

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the notice, hearing, and permitting process for
3 groundwater 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) through (i) 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 or board 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;

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; and

23 (4) provide notice by mail, facsimile, or electronic
24 mail to any person who has submitted a written request for notice of

1 a rulemaking hearing.

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

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

4 (2) a brief explanation of the subject of the hearing;

5 and

6 (3) a location at which a copy of the proposed rules
7 may be reviewed or copied.

8 (f) The presiding officer shall conduct a rulemaking
9 hearing in the manner the presiding officer determines to be most
10 appropriate to obtain information and testimony relating to the
11 proposed rule as conveniently and expeditiously as possible without
12 prejudicing the rights of any person at the hearing.

13 (g) The presiding officer shall prepare and keep a record of
14 each rulemaking hearing in the form of an audio or video recording
15 or a court reporter transcription. On the request of any party, the
16 hearing shall be transcribed by a court reporter. The presiding
17 officer may assess any costs associated with the court reporter
18 transcription against the party requesting the transcription or
19 among the parties to the hearing at the discretion of the presiding
20 officer.

21 (h) A person may submit to the district a written request
22 for notice of a rulemaking hearing. A written request for notice of
23 a rulemaking hearing is effective for one year from the date the
24 request is received by the district. To receive notice of a hearing
25 after a request expires, a person must submit a new request.

26 (i) Failure to provide notice under Subsection (d)(4) does
27 not invalidate any action taken by the district at the hearing.

1 SECTION 2. Section 36.113, Water Code, is amended to read as
2 follows:

3 Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) A
4 district shall require permits for the drilling, equipping,
5 operating, or completing of wells or for substantially altering the
6 size of wells or well pumps. A district may require that a change in
7 the withdrawal or use of groundwater under a permit issued by the
8 district may not be made unless the district has first approved a
9 permit amendment authorizing the change. A district may not
10 require a permit or a permit amendment for maintenance or repair of
11 a well if the maintenance or repair does not increase the production
12 capabilities of the well to more than its authorized or permitted
13 production rates.

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

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

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

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

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

25 (4) a water conservation plan or a declaration that
26 the applicant will comply with the district's management plan;

27 (5) the location of each well and the estimated rate at

1 which water will be withdrawn;

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

5 (7) a drought contingency plan.

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

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

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

14 (3) the proposed use of water is dedicated to any
15 beneficial use;

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

18 (5) the applicant has agreed to avoid waste and
19 achieve water conservation; and

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

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

27 (1) apply to all subsequent new permit applications

1 and permit amendment applications to increase [~~increased~~] use by
2 historic users, regardless of type or location of use;

3 (2) bear a reasonable relationship to the existing
4 district management plan; and

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

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

15 (g) In implementing Subsection (e) or Section 36.116(b), a
16 district may require an existing or historic user to prove the
17 maximum annual amount of groundwater that the user applied to a
18 beneficial use during a reasonable period established by the
19 district that ends on or before the date on which the district
20 publishes notice or adopts rules protecting existing or historic
21 users under Subsection (e) or Section 36.116(b).

22 (h) In implementing Subsection (g), a district may:

23 (1) for a user who produced groundwater only within
24 the final year of the period established under Subsection (g),
25 issue a permit for existing or historic use based on an
26 extrapolation of the user's beneficial use of groundwater to the
27 amount that would have been used in a full calendar year for the

1 same beneficial use;

2 (2) for use based on agricultural irrigation, issue a
3 permit based on:

4 (A) the maximum annual amount of groundwater
5 actually used during the period established under Subsection (g);
6 or

7 (B) the acreage irrigated during the period
8 established under Subsection (g); or

9 (3) for an electric utility, a power generation
10 company, or a retail electric provider as defined by Section
11 31.002, Utilities Code, issue a permit based on the amount actually
12 used as computed under and for the period established under
13 Subsection (g) or Subdivision (1).

14 (i) An annual report of groundwater use previously
15 submitted to a state agency is admissible as evidence of existing or
16 historic use under Subsection (g) or (h).

