

House Bill 2377
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

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

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

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

(b) A district located over any part of a designated brackish groundwater production zone may adopt rules to govern the issuance of permits for the completion and operation of a well for the withdrawal of brackish groundwater from a designated brackish groundwater production zone and shall adopt rules described by this subsection if the district receives a petition from a person with a legally defined interest in groundwater in the district. The district must adopt the rules not later than the

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180th day after the date the district receives the petition. Rules adopted under this subsection apply only to a permit for a project described by Subsection (c).

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

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

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

(d) The rules adopted must:

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

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

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

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

(5) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, require reasonable monitoring by the district of land elevations to determine if production from the project is causing or is likely to cause

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subsidence during the permit term;

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

(A) the amount of brackish groundwater withdrawn;

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

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

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

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

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

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

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

(4) a report that includes:

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

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

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

(f) The district shall submit the application to the development board and the development board shall conduct a technical review of the application. The development board shall submit a report of the review of the application that includes:

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

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

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

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

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

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

(3) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during

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the permit term.

(i) After receiving from the development board a report issued under Subsection (h) and after notice and hearing subject to Subchapter M, the district may:

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

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

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

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

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

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

No equivalent provision.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

SECTION __. Section 35.018(b), Water Code, is amended to read as follows:

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- (b) The report must include:
- (1) the names and locations of all priority groundwater management areas and districts created or attempted to be created on or after November 5, 1985, the effective date of Chapter 133 (H.B. No. 2), Acts of the 69th Legislature, Regular Session, 1985;
 - (2) the authority under which each priority groundwater management area and district was proposed for creation;
 - (3) a detailed analysis of each election held to confirm the creation of a district, including analysis of election results, possible reasons for the success or failure to confirm the creation of a district, and the possibility for future voter approval of districts in areas in which attempts to create districts failed;
 - (4) a detailed analysis of the activities of each district created, including those districts which are implementing management plans certified under Section 36.1072;
 - (5) a report on ~~audits performed on districts under Section 36.302 and~~ remedial actions taken under Section 36.303;
 - (6) recommendations for changes in this chapter and Chapter 36 that will facilitate the creation of priority groundwater management areas and the creation and operation of districts;
 - (7) a report on educational efforts in newly designated priority groundwater management areas; and
 - (8) any other information and recommendations that the commission considers relevant. [FA1]

No equivalent provision.

SECTION __. Section 36.061(b), Water Code, is amended to read as follows:

(b) The state auditor may conduct a financial audit ~~[the records]~~ of any district if the state auditor determines that the audit is necessary. [FA1]

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SECTION __. Section 36.1072(f), Water Code, is amended to read as follows:

(f) If the executive administrator does not approve the district's management plan, the executive administrator shall provide to the district, in writing, the reasons for the action. Not later than the 180th day after the date a district receives notice that its management plan has not been approved, the district may submit a revised management plan for review and approval. The executive administrator's decision may be appealed to the development board. If the development board decides not to approve the district's management plan on appeal, the district may request that the conflict be mediated. The district and the board may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the parties do not resolve the conflict through mediation, the decision of the development board not to approve the district's management plan may be appealed to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo. The commission shall not take enforcement action against a district under Subchapter I until the latest of the expiration of the 180-day period, the date the development board has taken final action withholding approval of a revised management plan, the date the mediation is completed, or the date a final judgment upholding the board's decision is entered by a district court.

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An enforcement action may not be taken against a district by the commission [~~or the state auditor~~] under Subchapter I because the district's management plan and the approved regional water plan are in conflict while the parties are attempting to resolve the conflict before the development board, in mediation, or in court. Rules of the district continue in full force and effect until all appeals under this subsection have been exhausted and the final judgment is adverse to the district. [FA1]

No equivalent provision.

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

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

- (1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;
- (2) the proposed use of water unreasonably affects:
 - (A) existing groundwater and surface water resources; [or]
 - (B) existing permit holders; or
 - (C) registered wells that are exempt from the requirement to obtain a permit under this chapter or district rules;
- (3) the proposed use of water is dedicated to any beneficial use;
- (4) the proposed use of water is consistent with the district's approved management plan;
- (5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond,

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lake, or reservoir to enhance the appearance of the landscape;
(6) the applicant has agreed to avoid waste and achieve water conservation; and
(7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.
(d-1) The district's consideration of the effect the proposed use of water has on a registered well described by Subsection (d)(2)(C) does not affect the registered well's permit exemption under this chapter or district rules. [FA1]

No equivalent provision.

SECTION __. Section 36.303(a), Water Code, is amended to read as follows:
(a) If Section 36.301 or [;] 36.3011 [~~or 36.302(f)~~] applies, the commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the commission considers appropriate, including:
(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;
(2) dissolving the board in accordance with Sections 36.305 and 36.307 and calling an election for the purpose of electing a new board;
(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the groundwater conservation district; or
(4) dissolving the district in accordance with Sections 36.304, 36.305, and 36.308. [FA1]

No equivalent provision.

SECTION __. Section 36.302, Water Code, is repealed.
[FA1]