

1-1 By: Keffer, Lucio III (Senate Sponsor - Perry) H.B. No. 200
 1-2 (In the Senate - Received from the House May 7, 2015;
 1-3 May 7, 2015, read first time and referred to Committee on
 1-4 Agriculture, Water, and Rural Affairs; May 12, 2015, reported
 1-5 favorably by the following vote: Yeas 6, Nays 0; May 12, 2015, sent
 1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			

1-16 A BILL TO BE ENTITLED
 1-17 AN ACT

1-18 relating to the regulation of groundwater.
 1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-20 SECTION 1. Section 36.0015, Water Code, is amended to read
 1-21 as follows:

1-22 Sec. 36.0015. PURPOSE. (a) In this section, "best
 1-23 available science" means conclusions that are logically and
 1-24 reasonably derived using statistical or quantitative data,
 1-25 techniques, analyses, and studies that are publicly available to
 1-26 reviewing scientists and can be employed to address a specific
 1-27 scientific question.

1-28 (b) In order to provide for the conservation, preservation,
 1-29 protection, recharging, and prevention of waste of groundwater, and
 1-30 of groundwater reservoirs or their subdivisions, and to control
 1-31 subsidence caused by withdrawal of water from those groundwater
 1-32 reservoirs or their subdivisions, consistent with the objectives of
 1-33 Section 59, Article XVI, Texas Constitution, groundwater
 1-34 conservation districts may be created as provided by this chapter.
 1-35 Groundwater conservation districts created as provided by this
 1-36 chapter are the state's preferred method of groundwater management
 1-37 in order to protect property rights, balance the development and
 1-38 conservation of groundwater to meet the needs of this state, and use
 1-39 the best available science in the development and conservation of
 1-40 groundwater through rules developed, adopted, and promulgated by a
 1-41 district in accordance with the provisions of this chapter.

1-42 SECTION 2. Section 36.066, Water Code, is amended by
 1-43 amending Subsection (g) and adding Subsection (h) to read as
 1-44 follows:

1-45 (g) If the district prevails in any suit other than a suit in
 1-46 which it voluntarily intervenes, the district may seek and the
 1-47 court shall grant, in the interests of justice and as provided by
 1-48 Subsection (h), in the same action, recovery for attorney's fees,
 1-49 costs for expert witnesses, and other costs incurred by the
 1-50 district before the court. The amount of the attorney's fees shall
 1-51 be fixed by the court.

1-52 (h) If the district prevails on some, but not all, of the
 1-53 issues in the suit, the court may award attorney's fees and costs
 1-54 only for those issues on which the district prevails. The district
 1-55 has the burden of segregating the attorney's fees and costs in order
 1-56 for the court to make an award.

1-57 SECTION 3. Section 36.108(d-1), Water Code, is amended to
 1-58 read as follows:

1-59 (d-1) After considering and documenting the factors
 1-60 described by Subsection (d) and other relevant scientific and
 1-61 hydrogeological data, the [The] districts may establish different

2-1 desired future conditions for:

2-2 (1) each aquifer, subdivision of an aquifer, or
 2-3 geologic strata located in whole or in part within the boundaries of
 2-4 the management area; or

2-5 (2) each geographic area overlying an aquifer in whole
 2-6 or in part or subdivision of an aquifer within the boundaries of the
 2-7 management area.

2-8 SECTION 4. Section 36.1083, Water Code, is amended by
 2-9 amending Subsections (a) and (b) and adding Subsections (e) through
 2-10 (r) to read as follows:

2-11 (a) In this section:

2-12 (1) "Affected person" has the meaning assigned by
 2-13 Section 36.1082.

2-14 (2) "Development [~~,"development]~~ board" means the
 2-15 Texas Water Development Board.

2-16 (3) "Office" means the State Office of Administrative
 2-17 Hearings.

