

## **BILL ANALYSIS**

Senate Research Center  
78R12437 QS-D

C.S.S.B. 738  
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Natural Resources  
4/17/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently Chapter 36, Water Code, regarding groundwater conservation districts, fails to clarify the exact nature of notice and hearings process that a district should utilize in rulemaking and permit authorization. There is a necessity to clarify and prescribe the notice and hearings process to be utilized by the district, since groundwater conservation districts are not subject to the Administrative Procedure Act. C.S.S.B. 738 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 a district may utilize alternative dispute resolution procedures.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to groundwater conservation districts in SECTION 2 (Section 36.114, Water Code) and SECTION 4 (Sections 36.406, 36.414 and 36.416, Water Code) of this bill.

Rulemaking authority is expressly granted to the board of directors of a district in SECTION 2 (Section 36.114, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.101, Water Code, by amending Subsection (b) and adding Subsections (d), (e), and (f), as follows:

- (b) Deletes text requiring notice in this section to include publication of the water conservation district board's agenda in one or more newspapers.
- (d) Requires the district's general manager or the board of directors of a district (board), not later than 10th day before a rulemaking hearing, to take certain actions, regarding notice.
- (e) Requires the notice to provided by Subsection (d) to include the time, date, and location of the hearing, a brief explanation of the subject of the hearing and a location at which a copy of the proposed rules may be reviewed or copied.
- (f) Requires the presiding officer to conduct a rulemaking hearing in the fashion the presiding officer deems to be appropriate to obtain information and testimony regarding the proposed rules as conveniently and expeditiously as possible without prejudicing the rights of any person at the hearing.

SECTION 2. Amends Sections 36.113 and 36.114, Water Code, as follows:

Sec. 36.113. New heading: PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) Authorizes the district to require that a change in the withdrawal or use of groundwater under a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.

- (b) Requires a district to require that an application for a permit or permit amendment be in writing and sworn to.

(c) Makes a conforming change.

(d) Makes a conforming change.

(e) Authorizes the district to impose more restrictive permits conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations meet certain standards. Makes conforming and nonsubstantive changes.

(f) Authorizes the permits and permit amendments to be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to drilling, equipping, completion, alternation, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(g) Deletes this Subsection, which authorizes the district to require prior approval for changes made in a withdrawal and use groundwater permit.

Sec. 36.114. New heading: PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) Requires the district by rule to determine each activity regulated by the district for which a permit or permit amendment is required.

(b) Requires the district by rule to determine whether a hearing on the permit or permit amendment application is required, for each activity for which the district determines a permit or permit amendment is required under Subsection (a).

(c) Requires the board, for all applications for which a hearing is not required under Subsection (b), to act on the application at a meeting as defined by Section 551.001(4) (defining meeting), Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

(d) Requires the district to promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.

(e) Authorizes the applicant, if, within 60 days, rather than 30 days, after the date an administratively complete application is submitted, the application fails to be acted on or set for hearing on specific date, to petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate. Makes nonsubstantive changes.

(f) Requires the initial hearing, for applications requiring a hearing to be held within 35 days after the setting of the date and requires the district to act on the application within 60 days, rather than 35 days, after the date the final hearing on the application is concluded.

(g) Creates new subsection from existing text.

(h) Creates new subsection from existing text.

SECTION 3. Amends Subchapter L, Chapter 36, Water Code, by adding 36.3705, as follows:

Sec. 36.3705. DEFINITION. Defines “applicant.”

SECTION 4. 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. DEFINITION. Defines “applicant.”

Sec. 36.402. APPLICABILITY. Provides that this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications, except as provided by Section 36.415.

Sec. 36.403. SCHEDULING OF HEARING. (a) Requires the district’s general manager or board to schedule a hearing on permit or permit applications received by the district as necessary, as provided by Section 36.114.

(b) Authorizes the general manager or board to schedule more than one application for consideration at a hearing.

(c) Requires a hearing to be held at the district office or regular meeting location of the board provides for hearings to be held at a different location in the district.

(d) Authorizes the hearing to be held in conjunction with a regularly scheduled board meeting.

Sec. 36.404. NOTICE. (a) Requires the general manager or the board to give notice of each hearing on an application for a permit or permit amendment.

