

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Larson, Lucio III

H.B. No. 2377

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the development of brackish groundwater.

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

4 SECTION 1. Subchapter D, Chapter 36, Water Code, is amended  
5 by adding Section 36.1015 to read as follows:

6 Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER  
7 PRODUCTION ZONES. (a) In this section:

8 (1) "Designated brackish groundwater production zone"  
9 means an aquifer, subdivision of an aquifer, or geologic stratum  
10 designated under Section 16.060(b)(5).

11 (2) "Development board" means the Texas Water  
12 Development Board.

13 (3) "Gulf Coast Aquifer" means the system of  
14 hydrogeologic units that run along the Gulf Coast from the Sabine  
15 River to the Rio Grande, including:

16 (A) the Catahoula confining system, including  
17 the Frio Formation, the Anahuac Formation, and the Catahoula Tuff  
18 or Sandstone;

19 (B) the Jasper Aquifer, including the Oakville  
20 Sandstone and Fleming Formation;

21 (C) the Burkeville confining system separating  
22 the Jasper Aquifer from the Evangeline Aquifer;

23 (D) the Evangeline Aquifer, including the Goliad  
24 Sand; and

1           (E) the Chicot Aquifer, including the Willis  
2 Sand, the Bentley and Montgomery Formations, the Beaumont Clay, and  
3 alluvial deposits at the surface.

4           (b) A district located over any part of a designated  
5 brackish groundwater production zone may adopt rules to govern the  
6 issuance of permits for the completion and operation of a well for  
7 the withdrawal of brackish groundwater from a designated brackish  
8 groundwater production zone and shall adopt rules described by this  
9 subsection if the district receives a petition from a person with a  
10 legally defined interest in groundwater in the district. The  
11 district must adopt the rules not later than the 180th day after the  
12 date the district receives the petition. Rules adopted under this  
13 subsection apply only to a permit for a project described by  
14 Subsection (c).

15           (c) A person may obtain a permit under rules adopted under  
16 this section for the following projects:

17                 (1) a municipal project designed to treat brackish  
18 groundwater to drinking water standards for the purpose of  
19 providing a public source of drinking water; and

20                 (2) an electric generation project to treat brackish  
21 groundwater to water quality standards sufficient for the project  
22 needs.

23           (d) The rules adopted must:

24                 (1) provide for processing an application for a  
25 brackish groundwater production zone operating permit in the same  
26 manner as an application for an operating permit for a fresh  
27 groundwater well, except as provided by this section;

1           (2) allow withdrawals and rates of withdrawal of  
2 brackish groundwater from a designated brackish groundwater  
3 production zone not to exceed and consistent with the withdrawal  
4 amounts identified in Section 16.060(e);

5           (3) provide for a minimum term of 30 years for a permit  
6 issued for a well that produces brackish groundwater from a  
7 designated brackish groundwater production zone;

8           (4) require implementation of a monitoring system  
9 recommended by the development board to monitor water levels and  
10 water quality in the same or an adjacent aquifer, subdivision of an  
11 aquifer, or geologic stratum in which the designated brackish  
12 groundwater production zone is located;

13           (5) for a project located in a designated brackish  
14 groundwater production zone in the Gulf Coast Aquifer, require  
15 reasonable monitoring by the district of land elevations to  
16 determine if production from the project is causing or is likely to  
17 cause subsidence during the permit term;

18           (6) require from the holder of a permit issued under  
19 rules adopted under this section annual reports that must include:

20                   (A) the amount of brackish groundwater  
21 withdrawn;

22                   (B) the average monthly water quality of the  
23 brackish groundwater withdrawn and in the monitoring wells; and

24                   (C) aquifer levels in both the designated  
25 brackish groundwater production zone and in any aquifer,  
26 subdivision of an aquifer, or geologic stratum for which the permit  
27 requires monitoring; and

1           (7) be consistent with and not impair property rights  
2 described by Sections 36.002(a) and (b).

