251.

17 (h) Chapter 2001, Government Code, does not apply to a
18 petition filed under this section or to a hearing held under this
19 section.

20 (i) The development board may adopt rules to implement this
21 section.

22 SECTION 6. Sections 36.1083(c) and (d), Water Code, are
23 repealed.

24 SECTION 7. (a) Section 36.1083, Water Code, as amended by
25 this Act, and Section 36.10835, Water Code, as added by this Act,
26 apply only to a desired future condition adopted by a groundwater
27 conservation district on or after the effective date of this Act. A

1 desired future condition adopted before that date is governed by
2 the law in effect on the date the desired future condition was
3 adopted, and the former law is continued in effect for that purpose.

4 (b) Section 36.1145, Water Code, as added by this Act,
5 applies only to a permit or permit amendment application submitted
6 to a groundwater conservation district on or after the effective
7 date of this Act. A permit or permit amendment application
8 submitted before that date is governed by the law in effect on the
9 date the permit or permit amendment application was submitted, and
10 the former law is continued in effect for that purpose.

11 SECTION 8. This Act takes effect September 1, 2015.