17 (j) In issuing a permit for existing or historic use, a
18 district may not discriminate against land or wells on land
19 enrolled or participating in the federal conservation reserve
20 program. Notwithstanding any provision to the contrary in this
21 chapter, a district that adopts rules related to the protection of
22 existing or historic use which authorize a person who participated
23 in the federal conservation reserve program during a period
24 established by the district under Subsection (g) to establish
25 existing or historic use based upon the person's groundwater
26 production during a reasonable period of time established by the
27 district prior to the person entering the federal conservation

1 reserve program shall not be considered discriminatory against such
2 a person for purposes of this chapter [~~A district may require that~~
3 ~~changes in the withdrawal and use of groundwater under a permit not~~
4 ~~be made without the prior approval of a permit amendment issued by~~
5 ~~the district~~].

6 SECTION 3. Subchapter D, Chapter 36, Water Code, is amended
7 by adding Section 36.1132 to read as follows:

8 Sec. 36.1132. DEFINED HISTORIC USE PERIODS FOR CERTAIN
9 DISTRICTS. (a) This section applies only to a groundwater
10 conservation district created under Section 59, Article XVI, Texas
11 Constitution, that:

12 (1) is, at least in part, adjacent to an international
13 border;

14 (2) has within its boundaries a part of an aquifer that
15 is regulated under Chapter 626, Acts of the 73rd Legislature,
16 Regular Session, 1993; and

17 (3) is not regulated under Chapter 626, Acts of the
18 73rd Legislature, Regular Session, 1993.

19 (b) In implementing Section 36.113(e) or 36.116(b), and
20 notwithstanding the periods described under Section 36.113(g), a
21 district may institute a process requiring an existing or historic
22 user to prove the maximum annual amount of groundwater that the user
23 applied to a beneficial use during the period from:

24 (1) June 1, 1972, to December 31, 1991; or

25 (2) January 1, 1992, to January 7, 2003.

26 (c) In implementing Subsection (b), for a user who produced
27 groundwater only within the final year of the period established

1 under Subsection (b)(2), a district shall issue a permit for
2 existing or historic use based on an extrapolation of the user's
3 beneficial use of groundwater to the amount that would have been
4 used in a full calendar year for the same beneficial use.

5 (d) If a district limits or reduces total permitted
6 production within its boundaries in a manner consistent with its
7 certified groundwater district management plan under Section
8 36.1072, the district shall limit or reduce the amount of permitted
9 production of groundwater through proportionate reductions that
10 will apply equally among classes of users in the following order,
11 with all limitations or reductions that can be made in one class
12 being made in that class before proceeding with limitations or
13 reductions in the next subsequent class:

14 (1) new users, except as provided by Subdivision (2);

15 (2) the class of users described by Subsections (b)(1)
16 and (c), or any new user who was issued a permit by the district on
17 or before May 1, 2003, for the amount recognized in the permit; and

18 (3) the class of users described by Subsection (b)(2).

19 SECTION 4. Section 36.114, Water Code, is amended to read as
20 follows:

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

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

1 permit amendment application is required.

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

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

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

17 (f) For applications requiring a hearing, the initial [A]
18 hearing shall be held within 35 days after the setting of the date,
19 and the district shall act on the application within 60 [35] days
20 after the date [of] the final hearing on the application is
21 concluded.

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

25 (h) An administratively complete application requires
26 information set forth in accordance with Sections 36.113 and
27 36.1131.

1 SECTION 5. Subchapter L, Chapter 36, Water Code, is amended
2 by adding Section 36.3705 to read as follows:

3 Sec. 36.3705. DEFINITION. In this subchapter, "applicant"
4 means a newly confirmed district applying for a loan from the loan
5 fund.

6 SECTION 6. Chapter 36, Water Code, is amended by adding
7 Subchapter M to read as follows:

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

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

12 Sec. 36.402. APPLICABILITY. Except as provided by Section
13 36.415, this subchapter applies to the notice and hearing process
14 used by a district for permit and permit amendment applications.

15 Sec. 36.403. SCHEDULING OF HEARING. (a) The general
16 manager or board shall schedule a hearing on permit or permit
17 amendment applications received by the district as necessary, as
18 provided by Section 36.114.

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

21 (c) A hearing must be held at the district office or regular
22 meeting location of the board unless the board provides for
23 hearings to be held at a different location.

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

26 Sec. 36.404. NOTICE. (a) The general manager or board
27 shall give notice of each hearing on an application for a permit or

1 permit amendment.