3           (e) An application for a brackish groundwater production  
4 zone operating permit must include:

5           (1) the proposed well field design compared to the  
6 designated brackish groundwater production zone;

7           (2) the requested maximum groundwater withdrawal rate  
8 for the proposed project;

9           (3) the number and location of monitoring wells needed  
10 to determine the effects of the proposed project on water levels and  
11 water quality in the same or an adjacent aquifer, subdivision of an  
12 aquifer, or geologic stratum in which the designated brackish  
13 groundwater production zone is located; and

14           (4) a report that includes:

15           (A) a simulation of the projected effects of the  
16 proposed production on water levels and water quality in the same or  
17 an adjacent aquifer, subdivision of an aquifer, or geologic stratum  
18 in which the designated brackish groundwater production zone is  
19 located;

20           (B) a description of the model used for the  
21 simulation described by Paragraph (A); and

22           (C) sufficient information for a technical  
23 reviewer to understand the parameters and assumptions used in the  
24 model described by Paragraph (B).

25           (f) The district shall submit the application to the  
26 development board and the development board shall conduct a  
27 technical review of the application. The development board shall

1 submit a report of the review of the application that includes:

2 (1) findings regarding the compatibility of the  
3 proposed well field design with the designated brackish groundwater  
4 production zone; and

5 (2) recommendations for the monitoring system  
6 described by Subsection (d)(4).

7 (g) The district may not schedule a hearing on the  
8 application until the district receives the report from the  
9 development board described by Subsection (f).

10 (h) The district shall provide the reports required under  
11 Subsection (d)(6) to the development board. Not later than the  
12 120th day after the date the development board receives a request  
13 from the district, the development board shall investigate and  
14 issue a report on whether brackish groundwater production under the  
15 project that is the subject of the report from the designated  
16 brackish groundwater production zone is projected to cause:

17 (1) significant aquifer level declines in the same or  
18 an adjacent aquifer, subdivision of an aquifer, or geologic stratum  
19 that were not anticipated by the development board in the  
20 designation of the zone;

21 (2) negative effects on quality of water in an  
22 aquifer, subdivision of an aquifer, or geologic stratum; or

23 (3) for a project located in a designated brackish  
24 groundwater production zone in the Gulf Coast Aquifer, subsidence  
25 during the permit term.

26 (i) After receiving from the development board a report  
27 issued under Subsection (h) and after notice and hearing subject to

1 Subchapter M, the district may:

2 (1) amend the applicable permit to establish a  
3 production limit necessary to mitigate any negative effects  
4 identified by the report;

5 (2) approve a mitigation plan that alleviates any  
6 negative effects identified by the report; or

7 (3) both amend the permit to establish a production  
8 limit and approve a mitigation plan.

9 SECTION 2. Section 36.1132, Water Code, is amended by  
10 adding Subsection (d) to read as follows:

11 (d) Production under a permit issued under Section 36.1015  
12 to produce brackish groundwater from a designated brackish  
13 groundwater production zone is in addition to the amount of  
14 groundwater that may be produced based on Subsections (b)(1) and  
15 (2). To the extent possible, a district shall issue permits up to  
16 the point that the total volume of exempt and permitted groundwater  
17 production in a designated brackish groundwater production zone  
18 equals the amount of brackish groundwater that may be produced  
19 annually to achieve the groundwater availability described by the  
20 Texas Water Development Board in its designation of the brackish  
21 groundwater production zone under Section 16.060(e).

22 SECTION 3. This Act takes effect September 1, 2017.

ADOPTED

*Charles Perry*

MAY 24 2017

*Secretary of the Senate*

1 Amend H.B. No. 2377 (senate committee printing) by adding  
2 the following appropriately numbered SECTIONS to the bill and  
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION \_\_. Section 35.018(b), Water Code, is amended to  
5 read as follows:

6 (b) The report must include:

7 (1) the names and locations of all priority  
8 groundwater management areas and districts created or attempted  
9 to be created on or after November 5, 1985, the effective date  
10 of Chapter 133 (H.B. No. 2), Acts of the 69th Legislature,  
11 Regular Session, 1985;

12 (2) the authority under which each priority  
13 groundwater management area and district was proposed for  
14 creation;

15 (3) a detailed analysis of each election held to  
16 confirm the creation of a district, including analysis of  
17 election results, possible reasons for the success or failure to  
18 confirm the creation of a district, and the possibility for  
19 future voter approval of districts in areas in which attempts to  
20 create districts failed;

21 (4) a detailed analysis of the activities of each  
22 district created, including those districts which are  
23 implementing management plans certified under Section 36.1072;

24 (5) a report on [~~audits performed on districts under~~  
25 ~~Section 36.302 and~~] remedial actions taken under Section 36.303;

26 (6) recommendations for changes in this chapter and  
27 Chapter 36 that will facilitate the creation of priority  
28 groundwater management areas and the creation and operation of  
29 districts;

1 (7) a report on educational efforts in newly  
2 designated priority groundwater management areas; and

3 (8) any other information and recommendations that  
4 the commission considers relevant.

