

By: Cook of Colorado

H.B. No. 1379

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the notice and hearing process for groundwater
3 conservation districts.

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

5 SECTION 1. Section 36.101, Water Code, is amended by
6 amending Subsection (b) and adding Subsections (d), (e), and (f) to
7 read as follows:

8 (b) After notice and hearing, the board shall adopt and
9 enforce rules to implement this chapter, including rules governing
10 procedure before the board. [~~Notice in this section shall include~~
11 ~~publication of the agenda of the hearing in one or more newspapers~~
12 ~~of general circulation in the county or counties in which the~~
13 ~~district is located.~~]

14 (d) Not later than the 10th day before the date of a
15 rulemaking hearing, the general manager shall:

16 (1) post notice in a place readily accessible to the
17 public in the district office;

18 (2) provide notice to the county clerk of each county
19 in the district; and

20 (3) publish notice in one or more newspapers of
21 general circulation in the county or counties in which the district
22 is located.

23 (e) The notice provided under Subsection (d) must include:

24 (1) the time, date, and location of the hearing; and

1 (2) a brief explanation of the subject of the hearing.

2 (f) The presiding officer shall conduct a rulemaking
3 hearing in the manner the presiding officer determines to be most
4 appropriate to obtain information and testimony relating to the
5 proposed rule as conveniently and expeditiously as possible without
6 prejudicing the rights of any person at the hearing.

7 SECTION 2. Sections 36.113 and 36.114, Water Code, are
8 amended to read as follows:

9 Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) A
10 district shall require permits for the drilling, equipping, or
11 completing of wells or for substantially altering the size of wells
12 or well pumps. A district may require that a change in the
13 withdrawal or use of groundwater under a permit issued by the
14 district may not be made unless the district has first approved a
15 permit amendment authorizing the change.

16 (b) A district shall require that an application for a
17 permit or a permit amendment be in writing and sworn to.

18 (c) A district may require that the following be included in
19 the permit or permit amendment application:

20 (1) the name and mailing address of the applicant and
21 the owner of the land on which the well will be located;

22 (2) if the applicant is other than the owner of the
23 property, documentation establishing the applicable authority to
24 construct and operate a well for the proposed use;

25 (3) a statement of the nature and purpose of the
26 proposed use and the amount of water to be used for each purpose;

27 (4) a water conservation plan or a declaration that

1 the applicant will comply with the district's management plan;

2 (5) the location of each well and the estimated rate at
3 which water will be withdrawn;

4 (6) a water well closure plan or a declaration that the
5 applicant will comply with well plugging guidelines and report
6 closure to the commission; and

7 (7) a drought contingency plan.

8 (d) Before granting or denying a permit or permit amendment,
9 the district shall consider whether:

10 (1) the application conforms to the requirements
11 prescribed by this chapter and is accompanied by the prescribed
12 fees;

13 (2) the proposed use of water unreasonably affects
14 existing groundwater and surface water resources or existing permit
15 holders;

16 (3) the proposed use of water is dedicated to any
17 beneficial use;

18 (4) the proposed use of water is consistent with the
19 district's certified water management plan;

20 (5) the applicant has agreed to avoid waste and
21 achieve water conservation; and

22 (6) the applicant has agreed that reasonable diligence
23 will be used to protect groundwater quality and that the applicant
24 will follow well plugging guidelines at the time of well closure.

25 (e) The district may impose more restrictive permit
26 conditions on new permit applications and permit amendment
27 applications to increase [~~increased~~] use by historic users if the

1 limitations:

2 (1) apply to all subsequent new permit applications
3 and permit amendment applications to increase ~~[increased]~~ use by
4 historic users, regardless of type or location of use;

5 (2) bear a reasonable relationship to the existing
6 district management plan; and

7 (3) are reasonably necessary to protect existing use.

8 (f) Permits and permit amendments may be issued subject to
9 the rules promulgated by the district and subject to terms and
10 provisions with reference to the drilling, equipping, completion,
11 ~~[or]~~ alteration, or operation of, or production of groundwater
12 from, [or] wells or pumps that may be necessary to prevent waste and
13 achieve water conservation, minimize as far as practicable the
14 drawdown of the water table or the reduction of artesian pressure,
15 lessen interference between wells, or control and prevent
16 subsidence.

17 ~~[(g) A district may require that changes in the withdrawal
18 and use of groundwater under a permit not be made without the prior
19 approval of a permit amendment issued by the district.]~~

20 Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND
21 HEARING. (a) The district by rule shall determine each activity
22 regulated by the district for which a permit or permit amendment is
23 required.

24 (b) For each activity for which the district determines a
25 permit or permit amendment is required under Subsection (a), the
26 district by rule shall determine whether a hearing on the permit or
27 permit amendment application is required.

