

## **BILL ANALYSIS**

C.S.H.B. 1379  
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Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Chapter 36, Water Code, authorizes a groundwater conservation district to adopt rules and issue permits related to the regulation and management of groundwater resources located within its boundaries. Although Chapter 36 sets forth a requirement that rules be adopted only after notice and hearing, as well as makes a reference to a hearings process for permit applications, the statute is silent on most aspects of the exact nature of the notice and hearings process that districts should utilize in rulemaking and permit consideration. Because groundwater conservation districts are not subject to the Administrative Procedures Act, it is necessary to clarify and prescribe the notice and hearings process to be utilized by the districts. It is also necessary to clarify that, where appropriate, groundwater conservation districts may utilize alternative dispute resolution (ADR) procedures in the permitting process in order to facilitate resolution of conflicts and minimize costs for both the district and parties to a permit hearing. This bill sets forth uniform procedures to be utilized by groundwater conservation districts regarding the notice and hearings process for both rulemaking hearings and permit application hearings and clarifies that districts may utilize ADR procedures.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. C.S.H.B. 1379 amends 36.101(b), Water Code, and adds Subsections (d), (e), and (f) to provide specific notice and hearing requirements for districts engaged in a rulemaking process.

SECTION 2. C.S.H.B. 1379 amends 36.113, Water Code, to authorize a district to provide approval of permit amendments and to require permit amendments to undergo the application process established for permits. The bill provides a district shall consider specific factors before taking action to grant or deny a permit amendment. The bill provides a district may impose more restrictive permit conditions on permit amendments to increase use by historic users if the limitations meet specific requirements. The bill provides permit amendments may be subject to rules of a district and subject to terms and provisions that include the operation of, or production of groundwater from, wells and many other responsibilities of a district.

C.S.H.B. 1379 amends 36.114 to authorize a district to establish a rulemaking process to regulate permit and permit amendments. The bill provides that a district by rule shall determine the activities for which a permit or permit amendment is required and whether a hearing on permits or permit amendments is required. The bill provides a time line for district action for applications that do not receive a hearing and the actions that can be taken by applicants. The bill provides a time line for district action for applications that receive a hearing or hearings.

SECTION 3. C.S.H.B. 1379 amends Chapter 36, Water Code, by adding Section 36.3705 to define "applicant."

SECTION 4. C.S.H.B. 1379 amends Chapter 36, Water Code, by adding Subchapter M as follows:

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS; NOTICE  
AND HEARING PROCESS

Sec. 36.401. DEFINITIONS. C.S.H.B. 1379 defines "applicant."

Sec. 36.402. APPLICABILITY. C.S.H.B. 1379 provides that this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

Sec. 36.403. SCHEDULING OF HEARING. The bill provides that the general manager or board of a district shall schedule a hearing on permit or permit amendment applications as necessary as provided by Section 36.114 and provides the requirements and options that a district has when scheduling and conducting a hearing.

Sec. 36.404. NOTICE. The bill provides that notice of each permit or permit amendment hearing shall be given. The bill provides the content requirements for notice and time and location requirements for notice to be given.

Sec. 36.405. HEARING REGISTRATION. The bill provides that a district may require submission of a hearing registration form and the requirements for the hearing registration form.

Sec. 36.406. HEARING PROCEDURES. The bill provides that a hearing must be conducted according to procedures that specify the participants and the roles and duties of the participants in a hearing. Provides the guidelines by which evidence and testimony may be presented or limited at a hearing and the means to supplement testimony. Provides that a presiding officer, if stated in district rules, may refer parties to a contested application hearing to an alternative dispute resolution procedure and may determine how costs are apportioned among the parties for the procedure.

Sec. 36.407. EVIDENCE. The bill provides the presiding officer of a hearing shall admit relevant evidence and may exclude irrelevant, immaterial or unduly repetitious evidence.

Sec. 36.408. RECORDING. The bill provides the presiding officer is required to prepare and keep a record of each hearing and assess costs associated with producing the transcript to one or more parties.

Sec. 36.409. CONTINUANCE. The bill provides the process that a presiding officer must follow to continue a hearing.

Sec. 36.410. REPORT. The bill provides the procedure the presiding officer must follow to submit a report on the hearing to the board and the contents required for the report. The bill provides the presiding officer or general manager shall mail a report to each person who requested the report under subsection (c).

Sec. 36.411. BOARD ACTION. The bill provides the time line for board action on the permit or permit amendment application.

Sec. 36.412. REQUEST FOR REHEARING. The bill provides the procedure for a rehearing and the actions of an applicant necessary to appeal a decision and request a rehearing on the board's decision. The bill provides a time line of board action on an appeal and a request for rehearing.

Sec. 36.413. DECISION; WHEN FINAL. The bill provides the scenarios when a decision by the board in a permit or permit amendment application hearing is final.

Sec. 36.414. ADDITIONAL PROCEDURES. The bill provides that a district may adopt additional rules to implement this subchapter. The bill provides that a district may adopt notice and hearing procedures in addition to this subchapter.

Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. The bill provides that this subchapter does not apply to hearings conducted by the State Office of Administrative Hearings. The bill provides that if a district contracts with the State Office of Administrative Hearings then the district shall use the State Office of Administrative Hearing's rules.

Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. The bill provides that a district may, by rule, develop and use alternative dispute resolution procedures in the manner provided under Chapter 2009, Government Code.

Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. The bill provides that a district that uses Administrative Procedures is not subject to notice and hearing

requirements under this chapter.

SECTION 5. Amends Chapter 36, Water Code by repealing Section 36.001(17).

SECTION 6. The bill provides that the change in law made by this Act applies only to a permit or permit amendment application hearing or a rulemaking hearing held by a groundwater conservation district on or after the effective date of this Act. The bill provides that a permit or permit amendment application hearing or a rulemaking hearing held by a groundwater conservation district before the effective date of this Act is governed by the law in effect at the time the hearing is held. The bill provides the former law is continued in effect for that purpose.

SECTION 7. The effective date of the bill is September 1, 2003.

### **EFFECTIVE DATE**

September 1, 2003

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 1379 modifies the original by clarifying that, for applications that do not require a hearing, the board is required to act at a meeting or that the general manager has the authority to act if the board has delegated that authority. It further clarifies that for applications requiring a hearing the district is required to act 60 days after the date of the final hearing on the application at its conclusion instead of 60 days after the last date of the hearing. Also, C.S.H.B. 1379 deletes the requirement that, if another location besides the district office or regular meeting place is used for a hearing, it be in the district. It also changes a notice on each permit or permit amendment hearing to a notice of each hearing on an application for a permit or permit amendment. It adds that the board or general manager, at least 10 days prior to a hearing shall post certain notices. It makes two technical changes by deleting a redundant "by rule" and changing "in" to "on."

The committee substitute also changes "the presiding officer may admit relevant evidence" to "the presiding officer shall admit relevant evidence." The provision that districts adopt rules when they contract with the State Office of Administrative Hearings (SOAH) is deleted to require districts to use SOAH rules if they contract with SOAH. Finally, a nonapplicability provision was added for districts that use the Administrative Procedures Act. (Chapter 2001, Government Code)