5 SECTION \_\_. Section 36.061(b), Water Code, is amended to  
6 read as follows:

7 (b) The state auditor may conduct a financial audit [~~the~~  
8 ~~records~~] of any district if the state auditor determines that  
9 the audit is necessary.

10 SECTION \_\_. Section 36.1072(f), Water Code, is amended to  
11 read as follows:

12 (f) If the executive administrator does not approve the  
13 district's management plan, the executive administrator shall  
14 provide to the district, in writing, the reasons for the  
15 action. Not later than the 180th day after the date a district  
16 receives notice that its management plan has not been approved,  
17 the district may submit a revised management plan for review and  
18 approval. The executive administrator's decision may be  
19 appealed to the development board. If the development board  
20 decides not to approve the district's management plan on appeal,  
21 the district may request that the conflict be mediated. The  
22 district and the board may seek the assistance of the Center for  
23 Public Policy Dispute Resolution at The University of Texas  
24 School of Law or an alternative dispute resolution system  
25 established under Chapter 152, Civil Practice and Remedies Code,  
26 in obtaining a qualified impartial third party to mediate the  
27 conflict. The cost of the mediation services must be specified  
28 in the agreement between the parties and the Center for Public  
29 Policy Dispute Resolution or the alternative dispute resolution  
30 system. If the parties do not resolve the conflict through  
31 mediation, the decision of the development board not to approve  
2 17.143.430 SLB



1 the district's management plan may be appealed to a district  
2 court in Travis County. Costs for the appeal shall be set by  
3 the court hearing the appeal. An appeal under this subsection  
4 is by trial de novo. The commission shall not take enforcement  
5 action against a district under Subchapter I until the latest of  
6 the expiration of the 180-day period, the date the development  
7 board has taken final action withholding approval of a revised  
8 management plan, the date the mediation is completed, or the  
9 date a final judgment upholding the board's decision is entered  
10 by a district court. An enforcement action may not be taken  
11 against a district by the commission [~~or the state auditor~~]  
12 under Subchapter I because the district's management plan and  
13 the approved regional water plan are in conflict while the  
14 parties are attempting to resolve the conflict before the  
15 development board, in mediation, or in court. Rules of the  
16 district continue in full force and effect until all appeals  
17 under this subsection have been exhausted and the final judgment  
18 is adverse to the district.

19 SECTION \_\_\_\_\_. Section 36.113, Water Code, is amended by  
20 amending Subsection (d) and adding Subsection (d-1) to read as  
21 follows:

22 (d) This subsection does not apply to the renewal of an  
23 operating permit issued under Section 36.1145. Before granting  
24 or denying a permit, or a permit amendment issued in accordance  
25 with Section 36.1146, the district shall consider whether:

26 (1) the application conforms to the requirements  
27 prescribed by this chapter and is accompanied by the prescribed  
28 fees;

29 (2) the proposed use of water unreasonably affects:

30 (A) existing groundwater and surface water  
31 resources; [~~or~~]



1 36.305 and 36.307 and calling an election for the purpose of  
2 electing a new board;

3 (3) requesting the attorney general to bring suit for  
4 the appointment of a receiver to collect the assets and carry on  
5 the business of the groundwater conservation district; or

6 (4) dissolving the district in accordance with  
7 Sections 36.304, 36.305, and 36.308.

8 SECTION \_\_. Section 36.302, Water Code, is repealed.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 25, 2017**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** HB2377 by Larson (Relating to the development of brackish groundwater.), As Passed  
2nd House

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Texas Water Code to authorize a Groundwater Conservation District (GCD) located over any part of a designated brackish groundwater production zone to adopt rules to permit the withdrawal of brackish groundwater in a designated brackish groundwater production zone. Permits may be issued either for a municipal project to treat brackish groundwater to drinking water standards or for an electric generation project. The bill would require Texas Water Development Board (TWDB) review and comment on permit applications and to make recommendations. The bill would require TWDB to report on the impacts of brackish groundwater production in designated zones at the request of GCDs. The bill would also require TWDB to receive and review annual brackish groundwater production reports from GCDs. According to TWDB, the agency will need to process and maintain additional data in accordance with provisions of the bill, however, no significant fiscal impact is anticipated.