2 (b) The notice must include:

3 (1) the name of the applicant;

4 (2) the address or approximate location of the well or
5 proposed well;

6 (3) for a permit amendment hearing, a brief
7 explanation of the proposed amendment;

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

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

11 (c) Not later than the 10th day before the date of a hearing,
12 the general manager or board shall:

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

15 (2) provide notice to the county clerk of each county
16 in the district; and

17 (3) provide notice by:

18 (A) regular mail to the applicant;

19 (B) regular mail, facsimile, or electronic mail
20 to any person who has submitted a written request for notice of the
21 hearing; and

22 (C) regular mail to any other person entitled to
23 receive notice under the rules of the district.

24 (d) A person may submit to the district a written request
25 for notice of a hearing on a permit or permit amendment application.

26 A written request for notice of a hearing is effective for one year
27 from the date the request is received by the district. To receive

1 notice of a hearing after a request expires, a person must submit a
2 new request.

3 (e) Failure to provide notice under Subsection (c)(3)(B)
4 does not invalidate any action taken by the district at the hearing.

5 Sec. 36.405. HEARING REGISTRATION. The district may
6 require each person who participates in a hearing to submit a
7 hearing registration form stating:

8 (1) the person's name;

9 (2) the person's address; and

10 (3) whom the person represents, if the person is not
11 there in the person's individual capacity.

12 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be
13 conducted by:

14 (1) a quorum of the board; or

15 (2) an individual to whom the board has delegated in
16 writing the responsibility to preside as a hearings examiner over
17 the hearing or matters related to the hearing.

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

20 (c) The presiding officer shall:

21 (1) convene the hearing at the time and place
22 specified in the notice;

23 (2) set any necessary additional hearing dates;

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

25 (4) administer oaths to all persons presenting
26 testimony;

27 (5) examine persons presenting testimony;

1 (6) ensure that information and testimony are
2 introduced as conveniently and expeditiously as possible without
3 prejudicing the rights of any party; and

4 (7) prescribe reasonable time limits for testimony and
5 the presentation of evidence.

6 (d) Any interested person, including the general manager or
7 a district employee, may testify or present evidence at the
8 hearing, unless:

9 (1) the district by rule limits testimony or the
10 presentation of evidence to persons that the district determines to
11 be affected by the subject matter of the hearing; or

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

16 (e) The presiding officer may allow testimony to be
17 submitted in writing and may require that written testimony be
18 sworn to.

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

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

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

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

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

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

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

12 Sec. 36.408. RECORDING. (a) Except as provided by
13 Subsection (b), the presiding officer shall prepare and keep a
14 record of each hearing in the form of minutes, audio or video
15 recording, or court reporter transcription. On the request of any
16 party to a contested hearing, the hearing shall be transcribed by a
17 court reporter. The presiding officer may assess costs associated
18 with the court reporter transcription against the party requesting
19 the transcription or among the parties to the hearing at the
20 presiding officer's discretion. The presiding officer may exclude
21 a party from further participation in a hearing for failure to pay
22 in a timely manner any costs associated with a court reporter
23 transcription that were assessed against that party.

24 (b) If a hearing is uncontested, the presiding officer may
25 substitute the report required under Section 36.410 for a method of
26 recording the hearing described by Subsection (a).

27 Sec. 36.409. CONTINUANCE. The presiding officer may

1 continue a hearing from time to time and from place to place without
2 providing notice under Section 36.404. If the presiding officer
3 continues a hearing without announcing at the hearing the time,
4 date, and location of the continued hearing, the presiding officer
5 must provide notice of the continued hearing by regular mail to
6 persons who submitted a hearing registration form under Section
7 36.405.

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

15 (b) The report must include:

16 (1) a summary of the subject matter of the hearing;
17 (2) a summary of the evidence or public comments
18 received; and

19 (3) the presiding officer's recommendations for board
20 action on the subject matter of the hearing.

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

22 (1) submit a written request to review a copy of the
23 report; and

24 (2) submit to the board written exceptions to the
25 report.

26 (d) The presiding officer or general manager shall mail a
27 copy of the report to each person who requests to review the report

1 under Subsection (c).

2 Sec. 36.411. BOARD ACTION. The board shall act on a permit
3 or permit amendment application not later than the 60th day after
4 the date the final hearing on the application is concluded.