2-18 (b) Not later than the 120th day after the date on which a
 2-19 district adopts a desired future condition under Section
 2-20 36.108(d-4), an affected [A] person [~~with a legally defined~~
 2-21 interest in the groundwater in the management area, a district in or
 2-22 adjacent to the management area, or a regional water planning group
 2-23 for a region in the management area] may file a petition with the
 2-24 district requiring that the district contract with the office to
 2-25 conduct a hearing [~~development board]~~ appealing the reasonableness
 2-26 [approval] of the desired future condition [~~conditions of the~~
 2-27 groundwater resources established under this section]. The
 2-28 petition must provide evidence that the districts did not establish
 2-29 a reasonable desired future condition of the groundwater resources
 2-30 in the management area.

2-31 (e) Not later than the 10th day after receiving a petition
 2-32 described by Subsection (b), the district shall submit a copy of the
 2-33 petition to the development board. On receipt of the petition, the
 2-34 development board shall conduct:

2-35 (1) an administrative review to determine whether the
 2-36 desired future condition established by the district meets the
 2-37 criteria in Section 36.108(d); and

2-38 (2) a study containing scientific and technical
 2-39 analysis of the desired future condition, including consideration
 2-40 of:

2-41 (A) the hydrogeology of the aquifer; and

2-42 (B) any relevant:

2-43 (i) groundwater availability models;

2-44 (ii) published studies;

2-45 (iii) estimates of total recoverable
 2-46 storage capacity;

2-47 (iv) average annual amounts of recharge,
 2-48 inflows, and discharge of groundwater; or

2-49 (v) information provided in the petition or
 2-50 available to the development board.

2-51 (f) The development board must complete and deliver to the
 2-52 office a study described by Subsection (e)(2) not later than the
 2-53 120th day after the date the development board receives a copy of
 2-54 the petition.

2-55 (g) For the purposes of a hearing conducted under Subsection
 2-56 (b):

2-57 (1) the office shall consider the study described by
 2-58 Subsection (e)(2) to be part of the administrative record; and

2-59 (2) the development board shall make available
 2-60 relevant staff as expert witnesses if requested by the office or a
 2-61 party to the hearing.

2-62 (h) Not later than the 60th day after receiving a petition
 2-63 under Subsection (b), the district shall:

2-64 (1) contract with the office to conduct the contested
 2-65 case hearing requested under Subsection (b); and

2-66 (2) submit to the office a copy of any petitions
 2-67 related to the hearing requested under Subsection (b) and received
 2-68 by the district.

2-69 (i) A hearing under Subsection (b) must be held:

3-1 (1) at a location described by Section 36.403(c); and
 3-2 (2) in accordance with Chapter 2001, Government Code,
 3-3 and the rules of the office.

3-4 (j) During the period between the filing of the petition and
 3-5 the delivery of the study described by Subsection (e)(2), the
 3-6 district may seek the assistance of the Center for Public Policy
 3-7 Dispute Resolution, the development board, or another alternative
 3-8 dispute resolution system to mediate the issues raised in the
 3-9 petition. If the district and the petitioner cannot resolve the
 3-10 issues raised in the petition, the office will proceed with a
 3-11 hearing as described by this section.

3-12 (k) The district may adopt rules for notice and hearings
 3-13 conducted under this section that are consistent with the
 3-14 procedural rules of the office. In accordance with rules adopted by
 3-15 the district and the office, the district shall provide:

3-16 (1) general notice of the hearing; and
 3-17 (2) individual notice of the hearing to:
 3-18 (A) the petitioner;
 3-19 (B) any other party to the hearing;
 3-20 (C) each nonparty district and regional water
 3-21 planning group located in the same management area as a district
 3-22 named in the petition;
 3-23 (D) the development board; and
 3-24 (E) the commission.

3-25 (l) Before a hearing conducted under this section, the
 3-26 office shall hold a prehearing conference to determine preliminary
 3-27 matters, including:

3-28 (1) whether the petition should be dismissed for
 3-29 failure to state a claim on which relief can be granted;
 3-30 (2) whether a person seeking to participate in the
 3-31 hearing is an affected person who is eligible to participate; and
 3-32 (3) which affected persons shall be named as parties
 3-33 to the hearing.

