

By: Springer

S.B. No. 638

A BILL TO BE ENTITLED

AN ACT

relating to the governance and decision-making of groundwater conservation districts in contested cases.

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

Section 1. Texas Water Code Sec. 36.0015, subsection (b), is amended as follows:

(b) 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, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. 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 conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules and procedures developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

Section 2. Texas Water Code Sec. 36.003 is added as follows:

36.003. IMPORTANCE OF GROUNDWATER TO THE STATE'S

1 ECONOMIC GROWTH. The legislature recognizes that timely decisions
2 regarding production and transport of private groundwater are
3 essential to the state's continued economic development. Delays in
4 such decisions substantially increase uncertainty and expense, and
5 thereby have a detrimental impact on the state's ability to
6 competitively attract businesses. Accordingly, districts should
7 ensure timely decisions in accordance with the procedures set forth
8 in this chapter.

9 Section 3. Texas Water Code Sec. 36.051 is amended by adding
10 subsection (c-1) as follows:

11 (c-1) A director who has been recused from voting on more
12 than one application for a permit or permit amendment or fails to
13 attend meetings two consecutive meetings of the district board
14 shall be disqualified from further service on the Board. The
15 resulting vacant position shall be filled as provided by this
16 chapter or as prescribed by the district's enabling legislation.

17 Section 4. Texas Water Code Sec. 36.053 is amended as
18 follows:

19 (a) A majority of the membership of the board constitutes a
20 quorum for any meeting, and a concurrence of a majority of the
21 entire membership of the board is sufficient for transacting any
22 business of the district, except as provided by subsection (b).

23 (b) For purposes of reaching a final decision on a permit or
24 permit amendment application, any board member who is recused from
25 voting or fails to attend shall not count towards the quorum or
26 majority requirements set forth in subsection (a).

27 Section 5. Texas Water Code Sec. 36.409 is amended as

1 follows:

2 The presiding officer may continue a hearing from time to
3 time and from place to place without providing notice under Section
4 36.404; however, in no event shall such continuance exceed the time
5 limits prescribed for issuance of a final decision as set forth in
6 Section 36.4165. If the presiding officer continues a hearing
7 without announcing at the hearing the time, date, and location of
8 the continued hearing, the presiding officer must provide notice of
9 the continued hearing by regular mail to the parties.

10 Section 6. Texas Water Code Sec. 36.412 is amended as
11 follows:

12 (a) An applicant in a contested or uncontested hearing on an
13 application or a party to a contested hearing may administratively
14 appeal a decision of the board on a permit or permit amendment
15 application. Except for decisions by the board under Section
16 36.4165, a party seeking to appeal a decision by the board must
17 request ~~by requesting~~ written findings and conclusions not later
18 than the 20th day after the date of the board's decision.

19 (b) On receipt of a timely written request required by
20 subsection (a), the board shall make written findings and
21 conclusions regarding a decision of the board on a permit or permit
22 amendment application. The board shall provide certified copies of
23 the findings and conclusions to the person who requested them, and
24 to each designated party, not later than the 35th day after the date
25 the board receives the request.

26 (c) A party to a contested hearing may request a rehearing
27 not later than the 20th day after the date the board issues the

findings and conclusions.

(~~d~~e) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.

(~~e~~a) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(~~f~~e) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

Section 7. Texas Water Code Sec. 36.413 is amended as follows:

(a) A decision by the board on a permit or permit amendment application is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

(A) the board denies the request for rehearing;
or

(B) the board renders a written decision after rehearing, or

(3) as provided by section 36.4165(e).

(b) Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the district under Section 36.251 to appeal a decision on a permit or permit

1 amendment application not later than the 60th day after the date on
2 which the decision becomes final.

3 (c) An applicant or a party to a contested hearing may not
4 file suit against the district under Section 36.251 if a request for
5 rehearing was not filed on time unless no such request is required
6 under section 36.4165(e).

7 Section 8. Texas Water Code Sec. 36.4165 is amended as
8 follows:

9 (a) In a proceeding for a permit application or amendment in
10 which a district has contracted with the State Office of
11 Administrative Hearings for a contested case hearing, the board has
12 the authority to make a final decision on consideration of a
13 proposal for decision issued by an administrative law judge.

14 (b) A board may change a finding of fact or conclusion of law
15 made by the administrative law judge, or may vacate or modify an
16 order issued by the administrative judge, only if the board
17 determines:

18 (1) that the administrative law judge did not properly
19 apply or interpret applicable law, district rules, written policies
20 provided under Section 36.416(e), or prior administrative
21 decisions;

22 (2) that a prior administrative decision on which the
23 administrative law judge relied is incorrect or should be changed;
24 or

25 (3) that a technical error in a finding of fact should
26 be changed.

27 (c) The final decision issued by the district under this

section must be in writing and shall either adopt the proposed findings of fact and conclusions of law as proposed by the administrative law judge or include revised findings of fact and conclusions of law consistent with subsection (b). No request for findings of fact or conclusions of law from a party is required under this section.

(d) Notwithstanding any other timelines provided in this chapter, and unless otherwise agreed to by the applicant, a district must issue its final decision under this section no later than 180 days after receipt of the proposal for decision, including final disposition of all motions for rehearing.

(e) If the administrative law judge recommends granting one or more permits, and the district fails to issue its final decision as required by subsection (d) for any reason, the district shall be deemed to have adopted the recommendations of the administrative law judge as a final order.

(f) A decision under (e) is final and appealable immediately and not subject to a motion for rehearing.

Section 9. STATUTORY INTERPRETATION. If there is a conflict between this Act and the enabling act of a groundwater conservation district or any other deadlines established by Chapter 36, this Act controls.

Section 10. (a) The changes in law made by this Act apply to any permit application that is filed with a district on or after the effective date of this Act and any permit application pending before a district for which a proposal for decision not yet been issued.

1 (b) Any proposal for decision that has been pending before a
2 district for more than 180 days on the effective date and for which
3 the administrative law judge recommends granting one or more
4 permits, shall be deemed adopted as a final order subject to
5 immediate appeal and not subject to a motion for rehearing.

6 Section 11. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2023.