

BILL ANALYSIS

Senate Research Center

S.B. 1053
By: Perry
Agriculture, Water & Rural Affairs
3/30/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, if an affected person wants to challenge groundwater conservation districts (GCDs) on the adoption of desired future conditions (DFC), they must petition the State Office of Administrative Hearings (SOAH) for a hearing on the reasonableness of the DFC. SOAH hearing can be a lengthy and costly process, and ultimately results in the issuance of a proposal for decision including findings of fact and conclusions of law, which are non-binding. These findings of fact and conclusions of law are then presented to the GCDs, which have the option to amend the findings of fact or conclusions of law, or modify or vacate the proposal for decision altogether. For the petitioner, their next available remedy is to appeal the GCD's final order to district court, where the court must apply a "substantial evidence" standard of review to the proceeding. Substantial evidence sets a very high bar for the petitioner to overcome in such proceedings, and heavily favors the defending entity.

S.B. 1053 removes the requirement that affected parties must first petition SOAH for an appeal of a DFC, and instead allows them to go straight to district court. This will save time and money for petitioners by removing an unnecessary, costly, and non-binding step in the process of appealing a DFC.

As proposed, S.B. 1053 amends current law relating to an appeal of a desired future condition in a groundwater management area.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a groundwater conservation district is rescinded in SECTION 2 (Section 36.1083, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.10835, Water Code, as follows:

Sec. 36.10835. New heading: JUDICIAL APPEAL OF DESIRED FUTURE CONDITION. (a) Defines "affected person," "development board," and "district."

(b) Authorizes a district's adoption of a desired future condition (DFC) under Section 36.108(d-4) (relating to a district's adoption of the DFCs in a resolution and report) to be appealed by an affected person to a district court with jurisdiction over any part of the territory of the district. Requires an appeal to be filed with the district court not later than the 120th day after the date of the adoption. Requires the pleadings to provide evidence that the DFC adopted by the districts was unreasonable.

(c) Requires the district, not later than the 10th day after receiving notice of the appeal, to submit a copy of the pleadings to the Texas Water Development Board (TWDB). Requires TWDB, on receipt of the pleadings, to conduct a certain administrative review and study.

(d) Requires TWDB, not later than the 120th day after the date of receiving a copy of the pleadings, to complete and deliver to the court the review and study

required by Subsection (c). Requires TWDB to make available relevant staff as expert witnesses if requested by the court.

(e) Creates this subsection from existing text. Requires the court, if the court finds a DFC unreasonable, to strike the DFC and order the districts in the same management area as the district that was a party to the appeal, rather than the district that received the petition, to reconvene not later than a certain day in a joint planning meeting for the purpose of revising the DFC. Makes a conforming change.

(f) Redesignates existing Subsection (b) as Subsection (f). Makes no further changes to this subsection.

SECTION 2. Repealer: Section 36.1083 (Appeal of Desired Future Conditions), Water Code.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.