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

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

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

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

17 Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the
18 board on a permit or permit amendment application is final:

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

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

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

24 (B) the board renders a decision after rehearing;

25 or

26 (C) the request for rehearing is denied by
27 operation of law.

1 (b) A decision by the board on a permit or permit amendment
2 application is appealable if the decision is final under Subsection
3 (a)(2).

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

8 Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF
9 ADMINISTRATIVE HEARINGS. This subchapter does not apply to a
10 hearing conducted by the State Office of Administrative Hearings
11 under Section 2003.021(b)(4), Government Code. If a district
12 contracts with the State Office of Administrative Hearings to
13 conduct a hearing, the hearing shall be conducted as provided by
14 Subchapters C, D, and 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 Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT
20 CODE. Except as provided by Section 36.415, Chapter 2001,
21 Government Code, does not apply to a hearing under this chapter.

22 SECTION 7. Subdivision (17), Section 36.001, Water Code, is
23 repealed.

24 SECTION 8. (a) The legislature finds that:

25 (1) groundwater conservation districts have existing
26 statutory authority to protect existing or historic use under
27 Subsection (e), Section 36.113, and Subsection (b), Section 36.116,

1 Water Code;

2 (2) in implementing Subsection (e), Section 36.113,
3 and Subsection (b), Section 36.116, Water Code, it is important
4 that groundwater conservation districts, in the conservation and
5 management of groundwater, adopt precise rules regarding existing
6 or historic use of groundwater, and that those rules may include
7 definite time periods during which existing or historic use must be
8 proven; and

9 (3) it will benefit the state and its citizens to set
10 express statutory guidelines that clarify the ability of
11 groundwater conservation districts to define and identify existing
12 or historic use periods.

13 (b) The changes in law made by this Act do not:

14 (1) limit the express or implied powers that
15 groundwater conservation districts had before the effective date of
16 this Act to implement Subsection (e), Section 36.113, and
17 Subsection (b), Section 36.116, Water Code, using reasonable time
18 periods during which existing or historic use must be proven by a
19 permit applicant; or

20 (2) invalidate rules lawfully adopted by a groundwater
21 conservation district before the effective date of this Act that
22 use those reasonable time periods.

23 (c) A district to which Section 36.1132, Water Code, as
24 added by this Act, applies may require a well that was previously
25 exempted by district rule from the permitting procedures of the
26 district but that is not exempt under Subsection (b), Section
27 36.117, Water Code, and is no longer exempted by district rule, as

1 of the effective date of this Act, to comply with the permitting
2 procedures and rules of the district, as amended. This subsection
3 does not apply to the requirement to obtain a permit to drill,
4 equip, or complete a well that was drilled, equipped, or completed
5 under an exemption by district rule before the date of repeal of the
6 exemption; however, this subsection does apply to the production of
7 groundwater from or operation of such a well.

8 (d) Notwithstanding Subdivision (3), Subsection (h),
9 Section 36.113, Water Code, as added by this Act, a district that
10 issues permits based on existing or historic use under Subsection
11 (e), Section 36.113, or Subsection (b), Section 36.116, Water Code,
12 and implements Subsection (g), Section 36.113, Water Code, may
13 issue an electric utility, a power generation company, or a retail
14 electric provider as defined by Section 31.002, Utilities Code, a
15 permit based on an amount necessary to annually provide sufficient
16 groundwater for cooling, boiler make-up, and potable purposes for
17 use at an existing or planned power generation facility using land
18 or the right to produce groundwater from land that was acquired by
19 the electric utility, power generation company, or retail electric
20 provider before May 1, 2003, to supply water to power generation
21 facilities that on that date existed or were planned for future
22 construction.

23 SECTION 9. The change in law made by this Act applies only
24 to a permit or permit amendment application hearing or a rulemaking
25 hearing held by a groundwater conservation district on or after the
26 effective date of this Act. A permit or permit amendment
27 application hearing or a rulemaking hearing held by a groundwater

1 conservation district before the effective date of this Act is
2 governed by the law related to notice and hearing in effect at the
3 time the hearing is held, and the former law is continued in effect
4 for that purpose.

5 SECTION 10. This Act takes effect September 1, 2003.