(b) Requires the notice to include certain information.

(c) Requires the general manager or the board, not later than the 10th day before the date of a hearing, to take certain actions.

Sec. 36.405. HEARING REGISTRATION. Authorizes the district to require each person who attends a hearing to submit a hearing registration form stating certain information.

Sec. 36.406. HEARING PROCEDURES. (a) Requires a hearing to be conducted in a certain manner.

(b) Requires the board president or the hearings examiner to serve as the presiding officer at the hearing.

(c) Requires the presiding officer to follow certain procedures.

(d) Authorizes any interested person, including the general manager or a district employee, to testify or present evidence at the hearing, unless the district or the presiding officer establishes certain restrictive measures.

(e) Authorizes the presiding officer to allow testimony to be submitted in writing and to require that the written testimony be sworn to.

(f) Authorizes the presiding officer to allow a person who testifies at a hearing to supplement the testimony given at the hearing by filing additional written materials with the board or hearings examiner by the 10th day after the date of the hearing if no decision has been made by the board.

(g) Authorizes the presiding officer, at his or her discretion, to issue an order at any time before the board takes certain actions under Section 36.411, notwithstanding any other provision of this section, if authorized by rules of the district.

Sec. 36.407. EVIDENCE. (a) Requires the presiding officer to admit evidence if it is relevant to an issue at the hearing.

(b) Authorizes the presiding officer to exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Sec. 36.408. RECORDING. Requires the presiding officer to prepare and keep a record of each hearing in the form of minutes, audio or video recording, court reporter transcription, or report described by Section 36.410. Authorizes the presiding officer, if a hearing is transcribed at the request of a party to the hearing, to assess the costs associated with producing the transcript to one or more parties.

Sec. 36.409. CONTINUANCE. Authorizes the presiding officer to continue a hearing from time to time and from place to place without providing notice under Section 36.404. Requires the presiding officer to provide notice of the continued hearing by regular mail to persons who submitted a hearing registration form under Section 36.405, if the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing.

Sec. 36.410. REPORT. (a) Requires the presiding officer to submit a report to the board by the 30th day after the date a hearing is concluded, unless the hearing was conducted by a quorum of the board. Requires the presiding officer, if the hearing was conducted by a quorum of the board, to determine at his or her discretion whether to prepare and submit a report under this section.

(b) Requires the report to include certain information.

(c) Authorizes a person who participated in the hearing to submit a written request to review a copy of the report and submit to the board written exceptions to the report.

(d) Requires the presiding officer or general manager to mail a copy of the report to each person who requests to review the report under Subsection (c).

Sec. 36.411. BOARD ACTION. Requires the board to act on a permit or permit amendment application by the 60th day after the date the hearing on the application is concluded.

Sec. 36.412. REQUEST FOR REHEARING AND APPEAL. (a) Authorizes an applicant to appeal a decision of the board on a permit or permit amendment application by requesting a rehearing before the board by the 20th day after the date of the board's decision.

(b) Requires a request for hearing to be filed in the district office and to state the grounds for the request.

(c) Requires the board, if the board grants a request for rehearing, to schedule the rehearing by the 45th day after the day of the request is granted.

(d) Provides that the failure of the board to grant or deny a request for rehearing before the 91st day after the request is submitted constitutes a denial of the request.

Sec. 36.413. DECISION; WHEN FINAL. Provides that under certain circumstances, a decision of the board on a permit or permit amendment application hearing is final.

Sec. 36.414. ADDITIONAL PROCEDURES. Requires a district by rule to adopt procedural rules to implement this subchapter and authorizes it to adopt notice and hearing procedures in addition to those provided by this subchapter.

Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. Provides that this subchapter does not apply to a hearing conducted by the State Office of Administrative Hearings under Section 2003.021(b)(4) (Office), Government Code. Requires the hearing to be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code, if a district contracts with the State Office of Administrative Hearings to conduct a hearing.

Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. Authorizes a district by rule to develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code.

Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. Provides that except as provided by Section 36.415, Chapter 2001, Government Code is not applicable to a hearing under this chapter.

SECTION 5. Repealer: Section 36.001(17), Water Code (defining applicant).

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2003.