

BILL ANALYSIS

Senate Research Center

H.B. 200
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Agriculture, Water & Rural Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 200: (i) clarifies vested property rights in the ownership of groundwater, (ii) ensures "loser pay" provisions apply to suits challenging groundwater districts, (iii) establishes science as the determining factor for establishing a desired future condition, (iv) maintains the development process and timelines of desired future conditions as a planning tool for the continued local regulation of groundwater resources by groundwater districts, (v) establishes an appeal process for affected persons to challenge the reasonableness of desired future conditions, (vi) provides a mediation period where parties may reach agreement before proceeding through the administrative process, and (vii) develops an administrative hearing process for parties in order to develop findings of fact and conclusions of law.

H.B. 200 amends current law relating to the regulation of groundwater.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Committee (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.0015, Water Code, as follows:

Sec. 36.0015. PURPOSE. (a) Defines "best available science."

(b) Creates this subsection from existing text. Authorizes groundwater conservation districts to be created as provided by this chapter in order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59 (Conservation and Development of Natural Resources and Parks And Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution. Provides that groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the development and conservation of groundwater to meet the needs of this state, and use the best available science in the development and conservation of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

SECTION 2. Amends Section 36.066, Water Code, by amending Subsection (g) and adding Subsection (h), as follows:

(g) Authorizes the district to seek and requires the court to grant, in the interests of justice and as provided by Subsection (h), in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court if the district prevails in any suit other than a suit in which it voluntarily intervenes. Requires the amount of the attorney's fees to be fixed by the court if the district prevails in any suit other than a suit in which it voluntarily intervenes.

(h) Authorizes the court to award attorney's fees and costs only for those issues on which the district prevails if the district prevails on some, but not all, of the issues in the suit. Provides that the district has the burden of segregating the attorney's fees and costs in order for the court to make an award.

SECTION 3. Amends Section 36.108(d-1), Water Code, as follows:

(d-1) Authorizes the districts, after considering and documenting the factors described by Subsection (d) (relating to groundwater availability models) and other relevant scientific and hydrogeological data, to establish different desired future conditions for:

- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
- (2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

SECTION 4. Amends Section 36.1083, Water Code, by amending Subsections (a) and (b) and adding Subsections (e) through (r), as follows:

(a) Defines "affected person," "development board," and "office."

(b) Authorizes an affected person to file a petition with the district requiring that the district contract with the office to conduct a hearing appealing the reasonableness of the desired future condition not later than the 120th day after the date on which a district adopts a desired future condition under Section 36.108(d-4) (relating to the district adopting the desired future conditions in the resolution and report). Requires that the petition provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.

Deletes existing text authorizing a person with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area to file a petition with the Texas Water Development Board (TWDB) appealing the approval of the desired future conditions of the groundwater resources established under this section.

(e) Requires the district to submit a copy of the petition to TWDB not later than the 10th day after receiving a petition described by Subsection (b). Requires TWDB, on receipt of the petition, to conduct:

- (1) an administrative review to determine whether the desired future condition established by the district meets the criteria in Section 36.108(d); and
- (2) a study containing scientific and technical analysis of the desired future condition, including consideration of the criteria set forth in this subdivision.

(f) Requires TWDB to complete and deliver to the State Office of Administrative Hearings (SOAH) a study described by Subsection (e)(2) not later than the 120th day after the date TWDB receives a copy of the petition.

- (g) Provides that, for the purposes of a hearing conducted under Subsection (b):
- (1) SOAH shall consider the study described by Subsection (e)(2) to be part of the administrative record; and
 - (2) TWDB shall make available relevant staff as expert witnesses if requested by SOAH or a party to the hearing.
- (h) Requires a district, not later than the 60th day after receiving a petition under Subsection (b), to:
- (1) contract with SOAH to conduct the contested case hearing requested under Subsection (b); and
 - (2) submit to SOAH a copy of any petitions related to the hearing requested under Subsection (b) and received by the district.
- (i) Requires a hearing under Subsection (b) to be held:
- (1) at a location described by Section 36.403(c) (relating to the scheduling of a hearing); and
 - (2) in accordance with Chapter 2001 (Administrative Procedure), Government Code, and the rules of SOAH.
- (j) Authorizes a district, during the period between the filing of the petition and the delivery of the study described by Subsection (e)(2), to seek the assistance of the Center for Public Policy Dispute Resolution, TWDB, or another alternative dispute resolution system to mediate the issues raised in the petition. Provides that, if the district and the petitioner cannot resolve the issues raised in the petition, SOAH will proceed with a hearing as described by this section.
- (k) Authorizes a district to adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of SOAH. Requires the district, in accordance with rules adopted by the district and SOAH, to provide the notices set forth in this subsection.
- (l) Requires SOAH, before a hearing conducted under this section, to hold a prehearing conference to determine preliminary matters, including:
- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
 - (2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
 - (3) which affected persons shall be named as parties to the hearing.
- (m) Requires the petitioner to pay the costs associated with the contract for the hearing under this section. Requires the petitioner to deposit with the district an amount sufficient to pay the contract amount before the hearing begins. Authorizes SOAH to assess costs to one or more of the parties participating in the hearing and requires the district to refund any excess money to the petitioner after the hearing. Requires SOAH to consider the information set forth in this subsection in apportioning costs of the hearing.
- (n) Requires the district, on receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. Authorizes the district to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an

order issued by the administrative law judge, as provided by Section 2001.058(e) (relating to a state agency changing a finding of fact or conclusion of law), Government Code.

(o) Requires a district to issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law if the district vacates or modifies the proposal for decision. Requires that the report provide the policy, scientific, and technical justifications for the district's decision.

(p) Requires the districts in the same management area as the district that participated in the hearing to reconvene in a joint planning meeting not later than the 30th day after the date of the final order for the purpose of revising the desired future condition if the district in its final order finds that a desired future condition is unreasonable.

(q) Provides that a final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.

(r) Authorizes the administrative law judge to consolidate hearings requested under this section that affect two or more districts. Requires the administrative law judge to prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 5. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.10835, as follows:

Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS. (a) Authorizes a final district order issued under Section 36.1083 (Appeal of Desired Future Conditions) to be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. Requires that an appeal under this subsection be filed with the district court not later than the 45th day after the date the district issues the final order. Requires that the case be decided under the substantial evidence standard of review as provided by Section 2001.174 (Review Under Substantial Evidence Rule or Undefined Scope of Review), Government Code. Requires the court to strike the desired future condition and order the districts in the same management area as the district that did not participate as a party in the hearing to reconvene in a joint planning meeting not later than the 30th day after the date of the court order for the purpose of revising the desired future condition if the court finds that a desired future condition is unreasonable.

(b) Provides that a court's finding under this section does not apply to a desired future condition that is not a matter before the court.

SECTION 6. Repealers: Sections 36.1083(c) (relating to TWDB review and hearing) and (d) (relating to the districts' revised plan in accordance with TWDB), Water Code.

SECTION 7. Provides that Section 36.1083, Water Code, as amended by this Act, and Section 36.10835, Water Code, as added by this Act, apply only to a desired future condition adopted by a groundwater conservation district on or after the effective date of this Act. Provides that a desired future condition adopted before that date is governed by the law in effect on the date the desired future condition was adopted, and the former law is continued in effect for that purpose.

SECTION 8. Effective date: September 1, 2015.