3-34 (m) The petitioner shall pay the costs associated with the
 3-35 contract for the hearing under this section. The petitioner shall
 3-36 deposit with the district an amount sufficient to pay the contract
 3-37 amount before the hearing begins. After the hearing, the office may
 3-38 assess costs to one or more of the parties participating in the
 3-39 hearing and the district shall refund any excess money to the
 3-40 petitioner. The office shall consider the following in
 3-41 apportioning costs of the hearing:

3-42 (1) the party who requested the hearing;
 3-43 (2) the party who prevailed in the hearing;
 3-44 (3) the financial ability of the party to pay the
 3-45 costs;
 3-46 (4) the extent to which the party participated in the
 3-47 hearing; and
 3-48 (5) any other factor relevant to a just and reasonable
 3-49 assessment of costs.

3-50 (n) On receipt of the administrative law judge's findings of
 3-51 fact and conclusions of law in a proposal for decision, including a
 3-52 dismissal of a petition, the district shall issue a final order
 3-53 stating the district's decision on the contested matter and the
 3-54 district's findings of fact and conclusions of law. The district
 3-55 may change a finding of fact or conclusion of law made by the
 3-56 administrative law judge, or may vacate or modify an order issued by
 3-57 the administrative law judge, as provided by Section 2001.058(e),
 3-58 Government Code.

3-59 (o) If the district vacates or modifies the proposal for
 3-60 decision, the district shall issue a report describing in detail
 3-61 the district's reasons for disagreement with the administrative law
 3-62 judge's findings of fact and conclusions of law. The report shall
 3-63 provide the policy, scientific, and technical justifications for
 3-64 the district's decision.

3-65 (p) If the district in its final order finds that a desired
 3-66 future condition is unreasonable, the districts in the same
 3-67 management area as the district that participated in the hearing
 3-68 shall reconvene in a joint planning meeting not later than the 30th
 3-69 day after the date of the final order for the purpose of revising

4-1 the desired future condition.

4-2 (q) A final order by the district finding that a desired
4-3 future condition is unreasonable does not invalidate the adoption
4-4 of a desired future condition by a district that did not participate
4-5 as a party in the hearing conducted under this section.

4-6 (r) The administrative law judge may consolidate hearings
4-7 requested under this section that affect two or more districts. The
4-8 administrative law judge shall prepare separate findings of fact
4-9 and conclusions of law for each district included as a party in a
4-10 multidistrict hearing.

4-11 SECTION 5. Subchapter D, Chapter 36, Water Code, is amended
4-12 by adding Section 36.10835 to read as follows:

4-13 Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE
4-14 CONDITIONS. (a) A final district order issued under Section
4-15 36.1083 may be appealed to a district court with jurisdiction over
4-16 any part of the territory of the district that issued the order. An
4-17 appeal under this subsection must be filed with the district court
4-18 not later than the 45th day after the date the district issues the
4-19 final order. The case shall be decided under the substantial
4-20 evidence standard of review as provided by Section 2001.174,
4-21 Government Code. If the court finds that a desired future condition
4-22 is unreasonable, the court shall strike the desired future
4-23 condition and order the districts in the same management area as the
4-24 district that did not participate as a party in the hearing to
4-25 reconvene in a joint planning meeting not later than the 30th day
4-26 after the date of the court order for the purpose of revising the
4-27 desired future condition.

4-28 (b) A court's finding under this section does not apply to a
4-29 desired future condition that is not a matter before the court.

4-30 SECTION 6. Sections 36.1083(c) and (d), Water Code, are
4-31 repealed.

4-32 SECTION 7. Section 36.1083, Water Code, as amended by this
4-33 Act, and Section 36.10835, Water Code, as added by this Act, apply
4-34 only to a desired future condition adopted by a groundwater
4-35 conservation district on or after the effective date of this Act. A
4-36 desired future condition adopted before that date is governed by
4-37 the law in effect on the date the desired future condition was
4-38 adopted, and the former law is continued in effect for that purpose.

4-39 SECTION 8. This Act takes effect September 1, 2015.

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