

A BILL TO BE ENTITLED

AN ACT

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

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

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

(6-a) "Landowner" means:

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

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

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

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

Sec. 36.0011. FINDINGS. The legislature finds that the conservation, preservation, use, and development of groundwater resources in this state are compelling public interests vital to public safety, welfare, and economic progress. In this chapter, the legislature has recognized that the implementation of long-term

1 aquifer management strategies developed by local groundwater  
2 conservation districts and subsidence districts to address the  
3 diverse characteristics that distinguish the many groundwater  
4 aquifers in this state is essential to implement Section 59,  
5 Article XVI, Texas Constitution, and to protect the landowner's  
6 ownership interest in the groundwater below the surface.

7 SECTION 3. Section 36.002, Water Code, is amended to read as  
8 follows:

9 Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The  
10 legislature recognizes that a landowner has a vested ownership  
11 interest in groundwater below the surface as an interest in the  
12 landowner's real property.

13 (b) The vested ownership interest described by this  
14 section:

15 (1) entitles the landowner to a fair chance to produce  
16 the groundwater below the surface of real property, subject to  
17 Subsection (d), without causing waste or malicious drainage of  
18 other properties or negligently causing subsidence, but does not  
19 entitle a landowner to the right to capture a specific amount of  
20 groundwater below the surface; and

21 (2) does not affect the existence of common law  
22 defenses or other defenses to liability under the rule of capture.

23 (c) Nothing [~~The ownership and rights of the owners of the~~  
24 ~~land and their lessees and assigns in groundwater are hereby~~  
25 ~~recognized, and nothing~~] in this code shall be construed as  
26 depriving or divesting a landowner [~~the owners or their lessees and~~  
27 ~~assigns~~] of the ownership interest [~~or rights, except as those~~

1 ~~rights may be limited or altered by rules promulgated by a~~  
2 ~~district].~~

3 (d) Nothing in this section shall be construed to:

4 (1) prohibit a district from promulgating a rule to  
5 limit the exercise of the right of the landowner to produce  
6 groundwater;

7 (2) prohibit a district from limiting or prohibiting  
8 the drilling of a well by a landowner for failure or inability to  
9 comply with minimum well spacing or tract size requirements adopted  
10 by the district;

11 (3) affect the ability of a district to regulate  
12 groundwater production as authorized under Section 36.113, 36.116,  
13 or 36.122 or otherwise under this chapter or a special law governing  
14 a district; or

15 (4) require that rules or regulations adopted by a  
16 district must allocate to each landowner a proportionate share of  
17 available groundwater for production from the aquifer based on the  
18 number of acres owned by the landowner.

19 (e) A rule promulgated by a district may not discriminate  
20 between owners of land that is irrigated for production and  
21 landowners ~~[owners of land or their lessees and assigns]~~ whose land  
22 that was irrigated for production is enrolled or participating in a  
23 federal conservation program.

24 SECTION 4. Section 36.101, Water Code, is amended by  
25 amending Subsection (a) and adding Subsection (a-1) to read as  
26 follows:

27 (a) A district may make and enforce rules, including rules

1 limiting groundwater production based on tract size or the spacing  
2 of wells, to provide for conserving, preserving, protecting, and  
3 recharging of the groundwater or of a groundwater reservoir or its  
4 subdivisions in order to control subsidence, prevent degradation of  
5 water quality, or prevent waste of groundwater and to carry out the  
6 powers and duties provided by this chapter. In adopting a rule  
7 under this chapter, a district [~~During the rulemaking process the~~  
8 ~~board~~] shall:

9           (1) consider all groundwater uses and needs;

10           (2) [and shall] develop rules that [which] are fair  
11 and impartial;

12           (3) consider the vested ownership interest described  
13 by Section 36.002;

14           (4) consider the public interest in conservation,  
15 preservation, protection, recharging, and prevention of waste of  
16 groundwater, and of groundwater reservoirs or their subdivisions,  
17 and in controlling subsidence caused by withdrawal of water from  
18 those groundwater reservoirs or their subdivisions, consistent  
19 with the objectives of Section 59, Article XVI, Texas Constitution;

20           (5) consider the goals developed as part of the  
21 district's comprehensive management plan under Section 36.1071;  
22 and

23           (6) [and that do] not discriminate between land that  
24 is irrigated for production and land that was irrigated for  
25 production and enrolled or participating in a federal conservation  
26 program.

27           (a-1) Any rule of a district that discriminates between land

1 that is irrigated for production and land that was irrigated for  
2 production and enrolled or participating in a federal conservation  
3 program is void.

4 SECTION 5. Subsection (c), Section 36.108, Water Code, is  
5 amended to read as follows:

6 (c) The presiding officer, or the presiding officer's  
7 designee, of each district located in whole or in part in the  
8 management area shall meet at least annually to conduct joint  
9 planning with the other districts in the management area and to  
10 review the management plans and accomplishments for the management  
11 area. In reviewing the management plans, the districts shall  
12 consider:

13 (1) the goals of each management plan and its impact on  
14 planning throughout the management area;

15 (2) the effectiveness of the measures established by  
16 each management plan for conserving and protecting groundwater,  
17 ~~and~~ preventing waste, and considering the vested ownership  
18 interest described by Section 36.002, and the effectiveness of  
19 these measures in the management area generally;

20 (3) any other matters that the boards consider  
21 relevant to the protection and conservation of groundwater and the  
22 prevention of waste in the management area; and

23 (4) the degree to which each management plan achieves  
24 the desired future conditions established during the joint planning  
25 process.

26 SECTION 6. This Act takes effect September 1, 2011.