

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 332  
By: Fraser  
Natural Resources  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 1904 the Texas Supreme Court in *Houston & TC Railway Company v. East* established the rule of capture in Texas. The supreme court ruled that a landowner has an ownership interest in the groundwater beneath their property. This ownership gives the landowner the right to capture the groundwater without being held liable for damage to others. Groundwater Conservation Districts (GCDs) were created by the Texas Legislature to be the preferred method of groundwater management. They are charged with the task of protecting and conserving groundwater resources. Recently, landowners' interest in groundwater below the surface has come into question in the courts. The argument being made by some GCDs is that the landowner does not have an interest in the water below the surface until they capture it.

This bill clearly defines that a property owner has a vested ownership interest in, and the right to produce, the groundwater below the surface of their property.

As proposed, S.B. 332 amends current law relating to the vested ownership interest in groundwater beneath the surface and the right to produce that groundwater.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state office, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.002, Water Code, as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) Provides that a landowner, or the landowner's lessee or assign, has a vested ownership interest in and right to produce groundwater below the surface of the landowner's real property, and nothing in this code may be construed as granting the authority to deprive or divest a landowner or the landowner's lessee or assign of the ownership interest in the groundwater or the right to produce groundwater, except as those rights and interests may be reasonably limited by rules promulgated by a district, rather than provides that the ownership and rights of the owners of the land and their lessees and assigns, in groundwater are hereby recognized and nothing in this code shall be construed as divesting the owners or their lessee and assigns of the ownership rights, except as those rights may be limited or altered.

(b) Prohibits a rule promulgated by a district from discriminating between an owner of land, or the owner's lessee or assign, whose land is irrigated for production and an owner of land, or the owner's lessee or assign, rather than owners lessees and assigns, whose land was previously irrigated for production and is now enrolled or participating in a federal conservation program. Makes nonsubstantive and conforming changes.

SECTION 2. Amends Section 36.101, Water Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the board of directors of a district, during the rulemaking process, to consider all groundwater uses and needs, consider the rights and interests under Section 36.002, and develop rules which are fair and impartial and that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program. Makes nonsubstantive changes.

(a-1) Creates this section from existing text. Makes no further changes.

SECTION 3. Amends Section 36.108(c), Water Code, as follows:

(c) Requires the districts, in reviewing the management plans, to consider certain factors, including the effectiveness of the measures established by each management plan for conserving and protecting groundwater, preventing waste, and protecting the rights and interests under Section 36.002, and the effectiveness of these measurements in the management area generally.

SECTION 4. Provides that the changes in law made by this Act apply only to a rule by a groundwater conservation district on or after the effective date of this Act or to a permit issued or application filed pursuant to a rule adopted on or after the effective date of this Act.

SECTION 5. Effective date: upon passage or September 1, 2011.