1 (c) For all applications for which a hearing is not required
2 under Subsection (b), the board shall act on the application at a
3 meeting, as defined by Section 551.001(4), Government Code.

4 (d) The district shall promptly consider and act on each
5 administratively complete application for a permit or permit
6 amendment as provided by Subsection (c) or Subchapter M.

7 (e) If, within 60 [30] days after the date an [the]
8 administratively complete application is submitted, the [an]
9 application has not been acted on or set for a hearing on a specific
10 date, the applicant may petition the district court of the county
11 where the land is located for a writ of mandamus to compel the
12 district to act on the application or set a date for a hearing on the
13 application, as appropriate.

14 (f) For applications requiring a hearing, the initial [A]
15 hearing shall be held within 35 days after the setting of the date
16 and the district shall act on the application within 60 [35] days
17 after the last date of the hearing or hearings.

18 (g) The district may by rule set a time when an application
19 will expire if the information requested in the application is not
20 provided to the district.

21 (h) An administratively complete application requires
22 information set forth in accordance with Sections 36.113 and
23 36.1131.

24 SECTION 3. Subchapter L, Chapter 36, Water Code, is amended
25 by adding Section 36.3705 to read as follows:

26 Sec. 36.3705. DEFINITION. In this subchapter, "applicant"
27 means a newly confirmed district applying for a loan from the loan

1 fund.

2 SECTION 4. Chapter 36, Water Code, is amended by adding
3 Subchapter M to read as follows:

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

6 Sec. 36.401. DEFINITION. In this subchapter, "applicant"
7 means a person who is applying for a permit or a permit amendment.

8 Sec. 36.402. APPLICABILITY. Except as provided by Section
9 36.415, this subchapter applies to the notice and hearing process
10 used by a district for permit and permit amendment applications.

11 Sec. 36.403. SCHEDULING OF HEARING. (a) The general
12 manager or board shall schedule a hearing on permit or permit
13 amendment applications received by the district as necessary, as
14 provided by Section 36.114.

15 (b) The general manager or board may schedule more than one
16 application for consideration at a hearing.

17 (c) A hearing must be held at the district office or regular
18 meeting location of the board unless the board by rule provides for
19 hearings to be held at a different location in the district.

20 (d) A hearing may be held in conjunction with a regularly
21 scheduled board meeting.

22 Sec. 36.404. NOTICE. (a) The general manager shall give
23 notice of each permit or permit amendment hearing.

24 (b) The notice must include:

25 (1) the name of the applicant;

26 (2) the address or approximate location of the well or
27 proposed well;

1 (3) for a permit amendment hearing, a brief
2 explanation of the proposed amendment;

3 (4) the time, date, and location of the hearing; and

4 (5) any other information the general manager or board
5 considers relevant and appropriate.

6 (c) Not later than the 10th day before the date of a hearing,
7 the general manager shall:

8 (1) post notice in a place readily accessible to the
9 public in the district office;

10 (2) provide notice to the county clerk of each county
11 in the district; and

12 (3) provide notice by regular mail to:

13 (A) the applicant; and

14 (B) any other person entitled to receive notice
15 under the rules of the district.

16 Sec. 36.405. HEARING REGISTRATION. The district may
17 require each person who attends a hearing to submit a hearing
18 registration form stating:

19 (1) the person's name;

20 (2) the person's address;

21 (3) whom the person represents, if the person is not
22 there in the person's individual capacity; and

23 (4) whether the person wishes to testify.

24 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be
25 conducted by:

26 (1) a quorum of the board; or

27 (2) an individual to whom the board has delegated in

1 writing the responsibility to preside as a hearings examiner over
2 the hearing or matters related to the hearing.

3 (b) The board president or the hearings examiner shall serve
4 as the presiding officer at the hearing.

5 (c) The presiding officer shall:

6 (1) convene the hearing at the time and place
7 specified in the notice;

8 (2) set any necessary additional hearing dates;

9 (3) establish the order for presentation of evidence;

10 (4) administer oaths to all persons presenting
11 testimony;

12 (5) examine persons presenting testimony;

13 (6) ensure that information and testimony are
14 introduced as conveniently and expeditiously as possible without
15 prejudicing the rights of any party; and

16 (7) prescribe reasonable time limits for testimony and
17 the presentation of evidence.

18 (d) Any interested person, including the general manager or
19 a district employee, may testify or present evidence at the
20 hearing, unless:

21 (1) the district by rule limits testimony or the
22 presentation of evidence to persons that the district by rule
23 determines to be affected by the subject matter of the hearing; or

24 (2) the presiding officer, under authority granted to
25 the presiding officer by district rule, limits testimony or the
26 presentation of evidence to persons who, in the presiding officer's
27 determination, are affected by the subject matter of the hearing.

