

By: Averitt

S.B. No. 1041

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the groundwater rights of private landowners and their
3 lessees and assigns.

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

5 SECTION 1. The legislature finds that:

6 (1) the common law of the State of Texas holds that a
7 surface owner's or a surface owner's lessee's or assign's property
8 interest in groundwater vests as a property right at the moment of
9 capture;

10 (2) the Supreme Court of Texas has consistently
11 recognized that regulation of groundwater is a duty of the
12 legislature;

13 (3) the legislature has recognized, by enacting
14 Section 36.0015, Water Code, that regulation by groundwater
15 conservation districts is the state's preferred method of
16 management of groundwater;

17 (4) the common law doctrine of this state on the nature
18 of the property right in groundwater is difficult for the residents
19 of the state to discern; and

20 (5) it will benefit the state and its residents to set
21 forth statutorily the common law doctrine on the nature of the
22 vesting of a private property right in groundwater in the general
23 laws of the state, thereby providing clarity to landowners and
24 their lessees and assigns regarding the nature of their right.

1 SECTION 2. Section 36.002, Water Code, is amended to read as
2 follows:

3 Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The ownership
4 and rights of the owners of the land and their lessees and assigns
5 in groundwater are hereby recognized, and nothing in this code
6 shall be construed as depriving or divesting the owners or their
7 lessees and assigns of the ownership or rights, except as those
8 rights may be limited or altered by rules promulgated by a district.

9 (b) A surface owner's or a surface owner's lessee's or
10 assign's property interest in groundwater vests as a property right
11 at the moment of capture. This subsection does not affect any
12 liability that may arise under common law because of the production
13 or use of groundwater or the impact of that production or use on
14 another person and does not restrict the regulatory authority of a
15 district under this chapter or special law.

16 SECTION 3. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2003.