

## **BILL ANALYSIS**

Senate Research Center  
2011S0821-1

C.S.S.B. 332  
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Natural Resources  
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Committee Report (Substituted)

### **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.

C.S.S.B. 332 amends current law 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.

### **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 36.001, Water Code, by adding Subdivision (6-a), to define "landowner" in this section.

SECTION 2. Amends Subchapter A, Chapter 36, Water Code, by adding Section 36.0011, as follows:

Sec. 36.0011. FINDINGS. Provides that 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. Provides that, in this chapter, the legislature has recognized that the implementation of long-term aquifer management strategies developed by local groundwater conservation districts and subsidence districts to address the diverse characteristics that distinguish the many groundwater aquifers in this state is essential to implement Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution, and to protect the landowner's ownership interest in the groundwater below the surface.

SECTION 3. Amends Section 36.002, Water Code, as follows:

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

(b) Provides that the vested ownership interest describe by this section:

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

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

(c) Requires that nothing in this code to be construed as depriving or divesting a landowner of the ownership interest. Deletes existing text providing 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 is to be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district.

(d) Requires that nothing in this section be construed to:

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

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

(3) affect the ability of a district to regulate groundwater production as authorized under Section 36.113 (Permits for Wells; Permit Amendments), 36.116 (Regulation of Spacing and Production), or 36.122 (Transfer of Groundwater Out of District) or otherwise under this chapter or a special law governing a district; or

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

(e) Prohibits a rule promulgated by a district from discriminating between owners of land that is irrigated for production and landowners, rather than owners of land or their lessees and assigns, whose land was previously irrigated for production and is now enrolled or participating in a federal conservation program.

SECTION 4. Amends Section 36.101, Water Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes a district to make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. Requires a district, in adopting a rule under this chapter, rather than requiring the board during the rulemaking process, to:

(1) consider all groundwater uses and needs;

(2) develop rules that are fair and impartial;

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

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

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

(6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participation in a federal conservation program.

Makes nonsubstantive changes.

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

SECTION 5. Amends Section 36.108(c), Water Code, as follows:

(c) Requires the presiding officer, or the presiding officer's designee, of each district located in whole or in part in the management area to meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans and accomplishments for the management area. 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 considering the vested ownership interest described by Section 36.002, and the effectiveness of these measures in the management area generally.

SECTION 6. Effective date: September 1, 2011.