1 (e) The presiding officer may allow testimony to be
2 submitted in writing and may require that written testimony be
3 sworn to.

4 (f) The presiding officer may allow a person who testifies
5 at the hearing to supplement the testimony given at the hearing by
6 filing additional written materials with the board or hearings
7 examiner not later than the 10th day after the date of the hearing
8 if no decision has been made by the board.

9 (g) Notwithstanding any other provision of this section, if
10 authorized by the rules of the district, the presiding officer, at
11 the discretion of the presiding officer, may issue an order at any
12 time before board action under Section 36.411 that:

13 (1) refers parties to a contested application hearing
14 to an alternative dispute resolution procedure on any matter at
15 issue in the hearing;

16 (2) determines how the costs of the procedure shall be
17 apportioned among the parties; and

18 (3) appoints an impartial third party as provided by
19 Section 2009.053, Government Code, to facilitate that procedure.

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

22 (b) The presiding officer may exclude evidence that is
23 irrelevant, immaterial, or unduly repetitious.

24 Sec. 36.408. RECORDING. The presiding officer shall
25 prepare and keep a record of each hearing in the form of minutes,
26 audio or video recording, court reporter transcription, or the
27 report described by Section 36.410. If a hearing is transcribed at

1 the request of a party to the hearing, the presiding officer may
2 assess the costs associated with producing the transcript to one or
3 more parties.

4 Sec. 36.409. CONTINUANCE. The presiding officer may
5 continue a hearing from time to time and from place to place without
6 providing notice under Section 36.404. If the presiding officer
7 continues a hearing without announcing at the hearing the time,
8 date, and location of the continued hearing, the presiding officer
9 must provide notice of the continued hearing by regular mail to
10 persons who submitted a hearing registration form under Section
11 36.405.

12 Sec. 36.410. REPORT. (a) The presiding officer shall
13 submit a report to the board not later than the 30th day after the
14 date a hearing is concluded, unless the hearing was conducted by a
15 quorum of the board. If the hearing was conducted by a quorum of the
16 board, the presiding officer shall determine at the presiding
17 officer's discretion whether to prepare and submit a report to the
18 board under this section.

19 (b) The report must include:

- 20 (1) a summary of the subject matter of the hearing;
21 (2) a summary of the evidence or public comments
22 received; and
23 (3) the presiding officer's recommendations for board
24 action on the subject matter of the hearing.

25 (c) A person who participated in the hearing may:

- 26 (1) submit a written request to review a copy of the
27 report; and

1 (2) submit to the board written exceptions to the
2 report.

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

6 Sec. 36.411. BOARD ACTION. The board shall act on a permit
7 or permit amendment application not later than the 60th day after
8 the date the hearing on the application is concluded.

9 Sec. 36.412. REQUEST FOR REHEARING AND APPEAL. (a) An
10 applicant may appeal a decision of the board on a permit or permit
11 amendment application by requesting a rehearing before the board
12 not later than the 20th day after the date of the board's decision.

13 (b) A request for rehearing must be filed in the district
14 office and must state the grounds for the request.

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

18 (d) The failure of the board to grant or deny a request for
19 rehearing before the 91st day after the date the request is
20 submitted constitutes a denial of the request.

21 Sec. 36.413. DECISION; WHEN FINAL. A decision by the board
22 in a permit or permit amendment application hearing is final:

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

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

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

1 or

2 (B) the board renders a decision after rehearing.

3 Sec. 36.414. ADDITIONAL PROCEDURES. A district by rule
4 shall adopt procedural rules to implement this subchapter and may
5 adopt notice and hearing procedures in addition to those provided
6 by this subchapter.

7 Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF
8 ADMINISTRATIVE HEARINGS. This subchapter does not apply to a
9 hearing conducted by the State Office of Administrative Hearings
10 under Section 2003.021(b)(4), Government Code. If a district
11 contracts with the State Office of Administrative Hearings to
12 conduct a hearing, the district shall adopt rules establishing
13 procedures for those hearings consistent with Subchapters C, D, and
14 F, Chapter 2001, Government Code.

15 Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. A district by
16 rule may develop and use alternative dispute resolution procedures
17 in the manner provided for governmental bodies under Chapter 2009,
18 Government Code.

19 SECTION 5. Section 36.001(17), Water Code, is repealed.

20 SECTION 6. The change in law made by this Act applies only
21 to a permit or permit amendment application hearing or a rulemaking
22 hearing held by a groundwater conservation district on or after the
23 effective date of this Act. A permit or permit amendment
24 application hearing or a rulemaking hearing held by a groundwater
25 conservation district before the effective date of this Act is
26 governed by the law in effect at the time the hearing is held, and
27 the former law is continued in effect for that purpose.

1 SECTION 7. This Act takes effect September 1, 2003.