

By: Fraser, et al.  
(Ritter)

S.B. No. 332

Substitute the following for S.B. No. 332:

By: Miller of Comal

C.S.S.B. No. 332

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the ownership of groundwater below the surface of land,  
3 the right to produce that groundwater, and the management of  
4 groundwater in this state.

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

6 SECTION 1. Section 36.002, Water Code, is amended to read as  
7 follows:

8 Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The  
9 legislature recognizes that a landowner owns the groundwater below  
10 the surface of the landowner's land as real property.

11 (b) The groundwater ownership and rights described by this  
12 section:

13 (1) entitle the landowner, including a landowner's  
14 lessees, heirs, or assigns, to drill for and produce the  
15 groundwater below the surface of real property, subject to  
16 Subsection (d), without causing waste or malicious drainage of  
17 other property or negligently causing subsidence, but does not  
18 entitle a landowner, including a landowner's lessees, heirs, or  
19 assigns, to the right to capture a specific amount of groundwater  
20 below the surface of his land; and

21 (2) do not affect the existence of common law defenses  
22 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~~

1 ~~recognized, and nothing]~~ in this code shall be construed as  
2 granting the authority to deprive [~~depriving~~] or divest a  
3 landowner, including a landowner's lessees, heirs, or assigns,  
4 [~~divesting the owners or their lessees and assigns~~] of the  
5 groundwater ownership and rights described by this section [~~or~~  
6 ~~rights, except as those rights may be limited or altered by rules~~  
7 ~~promulgated by a district~~].

8 (d) This section does not:

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

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

17 (3) require that a rule adopted by a district allocate  
18 to each landowner a proportionate share of available groundwater  
19 for production from the aquifer based on the number of acres owned  
20 by the landowner [~~A rule promulgated by a district may not~~  
21 ~~discriminate between owners of land that is irrigated for~~  
22 ~~production and owners of land or their lessees and assigns whose~~  
23 ~~land that was irrigated for production is enrolled or participating~~  
24 ~~in a federal conservation program~~].

25 (e) This section does not affect the ability to regulate  
26 groundwater in any manner authorized under:

27 (1) Chapter 626, Acts of the 73rd Legislature, Regular

1 Session, 1993, for the Edwards Aquifer Authority;

2 (2) Chapter 8801, Special District Local Laws Code,  
3 for the Harris-Galveston Coastal Subsidence District; and

4 (3) Chapter 8834, Special District Local Laws Code,  
5 for the Fort Bend Subsidence District.

6 SECTION 2. Section 36.101, Water Code, is amended by  
7 amending Subsection (a) and adding Subsection (a-1) to read as  
8 follows:

9 (a) A district may make and enforce rules, including rules  
10 limiting groundwater production based on tract size or the spacing  
11 of wells, to provide for conserving, preserving, protecting, and  
12 recharging of the groundwater or of a groundwater reservoir or its  
13 subdivisions in order to control subsidence, prevent degradation of  
14 water quality, or prevent waste of groundwater and to carry out the  
15 powers and duties provided by this chapter. In adopting a rule under  
16 this chapter, a district [~~During the rulemaking process the board~~]  
17 shall:

18 (1) consider all groundwater uses and needs;

19 (2) [~~and shall~~] develop rules that [~~which~~] are fair  
20 and impartial;

21 (3) consider the groundwater ownership and rights  
22 described by Section 36.002;

23 (4) consider the public interest in conservation,  
24 preservation, protection, recharging, and prevention of waste of  
25 groundwater, and of groundwater reservoirs or their subdivisions,  
26 and in controlling subsidence caused by withdrawal of water from  
27 those groundwater reservoirs or their subdivisions, consistent

1 with the objectives of Section 59, Article XVI, Texas Constitution;  
2 (5) consider the goals developed as part of the  
3 district's comprehensive management plan under Section 36.1071;  
4 and

5 (6) [~~and that do~~] not discriminate between land that  
6 is irrigated for production and land that was irrigated for  
7 production and enrolled or participating in a federal conservation  
8 program.

9 (a-1) Any rule of a district that discriminates between land  
10 that is irrigated for production and land that was irrigated for  
11 production and enrolled or participating in a federal conservation  
12 program is void.

13 SECTION 3. This Act takes effect September 1, 2011.