The bill would clarify that the State Auditor's Office (SAO) may conduct a financial audit of a GCD if SAO determines as necessary, removes SAO's ability to conduct certain enforcement action against a GCD if there is conflict with the district's management plan and approved regional water plan with another party, and repeals the SAO authority to review a GCD to make a determination of whether a district is actively engaged in achieving the objectives of the district's management plan. No significant fiscal impact is anticipated as a result of these provisions.

**Local Government Impact**

According to the Bee Groundwater Conservation District, McMullen Groundwater Conservation District, San Patricio County Groundwater Conservation District, and the Live Oak Underground Water Conservation District, the bill would cost each district an estimated \$15,000.

**Source Agencies:** 304 Comptroller of Public Accounts, 580 Water Development Board

**LBB Staff:** UP, SZ, JJ, PM, JGA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 15, 2017**

**TO:** Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2377** by Larson (Relating to the development of brackish groundwater.), As  
**Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Texas Water Code to authorize a Groundwater Conservation District (GCD) located over any part of a designated brackish groundwater production zone to adopt rules to permit the withdrawal of brackish groundwater in a designated brackish groundwater production zone. Permits may be issued either for a municipal project to treat brackish groundwater to drinking water standards or for an electric generation project. The bill would require Texas Water Development Board (TWDB) review and comment on permit applications and to make recommendations. The bill would require TWDB to report on the impacts of brackish groundwater production in designated zones at the request of GCDs. The bill would also require TWDB to receive and review annual brackish groundwater production reports from GCDs. According to TWDB, the agency will need to process and maintain additional data in accordance with provisions of the bill, however, no significant fiscal impact is anticipated.

**Local Government Impact**

According to the Bee Groundwater Conservation District, McMullen Groundwater Conservation District, San Patricio County Groundwater Conservation District, and the Live Oak Underground Water Conservation District, the bill would cost each district an estimated \$15,000.

**Source Agencies:** 304 Comptroller of Public Accounts, 580 Water Development Board

**LBB Staff:** UP, SZ, JJ, PM, JGA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 17, 2017**

**TO:** Honorable Lyle Larson, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2377** by Larson (relating to the development of brackish groundwater.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Texas Water Code to authorize a Groundwater Conservation District (GCD) located over any part of a designated brackish groundwater production zone to adopt rules to permit the withdrawal of brackish groundwater in a designated brackish groundwater production zone. Permits may be issued either for a municipal project to treat brackish groundwater to drinking water standards or for an electric generation project. The bill would require Texas Water Development Board (TWDB) review and comment on permit applications and to make recommendations. The bill would require TWDB to report on the impacts of brackish groundwater production in designated zones at the request of GCDs. The bill would also require TWDB to receive and review annual brackish groundwater production reports from GCDs. According to TWDB, the agency will need to process and maintain additional data in accordance with provisions of the bill, however, no significant fiscal impact is anticipated.

**Local Government Impact**

According to the Bee Groundwater Conservation District, McMullen Groundwater Conservation District, San Patricio County Groundwater Conservation District, and the Live Oak Underground Water Conservation District, the bill would cost each district an estimated \$15,000.

**Source Agencies:** 304 Comptroller of Public Accounts, 580 Water Development Board

**LBB Staff:** UP, SZ, JJ, PM, JGA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 3, 2017**

**TO:** Honorable Lyle Larson, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2377** by Larson (Relating to the development of brackish groundwater.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Texas Water Code to require a Groundwater Conservation District (GCD) located over any part of a designated brackish groundwater production zone that is petitioned by a person with a legally defined interest in groundwater in the district to develop and adopt rules to permit withdrawal of brackish groundwater from a well in a designated brackish groundwater production zone for projects designed to treat brackish groundwater to drinking water standards. The GCD may request that the Texas Water Development Board (TWDB) investigate and issue a report on whether withdrawals are causing significant, unanticipated aquifer level declines in an adjacent freshwater aquifer or negative effects on water quality in an aquifer. According to TWDB, the agency will need to process and maintain additional data in accordance with provisions of the bill, however, no significant fiscal impact is anticipated.

**Local Government Impact**

According to the Southeast Texas Groundwater Conservation District, no fiscal impact to the District is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 580 Water Development Board

**LBB Staff:** UP, SZ, JJ, PM, JGA